

Terms and Conditions

1. Definitions

In this Agreement:

“**Equipment**” includes ropes, lines, chains and tackle of, on or attached to the Vessel.

“**LOA**” means Length of vessel overall including non-removable extremities.

“**Licensee**” means the legal owner of the Vessel.

“**Licensor**” means Corlette Point Marina Holdings Pty Ltd (ACN 134 149 661).

“**Licensor’s Website**” means the website located at the Uniform Resource Locator (URL) www.anchoragemarina.com.au

“**Licence Term**” means the term of this Agreement as specified in the Schedule and includes any extensions to the Term

“**Rules and Regulations**” means the Anchorage Marina Rules & Regulations published on the Licensor’s Website and amended by the Licensor in its absolute discretion.

“**Marina**” means the Anchorage Marina Port Stephens operated by the Licensor.

“**Vessel**” means the Vessel identified in this Agreement.

“**Guests**” includes any person either expressly or implicitly invited or allowed by the Licensee onto the Marina or its Vessel, including its employees, (masters and crew of the Vessel whether or not employed by the Licensee) its agents and contractors.

“**Stored**” and “**Storage**” means either the ‘mooring or berthing of the Vessel’, whichever is specified in the Schedule.

“**Schedule**” means the schedule of this Agreement, including any amendments or additions made to the Schedule as agreed between the parties in writing on the Schedule.

“**Licence Fee**” means the fee identified in this Agreement plus additional Utility Charges if incurred by the Licensee; being paid in consideration for granting this Licence and the use of the Marina, its facilities and Storage of the Vessel.

“**Long-Stay**” means a licence that is granted under this Agreement that is subject to a Licence Term.

“**Short-Stay**” means a licence granted under this Agreement that is between two dates – Arrival and Departure Dates.

“**Due Date**” means the date that the Licence Fee is due to be paid; commencing on the date specified in the Schedule and includes any subsequent date the Licence Fee becomes due.

“**Utility Charge**” means shore power supplied by the Marina or Licensor.

2. Licence to use and occupy the Marina

(a) Subject to this Agreement, the Licensor grants to the Licensee a personal, non-exclusive and non-transferable right to access to the Marina, occupy its berths and use the Marina’s facilities for:

(i) In the event of a Short-Stay:

(A) the period between the Arrival Date and Departure Date specified in the Schedule to berth the Vessel; and

(B) in the event that the Vessel remains at the Marina after the Departure Date, for a length of time as agreed to between the parties.

(ii) In the event of a Long-Stay

(A) Until the expiration of the Licence term pursuant to clause 6.

3. Licence Fee

(a) In consideration for the granting of the licence by the Licensor in Clause 2, the Licensee agrees to pay the Licence Fee to the Licensor at the rate and frequency in the Schedule.

(b) The Licensee must pay the License Fee on or before the Due Date.

(c) Except where the Licensee terminates pursuant to clause 7.(b), if the Licensee pays a discounted Licence Fee and this Licence is terminated early, being before the end of the ‘Long Stay Term’ as listed in Schedule 1 or any subsequent anniversaries pursuant to clause 6.(b), the Licensee will not be entitled to the discount with the full Licence Fee being payable on termination.

(d) **Short-Stay – Additional Days**

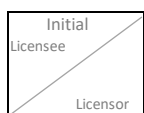
If the Vessel remains at the Marina, after the specified Departure Date, the Licensee will pay the Licensor before departing the Marina; the agreed Licence Fee in the Schedule calculated on a pro-rata basis for each day or part thereof that the Vessel remains in the Marina

(e) **Variation of Licence Fee with Notice**

The Licensor reserves the right to vary the Licence Fee listed in the Schedule at its absolute discretion and the varied Licence Fee will replace the existing Licence Fee one (1) month from the date that the Licensor provides Notice to the Licensee.

(f) **Licence Fee not refundable**

Subject to clause 5 and to the fullest extent available at law, the Licence Fee is not refundable if the Licensee does not use the licence.



