

# Agreement for Bundaberg Port Marina



## Schedule

Between: Bundaberg Port Marina Pty Ltd A.C.N. 637 864 745 Trading As Bundaberg Port Marina ("the Marina Company")

And

Name/Company: \_\_\_\_\_ ("The Customer")

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Vessel Details: Name: \_\_\_\_\_ Registration: \_\_\_\_\_ Number of Occupants: \_\_\_\_\_ Type of Vessel: \_\_\_\_\_

Length: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_ Weight Light/Full \_\_\_\_\_ / \_\_\_\_\_

Pets: YES / NO \_\_\_\_\_ Airconditioners: YES / . NO \_\_\_\_\_ Power: 3PH: YES / NO \_\_\_\_\_

Strap Positions: Bow to 1<sup>st</sup> strap \_\_\_\_\_ 1<sup>st</sup> strap to 2<sup>nd</sup> strap \_\_\_\_\_

Rental - Marina \$ \_\_\_\_\_ per day / week / month / 3 months / 6 months (incl GST) Key Deposit: \$ \_\_\_\_\_

Rental – Hardstand/Dry Storage \$ \_\_\_\_\_ per day (including GST) Key Deposit: \$ \_\_\_\_\_

Rental Period Up to 12 months from date of contract \_\_\_\_\_

Work Requirements: As advised periodically by customer, up to 12 months from date of contract \_\_\_\_\_

Guarantors

(if any): Name: \_\_\_\_\_ Address: \_\_\_\_\_

## Execution

The Customer:

- (a) has been made aware of the Terms & Conditions attached to this document and has received and read the current Berth / Hardstand Rental price list,
- (b) acknowledges that this Agreement includes both the Terms and Conditions and the Schedule; and
- (c) has read this Agreement and accepts the conditions in full.

### Executed as an agreement

Executed by an authorised delegate for and behalf of Bundaberg Port Marina Pty Ltd A.C.N 637 864 745 as Marina Company in accordance with Section 127 of the Corporations Act 2001

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signed sealed and delivered by the Customer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signed sealed and delivered by the Guarantor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Authorised Delegate

\_\_\_\_\_  
Signature of Customer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Witness

# Marina Terms and Conditions

## 1. Background

- 1.1. The Marina Company operates a Marina, Travel Lift and Hard Stand Facility located at Marina Drive, Port Bundaberg in the State of Queensland (hereafter called 'the Facility').
- 1.2. The Marina Company and the Customer are entering into this Agreement and the parties agree to the terms and conditions of this Agreement for the rental of a berthing facility or hardstand space at the Facility for the storage or repair of a Vessel or Vessel and Trailer as the case may be.

## 2. Definitions and Interpretation

- 2.1. In this Agreement and in any instrument created pursuant to or in accordance with it, unless the context otherwise requires:

- (a) "Agreement" means this Agreement.
- (b) "Authority" means any State, Federal or Local Government or other authority having jurisdiction or rights with respect to the Marina Complex
- (c) "Business Day" means any day except Saturday or Sunday or a day that is a public or bank holiday in Bundaberg in the State Queensland;
- (d) "Charges" means the Marina Company's charges for Rental, Hardstand storage, Lifting Services and any other associated charges calculated under its rates, schedule or other agreed rates and any tax including the Goods and Service Tax (GST) levied directly on a transaction or Supply under this Agreement.
- (e) "Commencement Date" means the date specified in the Schedule;
- (f) "Claim" means any claim, demand, remedy, suit, injury, damage, loss, cost, expense, liability, action, proceeding, right of action, notice, injunction, restraining order, claim for compensation or claim for abatement of rent.
- (g) "Cost" includes any cost, charge, expense, outgoing, payment of other expenditure, including reasonable legal fees.
- (h) "Deposit" means the amount specified in the Schedule and which is payable by the Customer to the Marina Company immediately upon formation of this Agreement;
- (i) "Dry Storage Area" means that area of the Marina as determined by the Marina Company from time to time for the dry storage of vessels.
- (j) "Expiry Date" means the date specified in the Schedule;
- (k) "GST Act" means the Act titled A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time;
- (l) "GST" has the meaning given to this term by the GST Act;
- (m) "Hardstand Area" means that area of the Marina as determined by the Marina Company from time to time for the hardstanding of Vessels.
- (n) "Hardstand Services" means the storage of the Vessel on the Hardstand area.
- (o) "Keys" include keys, encoded cards or other devices issued or used for the purpose of obtaining access to the complex, the Marina or the berth.
- (p) "Key Deposit" means the amount specified in the Schedule;
- (q) "Law" means any statute, rule, regulation, proclamation, ordinance or by-law, present or future, state, federal or otherwise.
- (r) "Lifting Services: means the lifting services including, the lifting by Travel Left, slipway, crane or other method of the Vessel from the water, lowering the Vessel into the water for the purpose of inspecting or hard standing the Vessel in the Hardstand Area or elsewhere within the Marina as the case may be.
- (s) "Marina" means the marina and commercial and industrial complex known as the "Bundaberg Port Marina" located at the Trawler Basin, Burnett River, near Bundaberg including its dry

