

**UNDERWRITING AND CLAIMS EXPERIENCE
OF TOURIST VESSELS IN QUEENSLAND**

BY

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THE UNDERWRITING AND CLAIMS EXPERIENCE OF TOURIST VESSELS IN QUEENSLAND

THE BUSINESS

The Shipowners' Club has been writing passenger ferries and tourist vessels in Queensland for over 20 years. Queensland is now our largest single area in this particular sector in Australia, representing 41 operators with 181 vessels out of a total entry Australia-wide of 89 operators and 330 vessels.

This business has grown over recent years and continues to grow.

The types of operations with which our Queensland members are involved can be broken down into 3 basic categories, those operating as ferries, those doing day excursions for scuba diving, charter fishing or to the reef and finally those offering mini cruise trips of maybe 3 or 4 nights.

a) Ferry Operators

The majority of vessels in this category operate around the Whitsunday Islands although the Club has entries spanning the whole Queensland coast which mainly serve island resorts. In these cases passengers very often have large amounts of luggage which can create both operational and liability problems particularly with the elderly.

b) Day Excursions

Membership in this category includes all the larger operators with fixed pontoons at the reef and the capacity to carry in excess of 400 passengers per day. In addition to the high speed transit craft the Club covers the liabilities of the pontoons, glass bottom boats, semi submersibles and transfer vessels, many of which spend most of their time at the reef.

These represent one end of the scale but, at the other, we have operators of singleton vessels carrying up to 10 passengers on charter fishing/dive trips.

The Club has been involved with all the larger operators for over 10 years and recent growth has come therefore from smaller operators and in particular owner/operated vessels.

c) Overnight Vessels

This category includes the Club's largest Australian passenger vessel, "Reef Endeavour" which operates 3/4 night cruises out of Cairns. Other members operate similar duration cruises and smaller vessels ranging right down to 50 foot owner operated yachts. With these operations it is common for operators to run excursions from entered vessels and in many cases therefore, cover may need to be extended to include liabilities such as bush walking. Where this takes place

the Club is able to respond when the activity is included under the original contract of carriage.

In addition to other basic underwriting enquiries we will also be considering whether the vessels will be operating in open or sheltered waters and what is the passenger throughput, as opposed to the passenger capacity, of vessels.

The target market for operators varies considerably although the majority of smaller operators target mainly the Australian market. Many of the larger operators spend an enormous amount of time and effort attracting inbound tourists from Europe, America but in particular Asia. In these instances there may well be a request that the tour operator should be named as a co-assured which we are generally able to do in accordance with the standard co-assured "misdirected arrow" cover.

Asians and "backpackers" tend to claim less often than others. Inbound tourists tend to produce a lower incidence of claims but can be very upset if their "holiday of a lifetime" has been ruined.

In underwriting new risks the target clientele can be as important in assessing the overall risk as the type of operation and management.

THE COVER

The terms on which the Club covers the Queensland passenger vessel sector are generally comprehensive, with the exception of crew claims which are excluded. They will generally be covered by the local workers' compensation schemes.

The Club does generally cover 4/4ths of the collision risk.

There are two particular terms of entry which deserve more detailed comment

a) The "Aerial and Aquatics Exclusion Clause" (Appendix 1)

This exclusion has developed as a result of the variety of leisure activities undertaken from entered vessels including diving, water-skiing, parascending, sausages, bananas and a variety of other activities which we believe may fall outside the scope of poolable mutual P&I cover. Of course it is our objective to provide our Members with the cover that they require so we are able to delete this exclusion if we are satisfied with the safety of the operation and would then arrange a special reinsurance of any liabilities arising from those particular activities.

We have reinstated cover on some occasions for swimming and snorkelling although this is not necessarily a cover which owners buy from the Club. Those which undertake diving activities are likely to take the diving cover from the policy bought by the Professional Association of Diving Instructors (PADI) and the swimming and snorkelling cover is then generally included for minimal premium.

b) The GBRMPA Wording

The GBRMPA wording arises out of the terms of the GBRMPA deed and attempts to recognise the unique position of GBRMPA as the licensor of a number of the tourist vessel operators, or more particularly the fixed pontoons.