(g) Interest on overdue Licence Fees

In the event that the Licensee does not pay the Licence Fee by the Due Date the Licensee will pay the Licensor interest at the rate of 1.5% per month (calculated daily) on any overdue amounts including costs incurred by the Licensor to recover such payments or remedy any breach of this Agreement by the Licensee, its servants and agents.

4. Obligation of the Licensee

The Licensee agrees that:

- (a) it will berth and maintain at its own expense the Vessel and its Equipment in good and proper working order.
- (b) it will manage and operate the vessel safely and in accordance good seamanship and any applicable maritime rules and regulations.
- (c) it will comply and cause all of its employees, (including the master and crew of the Vessel, whether or not employed by the Licensee) agents, contractors and guests to comply with the Marina's Rules and Regulations.
- (d) it will use the Marina solely for berthing and enjoyment of the Vessel.
- (e) it will not assign, sub-licence or part with its rights under this Agreement.
- (f) when the Vessel is located at the Marina, it will not sell or advertise the Vessel for sale or hire out the Vessel without the prior written consent of the Licensor, which will not be unreasonably withheld.
- (g) when the Vessel is located at the Marina, it will not carry out or cause to carry out repairs and/or maintenance on the Vessel or use the Vessel for any commercial or business purpose without the prior implied or express authority of the Licensor.
- (h) it will immediately advise the Licensor of any damage or injury caused to the Licensor's property by the Vessel or any employee, (including the master and crew of the Vessel, whether or not employed by the Licensee) its agents, contractors and Guests.
- (i) it will comply and cause all of its employees, (including the master and crew of the Vessel, whether or not employed by the Licensee) agents, contractors and Guests to comply with the requirements of all statutes, regulations, by-laws and common law relating to the use and occupation of the Marina and Licensor's property.
- (j) it will pay the Licensor for the Utility Charges incurred as a result of the Licensee's use of the

Marina and this payment will be collected as part of the Licence Fee.

- (k) the Licensor may, at its discretion, board and/or move the Vessel and/or its accessories or equipment as required.

5. Cancellation – Short Stay

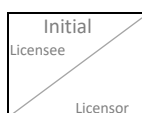
- (a) In the event that a Short Stay Licence is granted and paid in advance by the Licensee, the Licensee must cancel the Licence giving no less than (30) thirty days written notice prior to the Arrival Date, if the credited payment is to be:
 - (i) refunded to the Licensee; OR
 - (ii) held by the Licensor for a period of six (6) months to be used as credit for any future use of the Marina by the Licensee; AND
- (b) If the Licensee fails to give the required notice, pursuant to 5.(a) above, the credit payment will be forfeited to the Licensor; OR
- (c) If at the expiry of six (6) months, the Licensee has not used the credit, the credit payment will be forfeited to the Licensor.

6. Termination – Long Stay

- (a) If a Licence is granted for a Long Stay, either party may terminate the Licence by giving no less than (30) thirty days written notice prior to the expiration of the Licence term.
- (b) If no such notice is given, this Agreement shall automatically renew for a further period equal to the first Licence term, commencing the day after the expiry of the Licence term on the same terms contained in this Agreement.

7. Termination due to Default

- (a) The Licensor may terminate this Agreement by written notice to the Licensee if:
 - (i) the Licensee is in breach of this Agreement or the Rules and Regulations of the Marina; or
 - (ii) in the opinion of the Licensor any conduct by the Licensee, its employees, (including the master and crew of the Vessel, whether or not employed by the Licensee) agents, contractors and Guests is prejudicial to the interests of the Licensor and/or the Marina.
- (b) Either party may immediately terminate this Agreement by written notice to the other party:
 - (i) If the other party is a corporation and a receiver, liquidator, official manager, external administrator or similar is appointed to it or it is insolvent or unable to pay its debts as and when they fall due or has entered into any arrangement or debt



agreement with its creditors and/or in relation to its properties;

- (ii) If a natural person, has a Trustee in Bankruptcy appointed, has committed an act of Bankruptcy, has entered into a personal insolvency Agreement (PIA) Part X Arrangement under the Bankruptcy Act 1966 (Cth) or any debt agreement with creditors, is placed into receivership and/or has any property or personal assets so administered;
- (iii) If the other party enters into any discussion or negotiation with creditors, is subject to execution of debt proceedings, examination summons, writ of execution, charging order, injunction, has issued against it a Statement of Claim or Statutory Demand or any equivalent event however described.