storage space, hardstand area, car parking areas, marina berths and walkways, fuel wharf, waterways, facilities and equipment.

- (t) "Marina Company" means Bundaberg Port Marina Pty Ltd A.C.N 637 864 745 and its related bodies corporate within the meaning of that expression in Section 9 of the Corporations Act carrying on the business in their own names and under any business names and their offices, servants, agents and contractors.
  - (u) "Marina Regulations" means the regulations from time to time adopted by the Marina Company with respect to Rental, the berthing and mooring of vessels in its marina, Lifting Services, Hardstand Services, fuel and watering services and any other services provided and goods sold from time to time by the Marina Company.
  - (v) "Customer" means the Customer or Owner referred to in the Schedule.
  - (w) "Personal Property" has the same meaning as in the PPSA as it relates to:
    - (i) All personal property of the Customer, including without limitation present and after acquired property of the Customer.
    - (ii) Any personal property provided by the Marina Company (the secured party) to the Customer on a retention of title basis;
    - (iii) Any personal property leased or provided on bailment by the Marina Company (the secured party) to the Customer; and
    - (iv) Including without limitation, any Proceeds associated with the above personal property;
  - (x) "PPSA" means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
  - (y) "PPSR" means the Personal Property Securities Register established pursuant to the PPSA;
  - (z) "Rental" means the amount paid to rent the Space by the Customer.
  - (aa) "Rental Period" means the period specified in the Schedule and commencing on Commencement Date specified in Schedule.
  - (bb) "Space" means the berthing facility or hard stand, or dry storage space designated from time to time by the Marina Company for the Customer to store the Vessel or Vessel and Trailer (with or without any associated tender) of the Customer as the case may be.
  - (cc) "Supply" has the meaning given to this term by the GST Act;
  - (dd) "Vessel" means the Vessel or Vessel and Trailer as the case may be.
- 2.2. In this Agreement and in any instrument created pursuant to or in accordance with this Agreement, unless the context otherwise requires:
- (a) The singular includes the plural and vice versa;
  - (b) A reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;
  - (c) A person includes the legal personal representatives, successors and assigns of that person;
  - (d) A reference to any gender includes all genders;
  - (e) A reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to this Agreement;
  - (f) A recital, schedule, annexure, appendix or exhibit or description of the parties forms part of this Agreement;
  - (g) A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

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- (h) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (i) Where an expression is defined anywhere in this Agreement it has the same meaning throughout;
- (j) A reference to "dollars" or "\$" is to an amount in Australian currency;
- (k) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (l) All headings throughout this Agreement have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of this Agreement or of any instrument created pursuant to or in accordance with this Agreement.