The story began, so far as the Club was concerned, in November 1993 when one of our members received advice from GBRMPA that an examination of the Club's Rules by the Australian Government Solicitor had led them to the conclusion that the Club's cover did not fulfil their requirements.

The GBRMPA Deed (Appendix 2)

The wording of the deed has evolved a little over the years but was not, originally, and is not now, particularly onerous and it therefore came as some surprise to us to be told that our cover did not fulfil its terms.

The central clauses of the Deed are clause 3 (Covenants and Indemnity) and 4 (Insurance).

So far as the Club is concerned the essential scheme of clause 3 is that the Permittee undertakes:

- a) to remove the vessel if it becomes a wreck, and agrees to indemnify the Authority for the cost of doing so if he fails to do it himself;
- b) to clean up any pollution from the vessel, and agrees to indemnify the Authority for the cost of doing so if he does not do it himself; and
- c) to indemnify the Authority against third party claims for loss of or damage to property or for personal injury or death unless arising out of the negligence of the Authority.

Clause 4 requires the Permittee to maintain insurance covering his obligations under Clause 3 and naming the Authority as a co-assured.

None of the undertakings in Clause 3 has ever caused the Club a difficulty. We have regarded the undertakings to remove the wreck of the vessel and to clean up any pollution as quasi - legislative requirements. The indemnity in respect of third party claims falls within the scope of the Club's ordinary poolable P&I cover, rather than any additional contractual liability extension, as there is an exception from the indemnity provisions of the Authority's own negligence.

However, it became apparent that the Australian Government Solicitor, on whom GBRMPA relied, was quite unfamiliar with the scope of P&I cover and was unsatisfied with any general confirmation from us that the Club could cover the member's liabilities under the deed.

After a lull of some eight months through to the summer of 1994 another of our members, a new operator new to the Club, was formally advised that his insurance did not conform to the requirements of the Deed. This prevented the member commencing operations at all.

We managed to obtain interim approval for a month to enable the member to commence operations and in the meantime arranged a meeting with GBRMPA in Townsville at which we hoped to explain the Club's background and ethos so clearly that a general confirmation of entry would suffice.

Much of the problem resulted from the requirement in the Deed that GBRMPA be named as an "insured person". So far as a P&I liability policy is concerned naming a potential claimant, indeed the most likely claimant, as a co-assured is fundamentally incompatible with the mutuality of a Club of vessel operating members. We were only able to offer co-assured cover on the basis of the so-called "misdirected arrow" clause which only comes into play in the event of a third party claim being pursued against GBRMPA rather than the member. GBRMPA did not have an insurable P&I interest in their own right. They seemed to want more than mere co-assured cover but be exempt from any of the obligations of membership. As a result they sought numerous specific exemptions from the terms of cover so far as their own interest was concerned.

At a meeting in September 1994 we attempted to allay GBRMPA's concerns and persuade them that they would actually be better off not named as a co-assured. We were not successful.

We agreed instead to develop what has now become known as the GBRMPA wording which sets out exhaustively every qualification to the cover that they believed existed in the Rules and makes clear that they do not derogate from the general affirmation of cover of the obligations under the Deed which is provided.

That wording has now existed for some four years. There was a flurry of activity last year when the Australian Government Solicitor made certain further points on the wording which gave rise to a further dialogue. It was somewhat ironic that the conclusion to this correspondence should include a suggestion from GBRMPA that we should cut out all the specific clauses in the GBRMPA wording and just provide a general confirmation of cover.

THE CLAIMS

(a) Environmental Claims

With all the work that has gone into the GBRMPA wording, has there actually been a claim? There have been three incidents of broken moorings within GBRMPA's jurisdiction all as a result of cyclone Justin last March though in none has the cover, as such, actually been invoked by GBRMPA as they were dealt with by hull underwriters. We recognise, like any Club these days, that it is essential to move immediately on any claim involving environmental damage or potential environmental damage and we do neither the owners nor the insurance industry any good at all if we drag our feet in responding to an incident by insisting on a strict analysis of liability or hiding behind the small print of our cover. In fact the only incident we have had recently involving GBRMPA ourselves has been the removal of the fishing vessel Laurel May from an unnamed reef North East of MacKay.

