

LICENCE AGREEMENT

RECITALS

By a Lease from the Western Australian Land Authority the Mandurah Offshore Fishing and Sailing Club (**'the Club'**) has the power to grant licences of Pens within the leased premises and enters into this Agreement pursuant to that power.

OPERATIVE PART:-

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement unless the context otherwise requires, the following words and expressions have the following meanings:-

"Act" means any present or future Act of Parliament (Federal or State) and includes any amendments or re-enactment of it for the time being in force and includes by-laws and regulations under any Act;

this **"Agreement"** means this agreement and if varied as varied from time to time;

"Authorised Officer" means such person or persons as the Club may appoint from time to time;

"Authority" means any public body or authority of any kind having jurisdiction over the Club or its premises;

"Bond" means the bond set out in item 6 of the Particulars;

"Club's Employees" means each of the Club's employees, officers, agents, contractors, service suppliers, sub-Licensees, concessionaires, customers and those other persons who at any time are under the control of the Club and are on the Club's premises or in the Marina or its surrounds with the consent (express or implied) of the Club;

"GST" means the goods and services tax introduced by the A New Tax System (Goods and Services Tax) Act 1999 or any amendment thereto;

"Length" means bowsprits, anchors, marlin boards, davits, dinghies or any other attachments at bow and stern are included for measurement purposes.

"Licence Fee" means the fee as at Item 7 as in Schedule 1 and as modified from time to time under control of the Club.

"Marina" means the portion of the Mandurah Marina from time to time under the control of the Club.

"Particulars" means the Particulars as in Schedule 1 of this Agreement.

"Party" means a party to this Agreement;

"Pen" means as the case requires either of the particular section of Jetty and the water adjacent to it ("a Jetty Pen") or alternatively, the area of hardstand ("a Hardstand Pen"), the area of the boat shed ("a Boat Shed Rack") referred to in item 6 of the Particulars, or as changed from time to time by the Club, and in respect to a Jetty Pen includes all equipment used on, or in connection with the Pen and any other improvements comprising or installed within the Pen;

"Term" means the term of this Agreement as specified in item 6 of the Particulars; and

"Vessel" means the vessel specified in item 5 of the Particulars or as notified to the Club by the Licensee from time to time in accordance with this Agreement.

The term **"Mooring Finger"** is used for this as the purpose of a support for berthing and docking.

1.2 This Agreement binds each Party and their respective personal representatives, successors and permitted assigns.

A reference in this Agreement to a Party means and includes that Party and its personal representatives, successors and permitted assigns.

- 1.3 This Agreement may only be varied by written instrument signed by each Party
- 1.4 This Agreement is governed by and must be construed and interpreted in accordance with the law of Western Australia and where applicable, the laws of the Commonwealth of Australia.

2. GRANT OF LICENCE

In consideration of the Licensee paying the Licence Fee, the Service Fee and the Bond to the Club and performing all of the Licensee's obligations under this Agreement, the Club hereby grants to the Licensee the Licence, to access and use the Marina and the Pen during the Term subject to the terms and conditions contained in this Agreement, and the Rules and Guidelines of the Club as from time to time amended.

3. FEES AND BOND

3.1 Upon signing of this Agreement, the Licensee must:

- (1) be a fully paid up Ordinary Member of the Club;
- (2) pay the licence Fee in Item 7 of the Particulars;
- (3) pay the Service Fee in Item 7 of the Particulars;
- (4) pay the Bond in Item 7 of the Particulars.

3.2 If the Club is put to any expense by the Licensee during or at the expiry of the Term, the Club may deduct the costs and expenses thereby incurred from the Bond or upon termination of the Licence from any funds held by the Club. If insufficient funds are held by the Club the Licensee must pay all outstanding fees prior to removal of the vessel from the Clubs grounds.

3.3 Provided that the Licensee has complied with the terms and conditions of this Agreement, the Bond will be refunded to the Licensee within 28 days from expiry or sooner determination of the Term.

4. LICENSEE'S COVENANTS

The Licensee covenants with the Club, on his own behalf and on behalf of the Licensee's Employees, Agents and invitees, that throughout the Term the Licensee will:-

4.1 Use of Pen

Not use, or permit the use of, the Pen for any purpose which is not permitted by the Club.

