

THIS AGREEMENT is made between SOUTHPORT YACHT CLUB INCORPORATED of Macarthur Parade, Main Beach in the State of Queensland (hereinafter referred to as "the Club") and the person or corporation named in the Schedule on the face hereof as the Customer (hereinafter referred to as "the Customer").

WHEREAS: A. The Club conducts the Marina to allow boats to be kept at a berth within the Marina upon and subject to certain conditions and restrictions.
B. The Club has agreed under this Agreement to permit the Customer to moor at the Berth the Vessel for the Term upon the following terms and conditions and with the restrictions and at the rate of rental set out in the Schedule;

THE PARTIES AGREE AS FOLLOWS:

1. Definitions - In this Agreement, unless the context requires otherwise:

- (a) "Berth" means the Berth specified in the Schedule hereto;
- (b) "Facilities" means the facilities within the Marina supplied by the Club and including the Club's ablutions, garbage disposal, rubbish collection and recycling facilities, car parking, short and long term dinghy storage (both in and out of the water) and, if required, the walkways giving access to the Berth;
- (c) "GST" means any tax, impost or duty, including any goods and services, consumption, value added or similar tax applying on goods, services or other things imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST ACT") and associated legislation (as amended), or under legislation passed by a State or Territory Parliament which is charged or levied on goods, services or other things.
- (d) "Marina" means the business of providing berths and swing moorings for mooring of boats within the Southport Boat Harbour adjoining the Club's premises at Macarthur Parade, Main Beach, Queensland;
- (e) "Term" means the period specified in the Schedule hereto;
- (f) "Vessel" means the vessel identified in the Schedule hereto;
- (g) "Live Aboard" means a vessel being lived aboard for four or more nights per week.

2. Use -

- (a) The Customer shall for the Term be entitled to the use of the Berth for the mooring of the Vessel and to the reasonable use, in common with others, of the Facilities AND in consideration thereof, the Customer shall pay to the Club rent at the rate set out in the Schedule. The Customer will remain liable to pay rent up to and including the day upon which he delivers up possession of the Berth to the Club.
- (b) On signing this Agreement, the Customer must pay to the Club or its agent, as security for payment of rent and performance of the Customer's obligations under this Agreement, a sum equal to the Security Deposit stated in the Schedule on the face hereof. The Club may apply the same or any part in making good any default by the Customer and shall repay the unexpended balance to the Customer on his vacating the Berth at the termination of this Agreement.
- (c) On payment of the refundable access card deposit and whilst the Agreement remains in effect and the Customer is not in default, the Customer and his invitees may make reasonable use of Facilities whether or not the Customer is a member of the Club.

3. By-Laws - The Customer agrees to be bound by and observe all provisions of the Transport Infrastructure Act 1994, the Transport Infrastructure (Gold Coast Waterways) Management Plan 2000 and the Club's Constitution and By-Laws from time to time applicable to the use of the Marina and the Berth and any and all of the relevant By-Laws of the Club, whether or not the Customer is a member of the Club, as if the Customer were such a member. The Customer acknowledges that he has been provided with an opportunity to peruse a copy of the Club's Constitution and By-Laws and publication of the Club's Constitution and By-Laws on the Club's Notice Board will be sufficient notice thereof to the Customer.

4. Insurance - The Customer agrees to effect, either prior to or within 24 hours of securing the Vessel in the Berth, and maintain at the cost and expense of the Customer for the whole of the time during which the Vessel is moored in the Berth, adequate insurance for the Vessel, its contents and fittings at full insurable value with a reputable and substantial insurer approved by the Club and to the satisfaction of the Club and produce to the Club or its agent the insurance policy and a certificate of currency when reasonably requested by the Club or its agent to do so. Such insurance shall include public liability and removal of wreck. The Customer acknowledges that neither the Club nor its employees, agents or contractors will be liable for any loss or damage howsoever occurring to the Vessel, its contents, or fittings, all of which shall be at the Customer's sole risk.

5. Marketing/Brokerage - The Customer acknowledges and agrees as follows:

- (a) The Vessel shall not be advertised for sale or offered for sale at the Marina;
- (b) Marine brokers, other than the broker approved by the Club, are not permitted on the Marinas;
- (c) Vessels stored in the Marina must not be used for any commercial enterprise, in any case, without the prior written approval of the Club.