It is worth recording that we have had some experience of dealing with reef damage claims outside Australia. In October 1993 the Taiwanese fishing vessel Jin Shiang Fa ran aground on an algae reef surrounding an atoll in American Samoa and we mobilised salvors from Singapore to remove her. In July last year a Thai flag reefer vessel ran aground on Mona Island to the West of Puerto Rico causing substantial damage to the reef. In both cases we moved immediately to co-operate with the authorities.

It is perhaps surprising, given the number of tourist vessels operating in Queensland, that we have not encountered a single instance of pollution either by oil or garbage - no doubt a tribute to the general operating standards which apply.

(b) Passenger Claims

Needless to say the vast majority of claims which we encounter are passenger claims. Most claims are minor and result from the usual trips, slips and falls that are inevitable in any operation when very large numbers of passengers are being handled on a daily basis.

There are two particular areas of concern, first claims resulting from passengers standing up when they have been told to sit down.

In one case in the Whitsunday Islands a vessel left Hamilton Island for Lindeman Island. The skipper gave his usual safety talk and told passengers that they should remain seated and avoid any unnecessary movement around the boat. A deckhand who gave the life jacket demonstration also told the passengers to remain seated.

The weather conditions were bumpy rather than rough with a 15 knot wind and one metre seas. Three women were out of their seats and fell, injuring their ankles, when the vessel bounced on a wave. Their claims against both the tour operator, whose representative was on board, and our members, are being contested.

Secondly, and a variation on the same theme, we have regular injuries arising in rough weather. The passengers may have inadequate footwear or otherwise not be used to the motion of the vessel but there are also several in which the passengers have in fact been properly seated and yet been thrown up and back again in their seats. This can result in spinal injuries. Of course, the elderly are particularly vulnerable in heavy weather.

HANDLING PASSENGER CLAIMS

There are many facets to handling passenger claims but it may be true to say that the tourist vessel operators are coming increasingly to realise that "the customer is always right".

Fortunately the vast majority of injuries are minor and involve no claims for damages at all but simply request for payment or reimbursement of medical expenses. While the owner must obviously be careful not to prejudice the position on liability it is usually sensible to pay such expenses quickly and the owner then has a happy customer.

It must be said that claims have not always been treated in an enlightened way and it was very much in response to our concern that, in some areas of the world - not just Queensland, injured passengers were seen by some owners as a positive irritation that we have developed a booklet on passenger claims which is intended to focus on the very important essentials of dealing with them.

COMPULSORY PASSENGER LIABILITY INSURANCE

Discussions have been continuing for some time at IMO as to the compulsory insurance of passengers' liabilities under the Athens Convention. The Athens Convention has not received widespread support and only 26 countries are parties. Australia is not a party. The limits are generally perceived to be much too low and there are moves both to increase the limits and introduce an element of compulsory insurance of passenger liabilities.

The Clubs would agree that the Athens Convention limits are too low and need to be increased if the Convention is to attract support.

The Clubs are not opposed in principle to the idea of compulsory insurance of passenger liabilities but there are some serious practical difficulties as a result largely of the diversity of the tourist industry creating difficulties of channelling the liability to the operator who should be compulsorily insured. Recent ideas have included the purchase of compulsory personal accident insurance on behalf of passenger up to a limit with the possibility of a residual liability claim against the carrier to the extent that damages can be shown in excess of the limit. The topic remains on the agenda of the Legal Committee at IMO.

The "Aerial and Aquatics Exclusion Clause"

EXCLUDING

Liability to any seaman, passenger or other person in respect of any claim arising as a result of any aerial or aquatic activities undertaken by such seamen, passengers or other persons outside the confines of the insured vessel.