8. Warranties

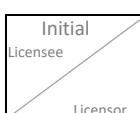
- (a) The Licensee acknowledges by entering into this Agreement that:
 - (i) it has not relied in any way on the Licensor's skill and judgment;
 - (ii) it has relied upon its own enquiries, inspection, and knowledge with respect to the Marina
 - (iii) it has satisfied itself as to the condition and suitability of the Marina and accesses the Marina at its own risk;
 - (iv) the description of the Vessel in this agreement is true and correct.
 - (v) it will pay any adjusted fees and be liable for any damage or additional expense arising out of the failure to describe the Vessel correctly in this agreement.
- (b) The Licensee acknowledges all conditions and warranties, express or implied, whether arising by statute or otherwise, as to the condition, suitability, quality, fitness or safety of the Marina provided by the Licensor are hereby excluded to the full extent permitted by law.
- (c) The Licensee acknowledges that the Licensor has not given any such warranty, express or implied, whether arising by statute or otherwise, as to the condition, suitability, quality, fitness, or safety of the Marina provided by the Licensor.
- (d) Nothing in clauses 8 (b) and (c) above shall remove or abrogate the non-excludable statutory warranties or guarantees provided under the Competition and Consumer Act 2010 (Cth) as amended or the Australian Consumer Law, or any other law that may apply, to the extent that they are applicable to this Agreement.

9. Liability and Risk

- (a) The Licensee, its employees, (including masters and crew of the Vessel whether or not employed by the Licensee) agents, contractors, and Guests are responsible for all rubbish and its removal associated with the Vessel. Rubbish includes, but is not limited to bilge, engine and other oils, discarded equipment, barnacles, marine growth, paint scraping etc.
- (b) The Licensee assumes all risk and liability; for the use of the Marina, the facilities of the Licensor, the use of its Vessel and equipment, in respect to all loss, damage, injury or death caused to persons or property. Whether or not the Licensee has effected insurance, the Licensee shall indemnify and release the Licensor against and from any actions, claims, cross claims, contribution claims, demands, loss, damages, costs and expenses including but not limited to legal costs and expenses resulting from loss of or damage to the facilities, other property or persons however caused.
- (c) The Licensee acknowledges the Vessel may undergo fair wear and tear and deteriorate whilst at the Marina and this may include but is not limited to; dust abrasion and marking, oxidization, corrosion, condensation resulting in water marks and mould, perishing of plastics, rubbers, seals and hoses, development or increase of leaks, water ingress, deterioration in electrical system, settling and sedimentation of oils and petroleum products, seizure of moving parts due to lack of use and deterioration of other mechanical parts, fading of paint work on decks and hull, deterioration arising from the Vessel being stored at the Marina and,
 - (i) The Licensee agrees to hold the Licensor harmless from such fair wear and tear and deterioration as described above.

10. Insurance

- (a) The Licensee must insure and keep the Vessel and its equipment insured with an insurer of recognised standing acceptable to the Licensor.
- (b) The Licensee must insure and keep an insurance policy against liability for any loss or damage to third-party property and for death or injury to any person caused by or in connection with the Vessel for an insured amount of no less than \$10 million.
- (c) The Licensee will on request produce to the Licensor a certificate of currency of the insurance(s).
- (d) The Licensee, its employees, (including masters and crew of the Vessel whether or not employed by the Licensee) agents, contractors and its Guests



must not do or fail to do any act or thing which might invalidate or prejudice the insurance Policy.

11. Licensee not a tenant

- (a) This Agreement does not confer on the Licensee or any other person, any rights as a tenant of the Marina or the Licensor's property, nor create the relationship of landlord and tenant.