4.2 Indemnity

At all times during the Term and notwithstanding any policy of insurance required by this Agreement or the Rules and Guidelines of the Club, indemnify and keep indemnified the Club from and against:-

- (1) all damage to, or loss of, any property of the Club, or any other person or any injury to any person;
- (2) all actions, suits, proceedings, claims costs, expenses and demands (on a full indemnity basis), caused by, arising out of, or incidental to any negligent act, default or omission of the Licensee or its Employees, Agents, and Invitees in relation to use or misuse of the Licence, the Pen, or the Vessel whilst within the Marina.

4.3 Compliances with Legislation and Notices

Comply with and perform all requisitions and all works as are required of, or directed to be done by, the Licensee (as occupier or otherwise) pursuant to any Act affecting the Pen or the Marina and/or by the direction of any Authority, including any structural works or alterations required or directed, and will indemnify the Club from and against being required to comply with and perform any such requisitions or work and from any claims, moneys and expenses relating, and incidental, to any such requisitions or work.

4.4 Licences and Permits

Keep in force all licences and permits required by the Licensee or others in relation to the Pen or within the Marina.

4.5 Maintenance and Repair

- (1) In the case of a Jetty Pen keep and maintain the Pen in good and tenantable repair, fair wear and tear excepted, and will replace all or any item of the Pen as and when a prudent Licensee would do so.

- (2) In the case of a Hardstand Pen keep the surface of the area of the Pen in good repair and condition, fair wear and tear excepted, and free from the Licensee's plant and equipment and rubbish as well as free from all oil and other stains.

And in addition in either case the Licensee will make good any damage occurring after the commencement date of the Term and undertake any reasonably necessary repairs to any part of the Pen as soon as practicable after receiving a notice in writing from the Club or any Authority to that effect and if remedy of those defects or necessary repairs has not commenced within seven days of receiving notice, or where those repairs involve major structural work and require the calling of tenders those tenders must be called for within 28 days of receiving notice, or if work does not proceed diligently, then the Club may arrange for all necessary work to be done at the sole expense of the Licensee and all moneys due for that work will be deemed to be a debt due from the Licensee to the Club.

4.6 Additions by Licensee

Not make any addition or alteration to any part of the Pen whatsoever without the Club's and any relevant Authority's prior written consent. All permitted alterations or additions shall be made, completed and carried out to the entire satisfaction of, and the materials used therein shall be approved by, the Club and any relevant Authority.

4.7 Negligent use of Pen

Not commit, or permit, anything whereby any insurance taken out in respect of the Pen, or the Marina may be rendered void or voidable or whereby any relevant insurance premium may be increased.

4.8 Notices to be delivered to the Club

Deliver copies of all notices, orders, requisitions directions and summonses which affect the Pen, the Marina or surrounding areas in any way, to the Club immediately upon receipt of the same.

4.9 Entry by the Club to Rectify Breach

Permit the Club to do, or cause to be done, all things necessary to rectify any breach by the Licensee of any of the terms, conditions, covenants and agreements in this Agreement (without the Club being under any obligation to do so and without prejudice to the Club's other rights, powers, remedies or discretions) and all reasonable costs and expenses incurred by the Club resulting from such breach (including the wage, fees and remuneration of any workmen, servants, agents, solicitors, surveyors or architects employed or engaged in that respect) will be a debt due and payable by the Licensee to the Club upon demand.

4.10 Encumbrances, Sub-licensing and Assignment

- (1) Not allow any encumbrance over the Pen nor assign, transfer or part with possession of the Pen or the Licence or any entitlement in relation to the Pen arising under this Agreement, to any person without the Club's prior written consent which may be given or withheld in the absolute discretion of the Club.
- (2) In the event that the Licensee wishes to assign transfer or part with possession of the Pen the Licensee shall give written notice to the Club of the Licensee's wishes whereupon the Club, if it consents in its absolute discretion to such assignment transfer or parting of possession, the Club may assign transfer or allow possession of the Pen to another Licensee on such conditions as the Club thinks fit.
- (3) The Licensee shall be entitled to receive from the Club for the balance of the Term or such part of the Term as the Licensee is not in possession or entitled to possession of the Pen reimbursement of that portion of the Licence Fee paid by the Licensee in respect to the portion of the Term during which the Licensee is not in possession of the Pen and the Pen is occupied.

4.11 Insurance

The Licensee must at all times keep the Vessel and any other property owned or brought into the Marina by the Licensee and/or invitees of the Licensee fully insured whilst within the confines of, or near to the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of God.

The Licensee will deliver evidence of all policies of insurance to the Club as soon as practicable upon their issue and will pay all premiums promptly and will deliver copies of the receipts for payment of premiums to the Club within 7 days of the Club requesting them.

