

## MARINA BERTH LICENCE

**THIS LICENCE** is made on the date the Terms and Conditions have been accepted on the website.

### BETWEEN

**Lincoln Lakes Development Co Pty Ltd** ABN 55 956 300 912 of PO Box 1073 Port Lincoln SA 5606 (**Licensor**)

### AND

**The Licensee** named in the Booking and Enquiry schedule.

### INTRODUCTION

A. Pursuant to a lease (**Lease**) from the Minister of Transport, Infrastructure and Local Government (**Minister**) the Licensor leases Lot 1 and 10 in GRO Plan No 633 of 1987, in Certificate of Title Volume 6155 Folio 846 (**Marina**).

B. Subject to the terms and conditions of this agreement the Licensor agrees to grant to the Licensee a licence to occupy, berth, moor and dock a marine vessel detailed as **Vessel on the Booking**, within the area described as **Berth** on the Booking, together with a right of access (jointly with others) to and from the Berth and over other parts of the Marina designed for that access.

#### 1. LICENCE

In consideration of the Licensee paying the fee for the Booking, the Licensor grants to the Licensee a non-exclusive licence to use and occupy the Berth subject to the conditions of this agreement (**Licence**).

#### 2. TERM OF LICENCE

This Licence will operate from the Commencement Date on the Booking and Enquiry Schedule up to and including the Expiry Date in the Booking.

#### 3. LICENCE FEE

The Licensee agrees to pay to the Licensor or as directed by the Licensor the Licence Fee as provided in the Booking by advance payment by automatic electronic funds transfer, or approved trading terms to the Licensor.

#### 4. USE OF THE BERTH

- 4.1 The Licensee must only use the Berth for the berthing, mooring and docking of a marine vessel.
- 4.2 The Licensor gives no warranty as to the suitability of the Berth or the use to which the Berth may be put.
- 4.3 The Licensee must comply with any law, regulation, instrument, lease, legislation, government policy, notice or order affecting the Berth.
- 4.4 The Licensee must use the Berth in a reasonable manner and in a way which causes no damage to the Berth or Marina.
- 4.5 The Licensee shall use the Berth and Marina in strict accordance with all bylaws and instructions and the rules of the Marina set out in Annexure A as amended and made and enforced from time to time by the Minister and or the Licensor (**Rules**). The Licensor reserves the right to create new bylaws, instructions and Rules, to amend or cancel existing bylaws, instructions and Rules as it sees necessary for the better management and safe operation of the Marina and the Licensee acknowledges and agrees that a breach of any bylaw, instructions or the Rules amounts to a breach of this agreement and entry into this agreement is subject to strict adherence to the Rules and the Lease.

#### 5. CHANGE OF VESSEL

If the Licensee wishes to substitute another vessel for the Vessel described in the Booking then it must make a new Booking enquiry on the Licensor's website.

#### 6. VESSEL TO BE REGISTERED AND INSURED

- 6.1 The Licensee acknowledges and agrees that the Vessel will, at all times, be appropriately registered and insured consistent with the details on the Booking.
- 6.2 The Licensee must, upon request by the Licensor, produce evidence of such registration and insurance.

#### 7. RISK PASSES TO LICENSEE

- 7.1 The Licensee acknowledges that risk in respect of damage to the Berth passes to the Licensee on the date of this agreement
- 7.2 The Licensee occupies the Berth at the Licensee's own risk and the Licensor is not liable for any damage or injury caused to:
  - 7.2.1 any person entering on the Berth, with or without the permission of the Licensee;
  - 7.2.2 any property of the Licensee; or
  - 7.2.3 any damage arising from anything emanating from the Berth that may constitute a nuisance, during the Term excluding anything that arises because of the negligent conduct of the Licensor or the Licensor's agent.
  - 7.2.4 The Licensee must hold Public Risk insurance in an amount not less than \$20 million. The Licensee must provide to the Licensor a certificate of currency of such insurance from the insurer, on demand.
- 7.3 The Licensee indemnifies and will keep indemnified the Licensor in respect to any damage (whether direct or indirect), cost, loss, expense or claim suffered or incurred by the Licensor and arising out of the Licensee's occupation or use of the Berth or the Marina.
- 7.4 The Licensee releases the Licensor in respect to any damage, cost, loss, expense or claim suffered or incurred by the Licensee and arising out of the Licensor exercising its rights under this agreement or any law.