### 3. Storage

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#### 3.1. The Customer:

- (a) provided the Customer complies with all of its obligations in this Agreement and subject to any rights of the Marina Company under this Agreement or otherwise or of any relevant Authority to move or otherwise relocate the Vessel, the Customer has a right to store its Vessel in the Space allocated to the Customer by the Marina Company for the Term of this Agreement;
- (b) warrants to the Marina Company that they have full knowledge and understanding of all matters pertaining to the safe operation and storage of the Vessel in the Space and shall inform the Marina Company in writing of any information it may be reasonably expected to require in order to move the Vessel from the Space in the event of an emergency or other appropriate reason;
- (c) warrants to the Marina Company that they are either the Owner of the Vessel or the authorised agent of the Owner of the Vessel and accepts these Terms and Conditions in its own capacity if they are the Owner of the Vessel and if they are the agent of the Owner of the Vessel, as agent for the owner in which event, the Customer warrants that it is authorised to enter into this Agreement on behalf of the Owner of the Vessel and any other person having an interest in the Vessel and thereby bind the owner and any other such person;
- (d) will notify the Marina Company in writing of the current, from time to time, address and contact details of the Customer and where the Customer is not the Owner of the Vessel, the Customer shall provide such details with respect to themselves as well as the Owner of the Vessel;
- (e) warrants to the Marina Company that the Customer has received a copy of the current Marina Regulations and shall comply with the Marina Regulations, and any amendments thereto, at all times while storing the Vessel at the Marina and whilst entering or leaving the Marina.

#### 3.2. The Marina Company:

- (a) does not and will not be deemed to have any knowledge of the Vessel other than as is provided to it in writing by the Customer;
- (b) agrees to store the Vessel in the Space allocated to the Customer by the Marina Company for the Rental Period, provided that the Customer complies with all of its obligations in this Agreement

### 4. Fees

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#### 4.1. The Customer is responsible to pay to the Marina Company:

- (a) the Key Deposit upon signing this Agreement;
- (b) the Rental Fee for each Rental Period one month (Marina) or two months (Dry Storage) in advance of commencement of the relevant Rental Period or as specified by the Marina Company;
- (c) all charges for electricity, water or other services which are separately metered to the Space within seven (7) days of being billed by the Marina Company for such charges;
- (d) interest at the rate of 5% per annum or such other rate as may be set by the Marina Company in its absolute discretion from time to time, acting reasonably, calculated on monthly rests on all amounts that remain unpaid for more than 14 days after the issuing of a tax invoice by the Marina Company to the Customer. The parties agree that interest payable under this clause is a genuine pre-estimate of the loss occasioned by the Marina Company from non-payment and that the same may be recovered as a liquidated debt due to the Marina Company;
- (e) any Government taxes or charges (including any Goods and Services Tax and Stamp Duty) being levied on this Agreement or any Supplies pursuant to this Agreement.

#### 4.2 Key Deposit

- (a) The Customer shall pay the Key Deposit to the Marina Company on or before the Commencement Date.
- (b) If the Customer fails to return the Keys to the Marina Company then the Customer forfeits the Key Deposit to the Marina Company and the Customer shall pay the Marina Company the cost of securing the Marina Complex as a result of the loss of the Keys.
- (c) The Marina Company's rights contained in this clause are in addition to any other rights available to the Marina Company under this Agreement, at Law or in equity.
- (d) The Marina Company shall refund to the Customer any part of the Key Deposit, not called upon by the Marina Company pursuant to this clause, at the expiration of this Agreement.

### 5. Credit Card Surcharge

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- 5.1. The Marina Company will charge a fee for accepting payment of moneys due and owing under this Agreement by way of credit card. The amount of the fee will be equivalent to one and a half percent (1.5%) of the amount of any such payment(s).

### 6. Use of Space

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#### 6.1. The Customer:

- (a) will use the Space only for the purpose of storage of the Vessel and shall not carry on any business or other activity in the Space;
- (b) must keep the Space clean and tidy at all times and dispose of rubbish as directed by the Marina Company. An additional cleaning fee or rubbish removal fee may be required to be paid by the Customer to the Marina Company if the Customer fails to comply with this clause;
- (c) must not damage the Space;
- (d) is to ensure that the Customer, their guests, staff and invitees act in a safe and responsible manner at all times and observe and comply with all reasonable and lawful directions of the Marina Company;
- (e) may use the car parking area designated and in such a manner as directed by the Marina Company from time to time and not otherwise;