6. Assignment - This Agreement and the rights conferred upon the Customer hereunder are personal to the Customer and are not capable of assignment by the Customer.

7. Repairs and Maintenance - The Customer acknowledges major repairs and/or refits of Vessels in the Marina are prohibited and no outside contractor or service organisation or individual is permitted to work on any Vessel in the Marina without the prior written approval of the Club.

8. Exclusion of Representations - Neither the Club nor its agent provide any warranty and make no representations as to the sufficiency, safety or adequacy of the Facilities or any of the services provided by the Club for use at the Marina and no such warranty or representations are to be implied from anything said or written in the negotiations between the parties or their representatives prior to entering into this Agreement. The Customer acknowledges that he uses the same in their condition, state of repair and adequacy from time to time and at his own risk in every respect.

9. Indemnity -

(a) The Customer whether or not he is the owner of the Vessel indemnifies and agrees to indemnify and keep indemnified the Club, or its agent, employees and contractors against any and all claims, demands, actions and proceedings whatsoever and howsoever arising directly or indirectly by, through or in connection with the mooring, launching, occupation or moving of the Vessel or the use by the Customer or his invitees or licensees of any of the facilities of the Club or the Marina and also from any and every loss, damage, cost, expense or claim arising out of injury (fatal or non fatal) to person or property (including the Vessel) or liability whatsoever and howsoever arising and suffered either by the Club, its agents, employees and contractors or the Customer as the case may be or any of the Club's, its agent or the Customer's crew, guests, visitors, invitees or licensees or any of them or any other person or persons whatsoever by, through or in connection with the mooring, launching, occupation or moving of the Vessel.

(b) Should the Club or its agent suffer or incur or become liable for or should demand be made on the Club or its agent for any loss, damage, costs, expenses or liability whatsoever by reason of any act or omission on the part of the Customer or any person for whose actions the Customer is vicariously liable then the Club or its agent, as the case may be, shall have a lien upon the Vessel and its equipment and contents as security for performance of the Customer's obligations under sub-clause (a) of this clause and may detain the Vessel until the Customer's obligations have been satisfied in full or the Customer has offered reasonably acceptable substitute security.

(c) Neither the Club nor its agent, employees and contractors will be liable in negligence or otherwise for any injury, loss or damage sustained or suffered by the Customer or any invitees, licensee or guest of the Customer in or about or while crossing over or going through any other property for the purpose of gaining access to the Vessel or the Marina and the Customer indemnifies and agrees to indemnify and to keep indemnified the Club, its agent, employees and contractors from claims arising from such injuries, loss or damage.

10. Entire Agreement - This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all of the representations, warranties, covenants and agreements of such parties. This Agreement supersedes all prior negotiations, contracts, arrangements, understandings and agreements with respect to such subject matter. There are no representations, undertakings, covenants or agreements between the parties express or implied, except as are herein contained.

11. Waiver - No waiver of any provision of this Agreement or consent to any departure therefrom by either of the parties shall be effective unless the same shall be in writing.

12. Joint and Several Liability - Unless otherwise expressly provided, all covenants and agreements on the part of two or more persons who comprise a single party shall be deemed to bind each of them severally and any two or more of them jointly.

13. Costs of Agreement - The Customer shall pay all costs, charges and expenses of and incidental to the negotiations for the preparation and stamping of this Agreement and all stamp duty (if any) hereon and all costs, charges and expenses reasonably incurred by the Club to protect or safeguard or enforce the rights, powers and remedies conferred upon the Club by this Agreement.

14. Notices -

(a) Any notice, communication or other document authorised or required to be given or served pursuant to this Agreement ("a Notice") shall be either:

- (i) personally served on the party or an officer of the party to whom it is given;
- (ii) mailed to the party by prepaid post; or
- (iii) sent to the party by facsimile or other electronic transmission.

(b) The address for service of a Notice on the Club is its address stated in this Agreement and on the Customer shall be such address as may from time to time be notified in writing by the Customer to the Club and unless so notified shall be the address specified in the Schedule hereto.

15. Applicable Law - The interpretation and construction of this Agreement shall be governed and determined in accordance with the laws of the State of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that State.