#### 8. POSSESSION DOES NOT PASS

This Licence is a licence to occupy only and does not give the Licensee a right of possession or create any equitable estate or proprietary interest in the whole or any part of the Berth which at all times remains vested in the Licensor.

#### 9. ACCESS TO THE BERTH

The Licensee must allow the Licensor or the Licensor's authorised representative to enter and inspect the Berth at all reasonable times and for reasonable purposes including, without limitation:

- 9.1 inspection of the Berth to ensure that the Licensee is complying with its obligations under this agreement;
- 9.2 carry out any required maintenance or other necessary works to the Berth or Marina; and
- 9.3 marketing and leasing purposes.

#### 10. MAINTENANCE OF THE BERTH

- 10.1 Having regard to its condition at the date of this agreement and excluding fair wear, the Licensee must keep the Berth in good condition and must not cause the Berth to be damaged.
- 10.2 The Licensee must notify the Licensor as soon as possible of any significant wear or damage to the Berth and allow the Licensor (or its agents) access as required in order to inspect and repair the damage.
- 10.3 The Licensee is liable for the cost of repairing any damage (excluding fair wear and tear) that it or its agents cause to the Berth.

10.4 The Licensee must not make any structural or external alterations or additions to the Berth.

## 11. RENEWAL OF LICENCE

### 11.1 No Automatic Renewal of Licence

The Licensee does not have an automatic right of renewal with respect to this agreement, and absence any agreement to the contrary this agreement will come to an end at the expiry of the Term.

### 11.2 Request for Renewal

11.2.1 If the Licensee seeks to renew this Licence it can make a request for renewal through the Licensor's website, Bookings and Enquiries Schedule.

11.2.2 Upon receiving a request for renewal the Licensor may grant or refuse consent to the renewal of this Licence at its discretion.

11.2.3 In the event that the Licensor grants a renewal of this Licence, then this Licence will renew for a further term (on the terms and conditions contained in this Licence subject to any amendments set out by the Licensor in writing) commencing on the day immediately following the Expiry Date of this Licence.

## 12. DEFAULT AND ENFORCEMENT

### 12.1 Termination

12.1.1 The Licensor may terminate this Licence by written notice if the Licensee does not comply with any of its obligations under this Licence and does not remedy that failure within a reasonable time.

### 12.2 Removal of Vessel on Termination

12.2.1 The Licensee must remove themselves and the Vessel from the Marina within one (1) week of this agreement being terminated under clause 12.1.1 or upon expiry. If the Licensee fails to remove the Vessel from the Marina the Licensor may:

- (a) enter the Berth with force if necessary and take reasonable steps to break into the Vessel or force entry to the Vessel without being liable for any damage whatsoever to the Vessel and eject the Licensee and all other persons; and
- (b) impound the Vessel; and/or
- (c) remove the Vessel from the Marina.

12.2.2 If the Licensee is in default in respect of payment of moneys the Licensor:

- (a) shall have a lien over the Vessel (including any personal property stored in the it) or other vessel moored in the Berth and may detain it until all monies payable by the occupant to the Licensor are paid in full or satisfied; and
- (b) may remove any vessel moored in the Berth to another wet or dry area within the Marina or waterway or elsewhere at the Licensee's sole cost and expense.

### 12.3 Consent to Charge Vessel

12.3.1 The Licensee consents to charge its interest in the Vessel (including in any personal property stored in it) or any other vessel moored that may be moored in the Berth to secure all amounts and other monetary obligations payable under this agreement.

12.3.2 The Licensor's acceptance of the Licence Fee or other money is not a waiver of any breach of this Licence.

12.3.3 This clause prevails despite anything to the contrary contained in this agreement and is in addition to any other rights which the Licensor may have.