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- (f) must notify the Marina Company if they intend to have any work performed on the Vessel whilst it is in storage whether by the Customer, Owner or by outside contractors and the Customer must provide full details as requested by the Marina Company of the work intended to be carried out. The Marina Company reserves the right to refuse access to the Space for any work that the Marina Company considers, in their absolute discretion, will cause a nuisance or environmental damage to the Marina and other Marina users. The Marina Company may set specific rules and impose conditions on work to be carried out in the Space to ensure compliance with this clause;
- (g) must ensure that anyone undertaking work on the Vessel regardless of whether they are the Customer, /Owner or contractor must report to the Marina Company and advise the type of work to be carried out and produce evidence of appropriate Ship Repairers' Liability Insurance and Public Liability Insurance for at least \$10,000,000 covering the intended activities. Customers are responsible for any trades people they engage to undertake work on their Vessel;
- (h) must not fuel or permit to be fuelled the Vessel or any tender to such Vessel whilst stored in the Space;
- (i) must not live aboard the Vessel whilst stored in the Space unless prior approval from the Marina Company is obtained; and
- (j) must not live aboard the Vessel whilst stored in the Dry Storage Area. The Customer may live aboard the Vessel whilst stored in the Hardstand Area with the prior approval of the Marina Company; and
- (k) must ensure they exercise due care and diligence when accessing the Marina and must ensure that all gates are securely closed and locked when entering or exiting the Marina.
- 6.2. The parties agree that the Customer shall not be entitled to assign their rights, title or interest in this Agreement to any other third party.
- 6.3. The Customer acknowledges and agrees that if the Customer sells, transfers or otherwise disposes of their interest in the Vessel whilst in storage, the Customer must ensure that the purchaser or transferee enters into a new agreement with the Marina Company for the rental of the Space at the Facility for the storage or repair of the Vessel prior to completion of the transfer of the Vessel. Furthermore all fees payable by the Customer must be paid in full prior to the transfer/sale date.

### 7. Provision of Hardstand and Lifting Services

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- 7.1. The Marina Company will provide the Lifting Services and/or Hardstand Services as reasonably required by the Customer at the request of the Customer and subject to terms of this agreement.
- 7.2. The Marina Company may change the manner in which the Lifting Services and/or Hardstand Services are provided from time to time in its absolute discretion.
- 7.3. The Marina Company may arrange for any of the Lifting Services and/or Hardstand Services or any part to be carried out by a sub-contractor.
- 7.4. The Marina Company reserves the right to refuse to provide Lifting Services if they consider, in the Marina Company's absolute discretion, that the Vessel is unsuitable or unsafe to be lifted. If pursuant to this clause, the Marina Company determines that the Vessel is unsuitable or unsafe to lift and the Customer has paid the Marina Company for Lifting Services, the Marina Company will refund the Customer the amount paid for Lifting Services.

### 8. Marina Company's Rights and Reservations

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- 8.1. The Marina Company may assign all or any part of its rights, title or interest in this Agreement including all or any portion of the rent due or to become due.
- 8.2. The Marina Company may refuse access to the Space by the Customer where the Customer is in breach of this Agreement,

including if monies are owing by the Customer to the Marina Company (whether or not a formal demand for payment of such monies have been made).

- 8.3. The Marina Company reserves the right to relocate the Customer to another Space at the discretion of the Marina Company.
- 8.4. No oral statements made by the Marina Company or its employees to the Customer shall form part of this Agreement and no failure or delay by the Marina Company to exercise its rights under this Agreement will have the effect to waive those rights.
- 8.5. The Marina Company has a general lien on the Vessel for all monies due, or which become due, on any account by the Customer to the Marina Company for storage or berthing of the Vessel or for any other Marina Company service.
- 8.6. If any charges remain unpaid for seven (7) days, the Marina Company may at anytime require the Customer to remove the Vessel from the Space or the Marina Company may elect to relocate the Vessel from the Space.
- 8.7. The Marina Company requires the Customer to pay the Marina Company's cost associated with exercising any of its rights pursuant to this Agreement including any costs of sale of Vessel or legal costs on an indemnity basis. Any excess monies recovered by the Marina Company on disposal of the Vessel, after paying all monies owing by the Customer to the Marina Company and costs et cetera, will be returned to the Customer, by posting to the last known address of the Customer.
- 8.8. If, in the Marina Company's opinion, the Vessel is or is liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Marina Company may at anytime and at the Customer's cost, destroy, dispose of, abandon or render them harmless without compensation to the Customer and without prejudice to the Marina Company's right to any charges.
- 8.9. The Marina Company may from time to time make any amendments to the Marina Regulations it may consider necessary for the proper management of the Marina and may alter and repeal any Marina Regulations from time to time as it thinks fit. Failure to comply with the Marina Regulations is a breach of this Agreement. A copy of the Marina Regulations is available in the Marina office and Customers are deemed upon entry to the Marina to have notice of the Marina Regulations or any amendments made to the rules from time to time.