16. Termination -

(a) This Agreement may be terminated by the Club by written Notice of Termination to the Customer in the following circumstances:

- (i) If the Customer is in arrears in the payment of any money payable pursuant to this Agreement;
- (ii) If the Customer is in breach of any of the terms and conditions of this Agreement.

(b) Upon giving Notice of Termination the Club may forthwith or at any time thereafter enter upon the Berth to remove the Vessel from the Berth and to move or otherwise moor it in a safe place as determined by the Club PROVIDED ALWAYS that the cost of such removal and/or mooring plus all money then owing under this Agreement shall be paid by the Customer before delivery of the Vessel by the Club to the Customer. The Club shall not be responsible or liable at the suit of the Customer for any damage which results from any such movement or removal or mooring of the Vessel.

(c) Unless otherwise agreed by the parties in writing, this Agreement shall terminate on the expiry date referred to in the Schedule on the face hereof and the Customer delivering up possession of the Berth to the Club.

17. Sub Rental - Notwithstanding anything elsewhere herein contained or implied the Customer may if he so desires from time to time appoint the Club to find a person (acceptable in every respect to the Club) to use the Berth for the purpose of mooring a boat other than the Vessel and the Club may at its sole discretion accept such appointment.

18. Uncollected Goods - The Club hereby gives notice to the Customer that vessels accepted by the Club for mooring within the Marinas are subject to the Disposal of Uncollected Goods Act 1965 (as amended) which confers upon the Club a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which such vessels are ready for re-delivery to the Customer, such date being that upon which the Club gives the Customer written notice to remove the vessel from the Marinas.

19. Environment - The Customer shall not do or direct or permit the doing of any act or the making of any omission which would or might amount to a breach of the Environmental Protection Act 1994.

20. Goods and Services Tax ("GST") -

(a) In respect of any liability of the club for GST under this Agreement including for rent or any other consideration for any other taxable supply made by the Club to the Customer, the Customer covenants to pay to the Club, at the same time as any payment is made involving the Club in GST liability, the additional amount of GST, together with the payment to which it relates.

(b) The Customer's liability under clause 20(a) above is to reimburse the full amount of GST, disregarding and excluding the Lessor's entitlement to input tax credits or other credits or reimbursements for GST.

(c) Notwithstanding clause 20(b), if the Club is entitled to an input tax credit in relation to any amount recoverable from the Customer under clause 20(b), the amount payable by the Customer shall be reduced by the amount of the input tax credit that the Club has received or claims and is entitled to receive.

(d) Where any GST is not paid by the Customer when due to the Club, in addition to any obligation under this agreement on the part of the Customer to pay interest to the Club, the Customer shall pay to the Club upon demand all Default GST (if any). "Default GST" means any additional GST, penalty or other sum levied against the Club under the GST Act by reason of a non-payment of GST but does not include any such sum levied against the Club by reason of a default by the Club in remitting a GST to the relevant authority after payment of the same by the Customer to the Club.

21. Miscellaneous -

(a) If the Customer is not by law the proprietor of the Vessel, then the expression "the Customer" shall include the lawful proprietor of the Vessel for the purpose of identifying invitees, licensees and guests and persons for whom the Customer described herein is vicariously liable in the terms of this agreement.

(b) A reference to persons shall include corporations; words including singular number shall include plural number and vice versa; words including a gender shall include all other genders.

(c) A reference in this agreement to a statute or a section of a statute includes all amendments to that statute or section passed in substitution for the statute or section referred to or incorporating any of its provisions.

(d) Except for the purpose of identification headings and underlinings have been inserted in this agreement for the purpose of guidance only and shall not be part of this agreement.

(e) The Club shall include the Club, its successors in title and assigns and, where relevant, its agent.

(f) The Customer shall include the Customer and its successors in title and assigns.

22. Holding Over - If the Customer shall, with the consent of the Club, remain in occupation of the Berth after the expiration of the Term, the Customer shall (in the absence of any express agreement in writing to the contrary) be deemed to hold the Berth for a further period mutually agreed between the Club and the Customer at a rental provided, as if the period of holding over was part of the Term provided for herein, but otherwise on the terms and condition of this Agreement so far as they can be applied to such holding over.