THIS DEED is made the _____ day of _____ 1997
 BETWEEN
 THE GREAT BARRIER REEF MARINE PARK AUTHORITY, an authority
 incorporated under the *Great Barrier Reef Marine Park Act 1975*
 (Commonwealth) of the first part,
 THE STATE OF QUEENSLAND, through the Department of Environment of
 the second part, and _____
 _____ a company duly incorporated according to law and having
 its registered office at _____ of the third part.

WHEREAS

- A. The Authority has granted to the Permittee Permit Number G pursuant to the *Great Barrier Reef Marine Park Act 1975* and the *Great Barrier Reef Marine Park Regulations* and Permit Number G pursuant to the *Queensland Marine Parks Act 1982* and the *Marine Parks Regulation 1990*.
- B. The permission has been granted to the Permittee subject to the Permittee executing and delivering to the Authority a Deed in the form approved by the Authority.
- C. The Permittee acknowledges that the conditions imposed by the Permit and the obligations cast upon the Permittee by this Deed are necessary for the attainment of the object of the Act.
- D. The Chief Executive of the Queensland Department of Environment pursuant to the provisions of the *Marine Parks Act 1982* shall be the agent of the State of Queensland in all matters in relation to this agreement.

NOW THE PARTIES HERETO EXPRESSLY COVENANT AND AGREE WITH EACH OTHER AND THIS DEED WITNESSES AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATIONS

In this Deed, unless the contrary intention appears:-

- 1.1 'the Act' in relation to the Great Barrier Reef Marine Park means the *Great Barrier Reef Marine Park Act 1975* as amended from time to time and in relation to a Queensland Marine Park means the *Queensland Marine Parks Act 1982*.
- 1.2 'the Authority' in relation to the Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975* and in relation to a Queensland Marine Park means the State of Queensland.
- 1.3 'clean up' means remove wastes and materials and disperse, remove or render harmless oil and other pollution and contaminants.
- 1.4 'environmental impact' shall include direct as well as indirect and cumulative as well as immediate impact to or upon the environment.
- 1.5 'Managing Agency' in relation to the Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park Authority, a member of the staff of that Authority or a person referred to in section 42 of the Act performing functions or exercising powers under that Act in accordance with an agreement referred to

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in that section and in relation to a Queensland Marine Park means the Chief Executive of the Queensland Department of Environment, their delegate or an officer of that Department, or a person referred to in Section 36 of the Marine Parks Regulation, appointed by the Chief Executive as an Inspector.

- 1.6 'the Marine Park' in relation to the Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park established by the *Great Barrier Reef Marine Park Act 1975* and in relation to a Queensland Marine Park means the ~~xxxxxxx~~ Marine Park established pursuant to the *Queensland Marine Parks Act 1982*.
- 1.7 'operating term' means the period of time from the commencement of any works in the Marine Park in connection with Permit Number G until the earliest of the expiry, revocation or surrender of the Permit.
- 1.8 'the Permit' means the permission the subject of Permit Number G granted by the Authority to the Permittee pursuant to the Regulations in relation to the works.
- 1.9 'the Permittee' means
- 1.10 'person' shall include a corporation or a company (words importing the singular number or plural number shall include the plural number and singular number respectively). Any reference herein to a Commonwealth Officer or body of persons shall be referred to as a reference to any other officer or body for the time being exercising the powers or performing the functions of the first mentioned officer or body.
- 1.11 'preventative action' in relation to 'the works' means action:
- (a) to render safe;
 - (b) to stabilise;
 - (c) to barricade or render inaccessible; and/or
 - (d) to mitigate damage caused or likely to be caused to the Marine Park.
- 1.12 'QDoE' means the Queensland Department of Environment or such body or bodies as are from time to time responsible for the administration of the *Queensland Marine Parks Act 1982*.
- 1.13 'the Regulations' in relation to the Great Barrier Reef Marine Park means the *Great Barrier Reef Marine Park Regulations* as amended from time to time and in relation to a Queensland Marine Park means the *Queensland Marine Parks Regulation 1990* as amended from time to time.
- 1.14 'rehabilitate' means rebuild, re-shape, re-plant, replace and/or transplant marine or terrestrial organisms or natural structures so as to restore the natural appearance of the area.
- 1.15 'the works' means and includes all plant and materials comprising or used in connection with all constructions, erections, dredging, installations, structures, farming facilities, vessels or aircraft of any kind associated directly or indirectly with the Permit and the use (authorised or unauthorised) of the Marine Park in connection with the Permit.