### 9. PPSA

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- 9.1. This clause applies to the extent that this Agreement provides for a Security Interest for the purposes of the PPSA.
- 9.2. The rights of the Marina Company under this Agreement are in addition to and not in substitution for the Marina Company's rights under other law (including PPSA) and the Marina Company may choose whether to exercise rights under this Agreement, and/or under other law, as it sees fit.
- 9.3. The Customer acknowledges that if the Marina Company's interest under this Agreement and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and this Agreement and any Contract is a security agreement for the purposes of the PPSA.
- 9.4. The Customer acknowledges that by this Agreement the Customer:
- creates and grants to the Marina Company a Security Interest for the purposes of the PPSA, in the Vessel and in all equipment and other materials stored in the Space;
  - that the Marina Company may register its Security Interest on the PPSA Register and that the Customer shall do anything requested of it by the Marina Company to enable the Marina Company to do so and ensure its Security Interest is perfected and otherwise enforceable under the PPSA, with first priority;
  - warrants that it shall not create or allow to be created any other Security Interest in the Vessel or any of its inventory or otherwise part with possession of the Vessel or any of its inventory to any third party without the written consent of the Marina Company;

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- (d) that if Chapter 4 of the PPSA applies to the enforcement of the Security Interest, to the maximum extent permitted by law, sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3), 132(4), 134(1), 135, 142 and 143 of the PPSA, will not apply to the enforcement of that Security Interest and the Customer waives its right to receive any notice under the PPSA so far as is permitted at law.

9.5. In support of the Marina Company's rights under this Agreement, the Customer charges its real and personal property with any amounts which are or may become owing to the Marina Company under this Agreement from time to time and shall sign any security documents requested by the Marina Company to give effect to the charge hereby created and appoints the Marina Company as its attorney to sign any documents for that purpose if the Customer fails to do so within a reasonable time.

### 10. Risk and Responsibility

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10.1. The Vessel is stored at the sole risk and responsibility of the Customer who shall be solely responsible for any and all theft, damage to and deterioration of the Vessel and shall bear the risk of any and all damage caused by flood or fire or leakage or overflow of water, heat, spillage or material from any other Space, removal or delivery of the Vessel, pest or vermin or any other reason whatsoever including acts or omissions of the Marina Company or persons under its control.

10.2. The Customer shall keep the Vessel and Space free of all pests and vermin, and will employ competent pest exterminators to treat the Vessel and Space if required by the Marina Company.

10.3. Access to the Customer's allocated Space by any person other than the Customer is prohibited unless the Customer gives personal or telephone instructions to the Marina Company advising the name of the person authorised by the Customer to enter the Customer's Space and that person provides reasonable identification to the Marina Company.

10.4. The Customer acknowledges and agrees to comply with all relevant laws, including Acts and ordinances, regulations, by-laws and orders as are or may be applicable to the use of the Space. This includes claims relating to the material which is stored and the manner in which it is stored. The liability for any and all breach of such laws rests absolutely with the Customer and includes any and all costs (on an indemnity basis) resulting from such a breach.

10.5. The Customer authorises the Marina Company to operate the Vessel and any machinery, whatsoever required to move the Vessel by whatever means necessary whether on land or in sea in any circumstances the Marina Company may consider necessary and appropriate.

### 11. Insurances and Indemnities

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11.1. The Customer must take out and maintain:-

- (a) public liability insurance in respect of the Vessel for at least \$10,000,000 in respect of any single accident;
- (b) comprehensive marine insurance for the Vessel;
- (c) third party insurance on the Vessel; and
- (d) any other insurance reasonably required by the Marina Company.