12. Marina Rules and Regulations Amendment

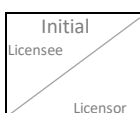
- (a) The Licensor reserves the right to create, amend or cancel any rules or regulations in line with the Marina rules and regulations and all such amendments and cancellations shall bind the Licensee when the Licensor gives notice of the changes in writing or by publishing the rules and regulations on the Licensor's Website.
- (b) If there is any inconsistency between the Marina Rules and Regulations and this Agreement, the prevailing term or rule shall be determined by the Licensor.

13. Liens and Encumbrances

- (a) The Licensor shall have a lien on the Vessel for the payment of all monies due to the Licensor under this Agreement.
- (b) In consideration for entering into this Agreement, the Licensee as the beneficial owner states that it is absolutely entitled to grant this security interest and hereby charges in favour of the Licensor all of its personal property present and future and where so ever situated with the payment to the Licensor of all monies secured by this Agreement. Such security interest shall be a non-circulating and specific security interest on all of the abovementioned personal property now or in the future belonging to the Licensee and a circulating security interest on all other personal property of the Licensee.
- (c) In the event of the Licensee's default of this Agreement, the Licensor may appoint a receiver and or manager of the Licensee as the case may be without derogating from its other rights under this Agreement.
- (d) Licensee irrevocably appoints the Licensor and any receiver or manager appointed by the Licensor to be the Licensee's joint and several attorneys to execute, sign and perform in its name and on its behalf all Agreements, instruments, acts and things whatsoever which the Licensee is required or reasonably expected to execute, sign and perform under the covenants contained in this Agreement and generally to use the Licensor's name in the exercise of all or any of the powers conferred on the Contractor or any receiver or

manager appointed by the Licensee as the case may be.

- (e) Notwithstanding the Licensor's rights under clause 13 (a)-(d) above, the Licensee authorises the Licensor to take possession of the Vessel on default in payment of an account. Any such taking of possession shall be at the cost and risk of the Licensee including all costs of storing the Vessel and any expenses and costs including but not limited to Legal Costs and Expenses shall be a debt due and owing to the Licensor. The Licensor may sell the Vessel either by public or private sale if the account remains unpaid for 21 days after a notice has been made in writing by the Licensor to the Licensee. The Licensor may and the Licensee authorises the Licensor to collect out of any sale or settlement proceeds however described the costs and expenses of taking possession and sale and the Licensee charges to the Licensor under this Agreement those costs and expenses against the Vessel and the Licensee. The Licensor will pay the Licensee any funds remaining from the net sale proceeds of the Vessel after all debts owed to the Licensor have been discharged.
- (f) The Licensee appoints the Licensor as the Licensee's attorney to sign any document required to transfer ownership of the Vessel on the sale of such Vessel arising from any default hereunder and to execute any document required under the Personal Property Securities Act 2009 (Cth) ("PPSA"), Corporations Act 2001 (Cth) and/or any applicable ASIC Form and/or any applicable registration Transfer or other applicable form under Marine Vessel Registration and/or Licensing Legislation and/or any finance encumbrance bank building society of finance company (or similar) documentation.
- (g) Where the Vessel is under finance or encumbrance, the Licensee covenants that the Licensee is not in default or arrears of any term of any applicable finance or encumbrance Agreement and that the encumbrance or finance provider as the case may be is aware of and consents to this berthing storage and mooring Agreement and the use of the Vessel Storage Facility set out herein.
- (h) The Licensee authorises the Licensor:
 - (i) to undertake and the licensee agrees to pay to the Licensor whether in advance or in arrears at the discretion of the Licensor for searches undertaken of the Personal Property Securities Register (PPSR) maintained under the Personal Property Securities Act 2009 (Cth) (PPSA), insurers, registration authorities, government



authorities, Roads and Maritime Services, courts and police for the purposes of ascertaining as to the Licensee's and the Vessel's status, applicable finance, encumbrances or other noted items in the PPSR and relevant information as to title and condition concerning the Vessel; and