(if no monitoring program delete 1.16, 1.17 and renumber)

- 1.16 'Environmental Monitoring Program' means a program of activities approved by the Managing Agency for detecting conditions which indicate that an unacceptable level of change is likely to take place, or has taken place and is

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intended to trigger action by the Managing Agency so as to prevent or ameliorate such change.

The program may include the preparation of a report:

- setting out standards for various environmental parameters against which the Managing Agency will determine whether changes to the environment are within acceptable levels;
- describing the monitoring program, including methods, timing and reporting schedule; and
- describing the proposed management responses where the standards are not being met.

1.17 'Director, Research and Monitoring' means the person holding, or performing the duties of the office of Director, Research and Monitoring of the Great Barrier Reef Marine Park Authority.

(if not indexed delete 1.18)

1.18 'CPI' means the All Groups Consumer Price Index for Brisbane produced or published by the Australian Bureau of Statistics Canberra from time to time or where that Index is not produced or published by the Bureau within the preceding six (6) month period, the Index that has been substituted for it by the Commonwealth Statistician or its nearest official equivalent.

2.0 AGREEMENT TO COMPLY WITH AND ABIDE BY CONDITIONS OF THE PERMIT (add if necessary AND THE CODE OF ENVIRONMENTAL PRACTICE)

2.1 The Permittee hereby expressly covenants to comply with and abide by the conditions of the Permit *(add if necessary* and the Code of Environmental Practice).

3.0 COVENANTS AND INDEMNITY

3.1 The Permittee hereby expressly covenants and agrees with the Authority as follows:

- a) to remove from the Marine Park, within three months or such reasonable time as is nominated in writing by the Managing Agency, the works, in whole or in part according to the direction in writing of the Managing Agency, in the event that:
 - (i) the works are wrecked, damaged, sunk or stranded so that they are rendered unfit for a period of four weeks (or longer) for the purpose described in the Permit by any cause whatsoever (including Acts of God, negligence or deliberate or accidental act of any person not party to this Deed) unless the Permittee is informed in writing by the Managing Agency that such removal is not required provided that in the event the works are damaged the Permittee's obligation to remove the works within this Subclause shall be suspended, where it has satisfied the Managing Agency that the works may be reinstated to

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fitness for the purpose described in the Permit within a reasonable time, for so long as the Permittee satisfies the Managing Agency that it is proceeding expeditiously to effect such reinstatement; or

- (ii) the works are abandoned or the Permit expires or is revoked or surrendered or is rendered invalid through any cause whatsoever unless the Permittee is informed in writing by the Managing Agency that such removal is not required; and

(If there is a Code of Environmental Practice or Environmental Monitoring Program the following subclause (iii) should be added - also change (ii) above so that it ends with "or" instead of "and".)

- (iii) the removal is directed by the Managing Agency in accordance with the Code of Environmental Practice or the Environmental Monitoring Program; and
- b) to indemnify the Authority against any and all loss or damage arising out of, or costs, charges or expenses reasonably incurred by the Authority for or in relation to, the removal of the works from the Marine Park in the event of the Permittee failing to do so pursuant to paragraph (a)(i); and
 - c) to indemnify the Authority against any and all loss or damage arising out of, or costs, charges or expenses reasonably incurred by the Authority for or in relation to, the removal of the works from the Marine Park in the event of the Permittee failing to do so pursuant to paragraph (a)(ii) [insert or (a)(iii) if monitoring program]; and
 - d) to clean up the Marine Park as directed in writing from time to time by the Managing Agency where such clean up is a result of:
 - (i) a sudden identifiable unintended and unexpected event which takes place in its entirety at a specific time and place which results in the discharge dispersal or escape of wastes, materials, oils, pollution or other contaminants which are produced directly or indirectly or arise from or in connection with the works or any activities associated with the works or any activities of the Permittee, its officers, employees and agents carried out within the Park whether permitted by the Permit or otherwise; and
 - (ii) causes other than from a sudden identifiable unintended and unexpected event which results in the discharge dispersal or escape of wastes, materials, oils, pollution or other contaminants which are produced directly or indirectly or arise from or in connection with the works or any activities associated with the works or any activities of the Permittee, its officers, employees and agents carried out within the Park whether permitted by the Permit or otherwise; and
 - e) to indemnify the Authority against any and all loss or damage arising out of, or costs, charges or expenses reasonably incurred by the Authority for or in relation to, the clean up of the Marine Park in the event of the Permittee failing to do so pursuant to paragraph (d)(i); and
 - f) to indemnify the Authority against any and all loss or damage arising out of, or costs, charges or expenses reasonably incurred by the Authority