If a Club member is unable to obtain comprehensive insurance cover for their boat, they must advise pen committee reasons in writing, and it will be at the committee's discretion to grant occupation continued or otherwise, subject to at least third party liability cover of \$10 million.

4.12 Costs

Pay the costs of and incidental to the instructions for the preparation, execution and stamping of this Agreement and all costs charges and expenses incurred by the Club for the purpose of or incidental to the preparation and service of any notice requiring the Licensee to remedy a breach of any of the covenants contained in this Agreement.

4.13 Removal of Licensee's Property

Upon expiry of the Term or earlier termination by the Licensee or Club, leave the Pen and the Marina (including the seabed) in a clean and tidy condition entirely at the Licensee's own cost, including, if required by the Club, the removal of any mooring equipment installed by the Licensee and repair any damage caused by that removal and if the Licensee fails to do so then the Club may do, or cause to be done, all things which are required to be done by the Licensee by this clause at the sole cost of the Licensee.

5. RESPONSIBILITY FOR DAMAGE

The Club will not be responsible in any way for:-

- 5.1 any damage from any cause whatsoever that any Vessel owned or used by the Licensee, or by any person lawfully authorised by the Licensee pursuant to this Agreement, may at any time sustain while in the Pen or entering or leaving the Pen;
- 5.2 any loss resulting from the theft of any Vessel owned or used by the Licensee, or any person lawfully authorised by the Licensee pursuant to this Agreement, while in the Pen or for the theft of any parts, equipment or contents of any such Vessel; and
- 5.3 any injuries which the Licensee or any of the Licensee's Employees, Agents and Invitees may at any time sustain while in or upon the Pen however occurring.

6. REMOVAL OF VESSEL

- 6.1 The Club may (at the cost and expense of the Licensee) in case of an emergency, or any other reasonable reason or upon the termination of this Agreement, remove any Vessel from the Pen and anchor, moor or store it at such place and by such means as the Club (using reasonable care) determines. The Club will not be liable in any way whatsoever to the Licensee or any person claiming through or under the Licensee in respect of anything done by the Club pursuant to this clause. The Club will notify the Licensee in writing of the location of any Vessel so removed from the Pen as authorised by this clause which notice will be dispatched by both pre-paid post and, where possible, by facsimile or other electronic means, on the day following such removal.
- 6.2 The Club may at any time require the Licensee to vacate the Licensee's Pen either temporarily or permanently and to take up another Pen within the Marina and/or to another suitable location nominated by the Club to assist the Club with events such as the annual Boat Show or for any other reason required by the Club acting reasonably. The Club will not be liable to pay any compensation to the Licensee in respect to any period during which the Licensee is so required to vacate the Licensee's Pen. Where the Licensee is required to move permanently to another Pen the terms of this Agreement shall apply for the remainder of the term to the new Pen.
- 6.3 If the Licensee is temporarily not occupying the Licensee's Pen then the Club may let the Pen on such conditions as it thinks fit until the Licensee again occupies the Pen. If the pen is let by the Club under this clause then and only then the Club shall reimburse the Licensee such amount, as defined in the Clubs by-laws, calculated at such a rate as the Licensee has paid the Club for the Pen pursuant to this Agreement.

7. NATURE OF RIGHTS

The rights conferred by this Agreement are in contract only and do not create in or confer upon the Licensee any tenancy of, or any proprietary rights in, and to, the Licence or physical ownership of any part of the Pen or the Marina.

8. DEFAULT

A Default occurs if:

- 8.1 the Licensee commits a fundamental breach of this Agreement; or
- 8.2 any moneys payable under this Agreement, or pursuant to the Club's Marina Rules and Guidelines are at any time in arrears and unpaid for 7 days after written demand for payment has been given by the Club; or
- 8.3 the Licensee does not comply with any of its other obligations under this Agreement and that non-compliance continues for 7 days after written demand for rectification has been given by the Club.

9. CLUB'S RIGHT TO TERMINATE

- 9.1 If a Default occurs, the Club may terminate the Licensee's right to use the Pen by notice in writing to the Licensee effective immediately upon receipt of that notice by the Licensee.
- 9.2 The Club's rights in clause 9.1 are in addition to any other rights which the Club may have against the Licensee under this Agreement or at law.
- 9.3 Termination of the Licensee's entitlement to use the Pen under clause 9.1 entitles the Club to all unpaid moneys due as at the date of termination together with all costs, expenses and damages arising from termination and the loss of the Licence Fee (if any) or any other moneys due under this Agreement.