### 12.4 Sale of Vessel

12.4.1 Where the Licensee fails to pay all outstanding costs, fees and charges to the Licensor or the Licensee fails to remove the Vessel after termination or expiry then the Licensor may offer the Vessel and contents for sale by public auction or tender, and apply such of the proceeds of any resultant sale:

- (a) Firstly in satisfaction of the Licensees outstanding debt;
- (b) Secondly in respect of the Licensor's expenses incurred in the removal and storage including legal and administrative expenses and the cost of providing custodians;
- (c) Thirdly in or towards satisfaction of any other debts or liabilities owed by the Licensee to the Licensor.

12.4.2 Any sum left over shall be paid to the Licensee.

12.4.3 The Licensee hereby irrevocably appoints the Licensor to be the attorney of the Licensee to execute all documents and do all things as may be necessary to give effect to such sale by way of settling the Licensees debt to the Licensor.

### 12.5 Forfeiture of Moneys

12.5.1 The Licensee shall have no rights to any compensation or claim of any kind against the Licensor arising from a Vessel sale pursuant to the terms of this agreement.

12.5.2 In the event that the proceeds of the sale are not sufficient to pay the cost of sale, and/or to satisfy fully such debts or liabilities, the Licensee shall remain personally liable to the Licensor for the amount which remains unsatisfied.

12.5.3 Should the Licensor suffer any loss whatsoever as a result of the sale then the Licensee shall indemnify the Licensor as to that loss. The Licensee hereby agrees to indemnify the Licensor against any liability incurred by the Licensor to any third party whose property shall have been sold by the Licensor in the mistaken belief held in good faith (which shall be presumed unless the contrary can be proved) that such property belonged to the Licensee.

## 13. ONGOING LIABILITY

The Licensee including any body corporate, sole trader, partnership or organisation, will be responsible to continue to pay any fees incurred regardless of whether the Vessel is moored at the Berth, until the agreement is revoked or surrendered as confirmed by the Licensor in writing.

## 14. FURTHER INDEMNITY

The Licensee agrees to indemnify and hold harmless the Licensor from all claims, suits and demands made by any person or entity in respect of the boat or any chattels seized and sold pursuant to this contract.

**15. VACATION OF THE BERTH**

On or before the termination of this agreement, the Licensee must vacate the Berth and leave the Berth in a clean and tidy state.

**16. ASSIGNMENT AND SUB-LICENSING**

The Licensee cannot assign or sublicense this agreement in any circumstances.

**17. COSTS, CHARGES AND EXPENSES**

The Licensee must pay (to the extent permitted by law) any taxes or government charges applicable to this agreement promptly and must indemnify or keep indemnified the Licensor for failure to do so and must pay or reimburse the Licensor for all costs, charges and expenses for its preparation and execution including, in all cases and without limitation, solicitor and other legal costs.

**18. NOTICES**

Notices under or relating to this agreement may be served on the Licensee by delivering, posting or emailing them to the respective address or email provided on the Booking and Enquiry Schedule.

**19. JURISDICTION**

This agreement shall be governed by and construed in accordance with the laws of South Australia and, where applicable, the Commonwealth of Australia, and the Licensee submits to the non-exclusive jurisdiction of the courts of South Australia.

**20. GST**

20.1 In this clause the expressions "GST", "supply", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

20.2 With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this agreement are inclusive of GST.

**EXECUTION OF THE LICENCE**

The Licence Agreement is executed by the Licensor **LINCOLN LAKES DEVELOPMENT CO** in accordance with the Corporations Act 2001, and the Licensee acknowledges and agrees that it has read and understood the terms of the agreement and confirms its acceptance to be bound by completing the acknowledgment on the webpage.