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for or in relation to, the clean up of the Marine Park in the event of the Permittee failing to do so pursuant to paragraph (d)(ii); and

- g) to rehabilitate the Marine Park as directed from time to time to a standard set by the Managing Agency but in any case not exceeding the standard existing at the time of commencement of activities in connection with the Permit, in order to repair damage to the Marine Park (whether direct or indirect, cumulative or immediate) arising out of the activities permitted, or the wrecking, abandonment, sinking, stranding (including such events during placement or removal from the Marine Park) of the works, or any of them being damaged by any cause whatsoever (including Acts of God, negligence or the deliberate or accidental act of any person not party to this Deed); and
- h) to indemnify the Authority against any and all loss or damage, costs, charges or expenses reasonably incurred by the Authority in rehabilitating the Marine Park in accordance with paragraph (g) if the Permittee fails to do so pursuant to paragraph (g); and
- i) to take preventative action, in relation to the works and/or the Marine Park, as directed by the Managing Agency where (in the sole unfettered opinion of the Managing Agency) the works are unsafe or pose a hazard to persons or property or are causing or likely to cause damage to the Marine Park; and
- j) to indemnify the Authority against any or all loss or damage, costs, charges or expenses reasonably incurred by the Authority in taking preventative action in accordance with paragraph (i) if the Permittee fails to do so pursuant to paragraph (i); and
- k) to indemnify and keep indemnified the Authority, its officers, employees and agents from and against all actions, claims, demands, costs and expenses (including the costs of defending or settling any action, claim or demand) made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury (including death) or loss of or damage to property or financial loss to or suffered by any person (and whether that person is a servant agent independent contractor licensee or invitee of the Permittee or otherwise) which may arise from or in connection with the works or any activities associated with the works or any activities of the Permittee, its officers, employees and agents carried out within the Park whether permitted by the Permit or otherwise other than arising out of or in connection with the negligence of the Authority; and

(NB. if no monitoring program delete l) below and delete the following from (n): 'or pay to the Authority the total cost of the Environmental Monitoring Program'

- l) to pay to the Authority the total cost of the Environmental Monitoring Program calculated as the sum of the following amounts:
 - (i) the total contract price for the preparation and conduct of the Environmental Monitoring Program by consultants nominated by the Permittee and approved by the Director, Research and Monitoring; and
 - (ii) a management fee charged by the Authority for each contract of 5% of the contract price or \$1000 whichever is greater; and

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- (iii) the reasonable costs of expert review of the Environmental Monitoring Program and draft reports arising out of the Environmental Monitoring Program; and

to make an initial payment, of such portion of the above amount as is determined by the Director, Research and Monitoring, within one month of the Director, Research and Monitoring approving the Environmental Monitoring Program and further payments of an amount, and at intervals, determined by the Director, Research and Monitoring to be made until the total cost of the Environmental Monitoring Program is fully paid to the Authority; and