10. WAIVER

Waiver by the Club of the Licensee's breach or non-observance of any of the covenants or conditions of this Agreement will not be construed as a general waiver and any waiver will relate only to the particular breach or non-observance in respect of which it was made. Acceptance by the Club of any Licence Fee or other moneys payable under this Agreement does not constitute a waiver by the Club.

11. GOODS AND SERVICES TAX

- 11.1 Subject to this Clause any payment made by the Licensee to the Club is exclusive of GST and represents the value of the taxable supply for which payment is to be made.
- 11.2 If the Club is liable by law for GST on any payment made by the Licensee to the Club the Licensee must pay to the Club the amount of the GST.
- 11.3 Subject to Clause 11.4 the Licensee must pay to the Club any amount in respect of GST that the Licensee is required to pay under this Agreement at the same time and in the same manner as the Licensee is required to make the payment to which the GST relates.
- 11.4 As a pre-condition of payment of GST by the Licensee the Club must issue to the Licensee on or before the date on which any payment by the Licensee to the Club is due a Tax Invoice in respect to that payment.

12. CHANGE OF DETAILS

- 12.1 If any of the details contained in the Particulars change during the Term, the Licensee must notify the Club within seven days of the change occurring.
- 12.2 The Licensee must obtain the consent of the Club (which consent will not be unreasonably withheld) before changing the Vessel occupying the Pen.

13. CLUB'S LEIN

- 13.1 Where the Club removes any Vessel in accordance with this Agreement or the Club's Marina Rules and Guidelines or the Clubs By-laws, the Club is entitled to a lien over the Vessel to the extent of all costs incurred by the Club for its removal and storage, where the Bond is not sufficient to pay for those costs.
- 13.2 If the Licensee fails to claim such Vessel within the period of three months after the date of such removal, the Club may at any time hereafter offer the Vessel for sale and appropriate the proceeds of any resultant sale in satisfaction of all expenses as may be incurred by the Club.
- 13.3 The Club may place and maintain on any such Vessel such person or persons as may be necessary and the Club will be entitled to a lien on the Vessel to cover the costs associated with appointing the custodian.

14. RENEWAL OF LICENCE

Prior to the expiration of the Term, the Club may in its absolute discretion offer to the Licensee, the right to renew the Licence for such period and for such fee as the Club determines in its absolute discretion.

15. EARLY TERMINATION OF THIS AGREEMENT

- 15.1 The Licence granted pursuant to this Agreement is personal to the Licensee and may not be transferred or assigned;
- 15.2 If the Licensee wishes to terminate this Agreement prior to the end of the Term the Licensee shall first apply in writing to the Marina Committee for its consent so to do which consent may be granted or refused in that Committee's discretion;
- 15.3 On the Marina Committee's consent in writing to the termination of this Agreement being given to the Licensee the Licence granted by this Agreement shall be surrendered by the Licensee to the Club. A refund of fees charged for a period of less than twelve months may be made at the sole discretion of the General Manager on the surrender of the Licence, and if so approved by the General Manager, on the strict condition that the Pen has been Licensed to another Club member. Part of a month's occupancy, shall be considered a complete month of occupancy.

16. MOORING FINGER

- 16.1 The fingers are to be constructed and supplied by the MOFSC preferred supplier from the same materials as used in existing Marina system.
- 16.2 Fingers and installation cost shall be at the penholders expense. No remuneration shall be made by the Club.
- 16.3 NO alterations to electrical and water bollards are to be made by the Licensee.
- 16.4 The Club shall own the Mooring Finger once installed by holder/lessee.
- 16.5 The lessee shall not remove or move the finger at any time without the written permission of the Club.
- 16.6 Notwithstanding clause 16.1, the Club will not be responsible in any way for any damage from any cause whatsoever that any Vessel owned or used by the Licensee, or by any person lawfully authorized by the Licensee pursuant to this agreement may at any time sustain while in the pen or entering or leaving the pen.

17. DISPUTES AND PENALTIES

Any member who is aggrieved by a decision of the Marina Committee or any sub-committee of it may complain by notice in writing to the Management Committee within 21 days of the decision complained of. The complaint shall be placed on the agenda of the meeting of the Management Committee next after receipt of the complaint. The Management Committee may refer the complaint to any sub-committee of the Club and may in its discretion consult with the complainant or inform itself of any other matter it may think fit. A decision of the Management Committee in respect to any complaint shall be final and binding upon the complainant.

18. DELEGATED AUTHORITY

The Club confirms that the Clubs General Manager has authority to sign the License on behalf of the Club.