11.2. Evidence of adequate insurance must be given on request by the Marina Company and the Marina Company must be notified if any insurance policy is cancelled.

11.3. The Customer must not:-

- (a) do anything which may affect rights under any insurance policy taken out by the Marina Company or other person; and
- (b) store chemicals, inflammable or volatile liquids or substances in the Vessel other than those that are required for safe operation of the Vessel (and then only in such quantities as are reasonably required and in appropriate and approved containers).

11.4. The Customer is liable for and indemnifies the Marina Company against any liability for any claim arising from:- (a) the use by the Customer of a berth or Vessel;

- (b) any damage, loss, injury or death caused or contributed to by any act, omission, negligence or default of the Customer;
- (c) any environmental damage caused or contributed to by any act, omission, negligence or default of the Customer; (d) the arrest, impounding or moving of a Vessel; and (e) a breach by the Customer of this Agreement.

11.5. The Customer releases the Marina Company from and agrees that the Marina Company is not liable for any claim arising from:-

- (a) damage, loss, injury or death unless it is caused by the negligence or default of the Marina Company;
- (b) damage by fire, storm, flood, tempest or otherwise by act of God without any neglect or default on the part of the Marina Company;
- (c) the arrest, impoundment or movement of the Vessel by the Marina Company or any third party;
- (d) anything the Marina Company is permitted to do under this Agreement; and
- (e) any defect in or faulty operation of any service.

11.6. The Customer agrees to indemnify and keep indemnified the Marina Company from all claims from any loss of or damage to the property of, or personal injury to, third parties resulting from or incidental to the use of a Space by the Customer including the storage of the Vessel in the Space or the movement of the Vessel in accordance with this Agreement.

11.7. The Marina Company excludes from this Agreement all conditions, warranties and terms implied by statute general law or custom provided that the terms of this Agreement are subject to any applicable implied warranty in the Competition & Consumer Act (Cth) 2010 (CCA) which cannot be excluded, restricted or modified.

11.8. The Marina Company excludes all liability to any person or corporation, including the Customer, for acts or omissions of the Marina Company in tort (including negligence), contracts, bailment or otherwise for loss of, damage to or deterioration or contamination of the Vessel, or any delay or other failure arising out of the storage of these conditions.

11.9. The Vessel and any property which may be in the Space or anywhere in or about the Marina is stored entirely at the risk of the Customer and the Marina Company accepts no liability for the Vessel or other property whatsoever.

### 12. Default

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12.1. The following constitutes an event of default by the Customer pursuant to this Agreement:

- (a) failure by the Customer to pay, when due, any rent or any charge due hereunder;
- (b) failure by the Customer to perform or comply with any term or conditions of this Agreement;
- (c) if the Customer becomes insolvent or commits or suffers any act of bankruptcy;
- (d) the seizure, condemnation or appropriation or other taking of custody or control of the Vessel by an Authority or Court.
- (e) failure to collect the Vessel within any agreed period of time.

12.2. In the event of default by the Customer, the Marina Company may (at the discretion of the Marina Company), subject to 13.4:

- (a) remove the Vessel and store it as the Marina Company thinks fit, at the Customer's risk and expense; or
- (b) deem the Vessel abandoned and sell the Vessel as the Marina Company thinks fit and apply the proceeds to discharge the debt owing by the Customer to the Marina Company and reimburse the Marina Company of the costs of sale, legal costs et cetera without being liable to the Customer or any other person for any loss or damage caused.

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12.3 Any obligations of the Customer shall survive termination or expiry of this Agreement.

12.4 The Marina Company agrees to provide the Customer with no less than seven (7) days' notice prior to disposing of any Vessel (except if the Vessel is required to be disposed because it is a hazard to people or the Marina Company's business premises or other property). Seven (7) days after the Marina Company provides Notice to the Customer, the Vessel shall be deemed abandoned and title in the Vessel shall automatically pass to the Marina Company.