- m) to pay to the Managing Agency within 30 days of an invoice being submitted to the Permittee the reasonable costs of transport, accommodation and food (the total cost of which is not to exceed \$5,000) incurred by the Managing Agency in carrying out environmental site supervision associated with the installation of works within the Marine Park pursuant to Permit G ; and
- n) if the Permittee fails to carry out any such removal or clean up or rehabilitation or take preventative action or pay or meet the costs of such or pay to the Authority the total cost of the Environmental Monitoring Program or pay to the Managing Agency the total cost of environmental site supervision or fails to indemnify the Authority (in each such case as required by the provisions of this clause) then the Authority may deduct the amount of any loss, damage, costs, charges or expenses thereof and any costs of the Authority thereby incurred from the bond referred to in clause 5 hereof or part of such or recover the same or any balance not met by such bond as a debt due and owing by the Permittee to the Authority; and
- o) to indemnify the Authority against any or all loss or damage, costs, charges or expenses incurred by the Authority for or in relation to any action taken by the Authority pursuant to clause 3 hereof.

4.0 INSURANCE

4.1 During the operating term and unless the Authority otherwise agrees for a further period of two (2) years thereafter the Permittee shall, at its cost, take out, keep in full force and effect, comply with and not do or allow or suffer to be done anything which would prejudice the continuing cover provided by the following policies of insurance:

- (a) **REMOVAL and CLEAN UP**- Insurance covering the Permittee's obligations pursuant to clauses 3.1(a)(i) (other than the obligation to remove a mooring) and 3.1 (d)(i) to the extent of A\$ (*insert appropriate amount*) per occurrence; and
- (b) **INDEMNITY (Removal and Clean Up)** - Insurance covering the Permittee's obligations under clauses 3.1(b) (other than the obligation to indemnify the Authority in respect of the removal of a mooring) and 3.1(e) to indemnify the Authority, to the extent of A\$ (*insert appropriate amount*) per occurrence; and
- (c) **INDEMNITY (Death, personal injury, property damage, etc.)** - Insurance covering the Permittee's obligation under clause 3.1(k)

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to indemnify the Authority (other than an obligation to indemnify the Authority in respect of a matter which is covered under any applicable law relating to workers' compensation insurance), to the extent of AS 10 000 000 per occurrence.

- 4.2 Every policy of insurance entered into pursuant to the provisions herein shall:
- (a) be taken out with an insurance company approved by the Authority;
 - (b) apart from any insurances in which the Authority has no insurable interest, name the Authority and any person designated by the Authority plus the Permittee as insured persons and as having insurable interests;
 - (c) contain a provision that the insurers shall not cancel or suspend or otherwise prejudice the insurance cover without first giving the Authority at least fourteen (14) days prior written notice; and
 - (d) at the discretion of the Permittee contain a provision that as a condition precedent to the Authority making a claim in respect of the insurance specified in clause 4.1(b) the Authority shall:
 - (i) notify in writing the insurer underwriting the insurance required pursuant to clause 4.1(a) that removal and/or clean up is required pursuant to clauses 3.1(a) and/or 3.1(d)(i) respectively (as the case may be); and
 - (ii) allow the insurer a reasonable period from the date of notification within which the insurer may (subject to the requirements of the Great Barrier Reef Marine Park Act) perform the Permittee's obligations under clauses 3.1(a) and/or 3.1(d)(i) (as the case may be).
- 4.3 In respect of each and every such policy of insurance the Permittee shall:
- (a) make all payments necessary for the purpose of keeping the policies in force within at least seven (7) days of the day when payment shall have become due or such earlier time as may be necessary to ensure the continuation of the cover provided; and
 - (b) deliver to the Authority prior to the commencement of the operating term a copy of the policy, the certificate of currency of the insurance and any other documents concerning the policy as the Authority may require ; and
 - (c) provide to the Authority when called upon to do so written evidence of the currency of the policy and any other documents concerning the policy as the Authority may require; and
 - (d) at least 14 days before the expiry of any of the policies referred to in this clause, satisfy the Authority that a replacement policy under which the interest of the Authority is noted will come into operation immediately upon the expiry of the abovementioned policy.

- 4.4 Where the nature of the works changes to the extent that the works are no longer covered by an existing policy of insurance referred to in this deed and at least 7 days before the above changes are to occur the Permittee shall take out further appropriate insurance so that the Permittee's insurance obligations under this deed continue to be met.