## Annexure A – Rules

- The Marina provides berths only and does not provide any bathroom or other facilities.
- The Licensee shall not place or suffer or permit to be placed anything on, in or about the Marina which may obstruct use of the common areas, any boat berth area or any part of the foregoing.
- The Licensee must not do or suffer or permit to be done upon the Vessel anything which may cause a nuisance, damage, danger or annoyance to the Licensor, to any other Marina occupier or to any other person or, in or about the Marina. The Berth shall be used solely for the mooring of the nominated boat and no part of the said boat shall extend beyond the maximum permitted dimensions of the Berth specified in the schedule.
- The Licensee is responsible for the safe and secure mooring of its Vessel and is liable for damages to the Marina, to other vessels, and to the Vessel, and will be billed for labour and materials to secure any vessels or items, plant and equipment which are in the opinion of the Licensor improperly or inadequately secured.
- Fires are not permitted in the Marina, apart from gas burners and barbecues, which may only be used on board vessels, if personally attended and if all safety rules are observed.
- The Licensee or its invitees or visitors must not engage in any swimming, diving or underwater activities within the Marina.
- Shore power lines shall be of the type approved by the Licensor and shall not be permitted to hang in the water. Mooring lines shall be neatly stowed at all times when the Berth is not in use.
- The Licensee must ensure that no laundry or other items of wearing apparel or of a personal nature are hung out to dry or air in public view on any part of the Vessel at the Berth or on any part of the Marina.
- The Licensee must take all necessary precautions against the outbreak of fire in, on or about the Vessel, the Berth and any other part of the Marina and furthermore the Licensee must not do or suffer or permit to be done anything which might increase the cost or result in the cancellation of any insurance on the Marina.
- The Licensee must not do, or suffer, permit or cause to be done, any act, matter or thing which may damage the face or disfigure the Marina or any part thereof or the property of or in the possession, custody or control of any person where such property is situate on, in, or about the Marina.
- The Licensee must, and cause its, guests and invitees to comply with all statutes, ordinances, by-laws, regulations and rules for the time being in force affecting the Berth, the Marina or any part thereof.
- The Licensee must not keep or store or suffer or permit to be kept or stored on, in, or about the berth any materials of a dangerous, flammable or explosive nature or any materials the keeping of which may contravene any statute, by-law or regulation for the time being in force, unless the Licensee shall comply with all requirements and regulations thereunder.
- Dinghies are to be stored aboard boats and not left in waters of the Marina.
- For the purposes of mooring any vessels to the Berth the Licensee shall use only the standard mooring lines provided by the licensor and shall at all times ensure that these are properly fitted.
- Alcohol shall not be consumed within the Marina area except on private vessels, or other premises where the consumption of alcohol is not prohibited by law.
- The Licensee shall in the use of the Marina comply with all statutes, ordinances, by-laws, regulations and rules for the time being in force effecting the Berth, the Marina or any part thereof and any special instructions from time to time issued by the Licensor or any of its agents for the sage and harmonious use of the Marina, and any of its facilities, by any persons entitled to use them.
- The Licensee must not pollute or permit the pollution of the Marina or discharge into the Marina or its waters any poisonous, noxious, dangerous or offensive substance or thing.
- The Licensee shall keep the Berth and walkways abutting the same in good and tidy appearance and shall keep the waters of the Marina clean and , without limiting the generality thereof, free from debris and other polluted substances and shall not whilst any vessel is moored in the Berth or otherwise in the Marina discharge any sewerage or otherwise empty any toilet into the Marina waters, or otherwise dispose of any garbage, oil, fuel or other material whatsoever in the Marina, except into containers which may be provided by the Licensor.
- The Licensee shall not permit or suffer any animal or pet to enter or to remain in the Marina, or land adjacent thereto.
- The Licensee must not within the Marina moor, sail or manoeuvre any vessel so as to create a danger, impediment, obstacle or inconvenience to other Marina users.
- The Licensee shall ensure all halyards, lines, ropes, rigging and sheets on any vessel at the Berth are secured so that they shall not create any undue noise or disturbance.
- The speed limit within the Marina shall be no wake speed and in no case shall exceed whichever is the lesser of 4 knots or such maximum speed as shall from time to time be set by the Harbour Master.
- When entering or leaving the Marina the Vessel must be under power not sail.