12.5 The Customer confirms that they fully understand that their Vessel will be deemed abandoned if they fail to collect the Vessel seven (7) days after being requested to do so by the Marina Company as per the terms of this Agreement.

### 13. Inspection and Entry by the Marina Company

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13.1. The Customer consents to inspection and entry of the Space by the Marina Company provided that the Marina Company gives seven (7) days written notice.

13.2. In the event of an emergency, whereby the property, the environment or human life is, in the opinion of the Marina Company, threatened, the Marina Company may enter the Space using all necessary force without the written consent of the Customer but the Marina Company shall notify the Customer of entry as soon as practicable. The Customer Owner consents to such entry.

13.3. If the Customer is in default of this Agreement, then the Marina Company shall have the immediate right to enter this Space.

### 14. Expiry of Agreement

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14.1. The Customer shall at the expiration or earlier determination of this Agreement:

- (a) remove any Vessel, tender, vehicle or trailer occupying the Space and shall also remove from the Space or any other part of the Marina any chattels, moveable improvements and any other items belonging to the Customer or associated with the Customer occupying the Space and shall surrender to the Marina Company the Space and all appurtenances in good repair and in a clean and tidy condition; and
- (b) deliver to the Marina Company all Keys held by the Customer and any other person to whom the Customer may have given the Keys.

### 15. Termination of Agreement

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15.1. The Marina Company may by notice in writing to the Customer terminate this Agreement if:

- (a) The Customer is in breach of its obligations to make payments in accordance with clause 3 of this Agreement; or
- (b) The Customer is in breach of any obligations under the Agreement and that breach has not been remedied within 14 days (or such other longer period as the Supplier may allow) of the service by the Marina Company on the Customer of the notice requiring the breach to be remedied.

15.2. Termination will not affect any accrued rights and remedies the Marina Company may have against the Customer.

### 16. Notice

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16.1. Any notice to be given to the Marina Company shall be in writing and provided to the address as the Marina Company may designate pursuant to this clause. Notice by mail shall be deemed to have been received five (5) days after deposit in a Government Post Office Box.

16.2. Notice given by the Marina Company to the Customer may be given by posting the written notice to the Customer at the address of the

Customer specified in the Schedule or such other address as advised by the Customer to the Marina Company after the commencement of the Agreement. Notice can also be provided by way of facsimile, email or SMS to any facsimile, email address or mobile phone of the Customer. Notice can also be provided by personally serving the Customer. Notice by facsimile, email or in person shall be deemed to be given on the date that it is sent or made.

### 17. Non Wavier

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17.1. The failure by the Marina Company to insist upon strict performance of any of the terms in this Agreement or any delay by the Marina Company in exercising any of its remedies or rights shall not constitute or be deemed a waiver or variation by the Marina Company of any of the terms or a waiver of any default or remedy and no waiver by the Marina Company of any breach shall constitute waiver of further or subsequent breaches by the Customer.

### 18. Entire Agreement

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18.1. This Agreement contains the entire agreement between the parties and both parties agree that there are no other terms, representations or understandings except those set out in this Agreement.

### 19. Force Majeure

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19.1. Where a party is unable, wholly or in part, by reason of an act of God, strike, lockout or other interference with work, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals consents permits licences authorities or allocations, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party affect ('force majeure'), to carry out any obligation under this Agreement and that party.

### 20. Severability

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20.1. If any of the provisions of this Agreement shall be declared invalid or unenforceable all provisions shall remain in full force and effect.

### 21. Binding Effect

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21.1. This Agreement shall be binding upon the parties and the respective heirs, legal representatives, successors and assigns.

### 22. Law

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22.1. These conditions are governed and must be construed under the laws of the State of Queensland and the parties submit to the exclusive jurisdiction of the courts of the State.

### 23. Guarantee and Indemnity

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23.1. In consideration of the Marina Company entering into this Agreement with the Customer at the request of the Guarantor (or Guarantors if more than one) the Guarantor guarantees (jointly and severally where there is more than one Guarantor) to the Marina Company the due and punctual performance and observance by the Customer of the obligations contained in this Agreement and indemnifies the Marina Company against any loss or liability the Marina Company incurs arising from or connected with the Customer's obligations.