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4.5 Where default in payment of monies due by the Permittee is made in respect of any of the said policies pursuant to the provisions hereof or default in effecting or maintaining any of the said policies pursuant to the provisions hereof is made by the Permittee, the Authority may, at any time, and without prejudice to any of its other rights in respect of such default, pay the said monies or at its sole discretion effect or maintain any of the said policies and or upon the incurrence by the Authority of any costs associated with effecting or maintaining any of the said policies and, upon such payment, the Authority shall be entitled to deduct the amount of the said monies and or costs incurred (as the case may be) and any further costs of the Authority thereby incurred from the bond referred to in clause 5 hereof.

4.6 During the operating term and for a period of two (2) years thereafter, the Permittee shall make available and produce to the Authority for inspection at any time upon request each and every policy of insurance (and any and all amendments, endorsements and replacements thereto) referred to in this clause and any notices, premium accounts, premium receipts, correspondence or documentation of any other kind whatsoever concerning the same as the Authority may require.

5.0 BOND

5.1 The Permittee shall lodge with the Authority a bond ('the bond') in favour of the Authority in the sum of not less than A\$ (hereinafter referred to as 'the original amount') to cover the liability of the Permittee under the Permit and this Deed.

5.2 The bond shall be:

- (a) maintained and callable during the operating term and unless the Authority otherwise agrees for a further period of two years thereafter;
- (b) unconditionally payable to the Authority upon demand by the Authority;
- (c) otherwise in terms approved by the Authority;

(NB. delete one of 'd' as appropriate)

- (d) lodged with the Authority prior to the commencement of the operating term;
- (d) lodged with the Authority within days of the date of issue of Permit G ;
- (e) issued by a party or parties acceptable to the Authority;
- (f) maintained so that at the end of each successive three month period the balance at the end of each successive three month period (the first three month period beginning on the date of issue of the Permit) is equal to
 - i) in the first twelve month period of the term, the original amount; and
 - ii) in each successive twelve month period of the term, the adjusted amount as referred to in 5.2(g) hereof; and
- (g) reviewed at the end of each successive twelve month period (the first twelve (12) month period beginning on the date of issue of the Permit) so that the balance at the end of each successive twelve (12) month

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period is equal to the original amount as progressively adjusted by the average percentage change in the CPI for each twelve month period that most approximates to such successive period ('the adjusted amount); and

(h) irrevocable.

5.3 All monies received by the Authority under or by virtue of the bond shall be applied by the Authority only towards the satisfaction of any right to deduction from the bond under this Deed and the Authority shall at the expiry of the period referred to in clause 5.2(a) hereof and after the satisfaction of any such right pay to the Permittee the surplus monies (if any).

6.0 TERM

6.1 The parties agree that this Deed shall remain in force until, the expiration of two (2) years after the expiry of the operating term, or the satisfaction by the Permittee of all of its obligations pursuant to this Deed, whichever is the later.

7.0 NON-ASSIGNABILITY

7.1 Neither the benefit nor the burden of this Deed (in either case whether wholly or in part) shall be assigned or assignable by the Permittee to any other person without the prior consent in writing of the Authority, such consent being within the sole unfettered discretion of the Authority.

8.0 DEFAULT

8.1 In the event of default (whether in whole or in part) by the Permittee in the performance or observance of any of the conditions of this Deed the Authority without prejudice to any of its other rights in respect of such default shall be empowered and entitled (but not obliged) after providing reasonable notice in writing to the Permittee of its intention to do so, to take whether by itself, its servants, agents, independent contractors or otherwise such action as it considers (in its sole unfettered discretion) necessary to remedy such default in such a manner as it considers (in its sole unfettered discretion) appropriate.

9.0 GOVERNING LAW

9.1 This Deed shall be interpreted in accordance with, and governed by, the laws in force in the State of Queensland.

IN WITNESS WHEREOF the parties hereto have duly executed this Deed on the date first written above.

THE COMMON SEAL of the)
GREAT BARRIER REEF MARINE)
PARK AUTHORITY was hereunto)
duly affixed to this Deed)
and this Deed delivered in)

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