- (ii) pursuant to Section 18E of the Privacy Act 1988 (Cth) the Licensee authorises the Licensor in waiver of the Licensee's rights to make confidential enquiries of and obtain information from finance providers, bankers, insurers, registration authorities, government authorities, Roads and Maritime Services, courts and police with respect to the Vessel, its status, title, condition and with respect to the Licensee and the Licensee's legal status including any proceedings against the Licensee and/or the Vessel, and any indebtedness of the Licensee and/or the Vessel as to any specific credit debt and credit generally and to obtain information including but not limited to a payout figure, daily rate of interest, the nature of any security or finance interest claimed over the Vessel or with respect to the Licensee. The Licensee authorizes the Licensor to communicate to and receive from the said persons and entities what would otherwise be confidential information concerning the Licensee and Licensee's indebtedness and the indebtedness of the Vessel for the purposes of this Agreement including securing payment or repayment as the case may be for the Vessel, discharge of indebtedness and remuneration of and payment to the Licensor and/or the Licensor's costs and expenses including but not limited to legal costs and expenses under this Agreement.

- (i) For the purposes of this clause:

"Financing statement" has the meaning given to it by the PPSA;

"Financing change statement" has the meaning given to it by the PPSA; (c)

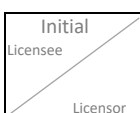
"Security Agreement" means the security Agreement under the PPSA created between the Licensee and the Licensor whether described as a security interest, charge or other expression herein and without limiting those other expressions; and

"security interest" has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described.

- (j) The Licensee agrees that its execution of the respective parts of this Agreement and the provisions set out herein constitute a security Agreement for the purposes of the PPSA and create the security interest as set out in the respective executed document.
- (k) The Licensee shall indemnify or pay the Licensor at the Licensor's sole discretion for all expenses incurred or to be incurred in registering a financing statement or financing change statement in the PPSR or releasing any interest thereunder.
- (l) The Licensee shall not create or cause or set in chain to be created a financing statement or financing change statement in respect of a security interest without the prior written consent of the Licensor.
- (m) The Licensee shall not register, cause to be registered or do any action or execute anything which may enable the registration of a financing statement or a financing change statement in relation to the Personal Property secured herein in favour of a third party without the prior written consent of the Licensor.
- (n) The Licensee shall immediately advise the Licensor of any material change in its business practices, corporate structure, directorship, shareholdings, financial structure or solvency which would otherwise jeopardise the security interests of the Licensor.
- (o) The Licensor and the Licensee agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by the Agreement of guarantee.
- (p) The Licensee hereby waives the Licensee's rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA.
- (q) The Licensee waives its rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.
- (r) The parties agree that the Licensee is the debtor for the purposes of Section 275(6) (a) of the PPSA and that the parties shall not disclose information of the kind mentioned in Section 275(1) of the PPSA. This clause constitutes a confidentiality Agreement for the purpose of Section 275(6) (a) of the PPSA.

14. Authority and Covenants

- (a) The Licensee hereby certifies that it is the legal and beneficial owner or duly authorised agent of the owner of the Vessel and that the Licensee shall be personally liable for all fees, amounts, costs, claims, cross claims, contribution claims or



liabilities of whatsoever nature arising out of this Agreement. The Licensee undertakes to pay all such moneys on demand.

- (b) The Licensee warrants as an essential term of this Agreement that the Vessel is not the subject of any defect notice, registration cancellation, suspension, levy of debt, proceeds of crime order, injunction, charging order, seizure, confiscation or similar and is not stolen or otherwise illegally obtained or held, nor are there any proceedings against the Licensee or the Vessel with respect to defect notice, registration cancellation, suspension, levy of debt, proceeds of crime, injunction, charging, seizure, confiscation or similar.
- (c) The Licensee covenants that the Vessel has not had any alterations or changes to any Australian compliance plate or manufacturer's plate or its serial number, hull identification number or any other registration or compliance number attached to the Vessel.

15. General Provisions

(a) Governing Law

The contents of this Agreement, its meaning and interpretation and the relationship between the parties are to be governed in accordance with the laws of the State of New South Wales.

(b) Invalidity

If any part of this agreement is for any reason declared invalid or unenforceable, the validity of the remaining portion is not to be affected and the remaining portion is to remain in full effect as if this agreement had been signed with the invalid portion eliminated.

(c) Variation

The terms of this Agreement shall be subject to change from time to time at the absolute discretion of the Licensor provided that the Licensor provides notice of any change in writing or by publishing a copy on the Licensor's Website.

(d) No Waivers

- (i) No failure on the part of a party to exercise its rights or remedies provided by this agreement or by law operates as a waiver of them. Any single or partial exercise of any of the rights or remedies does not preclude any further or other exercise of such right or remedy or the exercise of any other of the rights or remedies.
- (ii) Any waiver or consent by a party is effective only if it is in writing signed by or on behalf of that party and then only to the extent

expressly stated in the writing and in the specific instance and the purpose for which it is given.

(e) Notices

Any notice to be served shall be duly served if:

- (i) delivered personally to the other party; or
- (ii) sent through the post in a prepaid envelope addressed to that party at its address set out in this Agreement; or
- (iii) By email to its email address set out in this Agreement.

(f) No Merger

Notwithstanding the completion of any of the transactions contemplated by this agreement, any obligation of a party, which is of a continuing nature or is not fully satisfied and discharged on completion, including, the warranties, will not merge on completion or in any transfer but will continue in favour of the party to which it is owed and remain in full effect.

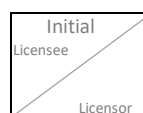
(g) Survival of Indemnities

Each indemnity of a party contained in this agreement is a continuing obligation of that party despite any settlement of accounts and remains in full force and effect until all money owing, contingently or otherwise, under any indemnity has been paid in full and:

- (i) is an additional, separate and independent obligation of that party and no one indemnity limits the generality of any other indemnity; and
- (ii) survives the termination of this agreement.

(h) Remedies

- (i) The rights and remedies contained in this agreement are cumulative and are not exclusive of any rights and remedies provided by law.
- (ii) Any right or remedy which may be exercised, or any determination which may be made, under this agreement by a party may be exercised or made (or declined to be exercised or made) in the absolute discretion of that party who is not under any obligation to do so or to give reasons for its decision.
- (iii) A party is not liable or accountable for any loss occasioned by or arising out of or in connection with its omission to exercise any right or remedy or to make any determination, or any delay in exercising any right or remedy or in making any



determination, or the exercise or partial exercise of any right or remedy.

- (iv) A party is entitled to enforce or take action in respect of, to the extent permitted by law, any breach of another party's obligations under this agreement notwithstanding the termination of this agreement.

(i) **Whole Agreement**

The contents of this Agreement record the entire agreement between the parties in relation to its subject matter. It supersedes all previous negotiations, understandings or agreements in relation to the subject matter.

(j) **Further Assurances**

Each party must do and perform all such other acts matters and things as may be necessary or convenient to implement the provisions of this agreement so as to give effect to the intentions of the parties as expressed in this agreement.

16. Interpretation

In this document, unless the context indicates a contrary intention:

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(documents) a reference to this document or another document includes any document which varies, supplements, replaces, assigns or novates this document.

(gender) words importing one gender include all other gender.

(headings) clause headings and the table of contents are inserted for convenience only and must not be used when interpreting this document.

(including) including and includes are not words of limitation.

(joint and several) an agreement on the part of two or more persons binds them jointly and severally.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(natural person) a reference to a natural person includes their personal representatives, successors and permitted assigns.

(parts) a reference to one or more things includes each part and all parts of that thing or group of things.

(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

(requirements) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done.

(references) a reference to a party, clause, schedule or annexure is a reference to a party, clause, schedule or annexure of this document.

(rights and obligations) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this document.

(rules of construction) neither this document nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(singular) the singular includes the plural and vice-versa.

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia even if the obligation is to be performed elsewhere.

(writing) a reference to a notice, consent, request, approval or other communication under this document or an agreement between the parties means a written notice, request, consent, approval or agreement

