

Office Use Only

File Number: 16.71.2

Record Number:

THIS AGREEMENT is made on the _____ (Date)
 BETWEEN District Council of Robe of PO Box 1, ROBE SA 5276 (The "Licensor")
 AND The Person referred to in the Item 1 of the Schedule (The "Licensee")

SCHEDULE

ITEM 1 Licensee	Name _____ Address _____ Email _____ Telephone _____										
ITEM 2 Berth & Key	The Berth marked " _____ " _____ and key marked " _____ " _____										
ITEM 3 Term	Length of stay _____ days	<table border="1"> <thead> <tr> <th data-bbox="1035 779 1240 815">FROM</th> <th data-bbox="1240 779 1461 815">TO</th> </tr> </thead> <tbody> <tr> <td data-bbox="1035 815 1240 954"> </td> <td data-bbox="1240 815 1461 954"> </td> </tr> </tbody> </table>	FROM	TO							
FROM	TO										
ITEM 4 Permitted Use	<p>Commercial – for use as a berthing, loading and unloading facility for fishing vessels and not for any other purpose</p> <p>Recreational – for use as a berth for the mooring of a vessel or vessels for recreational purposes and not for any other purpose</p> <p><i>Please circle appropriate use</i></p> <p style="text-align: center;">Commercial Recreational</p>										
ITEM 5 Lease Fee	\$ _____ (including GST) payable in advance										
ITEM 6 Bond/Security	Name on Card: _____ Card No: _____ Expiry Date: _____ Last 3 Numbers: _____										
ITEM 7 Vessel	<table border="1"> <tr> <td data-bbox="818 1635 1139 1702">Registration No</td> <td data-bbox="1139 1635 1461 1702"> </td> </tr> <tr> <td data-bbox="818 1702 1139 1758">Boat name</td> <td data-bbox="1139 1702 1461 1758"> </td> </tr> <tr> <td data-bbox="818 1758 1139 1809">Type of boat</td> <td data-bbox="1139 1758 1461 1809"> </td> </tr> <tr> <td data-bbox="818 1809 1139 1897">Drivers Licence No</td> <td data-bbox="1139 1809 1461 1897"> </td> </tr> </table>			Registration No		Boat name		Type of boat		Drivers Licence No	
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Boat name											
Type of boat											
Drivers Licence No											

LICENSEE

DISTRICT COUNCIL OF ROBE

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

THE PARTIES AGREE as follows:

1. INTERPRETATION

1.1 In this Agreement the following terms have these meanings:

- a) "Berth" means the berth identified in Item 2 of the Schedule and as varied, if necessary by clause 3.2;
- b) "Licence Fee" means the fee specified in Item 5 of the Schedule;
- c) "Marina" means the floating marinas and moorings located at Lake Butler, Robe and operated by the Licensor;
- d) "Permitted Use" means the use referred to in Item 4 of the Schedule;
- e) "Rules" means the rules governing the use and occupation of the Marina as notified to the Licensee by the Licensor from time to time, the current version of which the Licensee acknowledges has been provided to it by the Licensor prior to the execution of this Agreement;
- f) "Term" means the term of this Agreement specified in Item 3 of the Schedule;
- g) "Vessel" means the vessel identified in Item 6 of the Schedule; and
- h) "Working Day" means a day which is not a Saturday, a Sunday or a public holiday in Adelaide.

1.2 Unless the contrary intention appears:

- a) Words denoting the singular number only shall include the plural number and vice versa.
- b) Reference to any gender shall include every other gender and words denoting individuals shall include corporations and vice versa.
- c) Reference to any Act of Parliament, Statute or Regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, Statute or regulation enacted or passed in substitution therefor.
- d) Headings are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
- e) A requirement in this Agreement for liaison and consultation is a requirement for full and frank exchange and discussion and includes a requirement where necessary and appropriate, for full disclosure of relevant information and material.

2. GRANT OF LICENCE

2.1 The Licensor grants to the Licensee an exclusive licence to moor or keep the Vessel in or on the Berth for the Term of this Agreement.

2.2 The Licensee must remove the Vessel from the Berth and the Marina at the end of the Term or when this Agreement is terminated pursuant to clause 10, whichever is the earlier.

2.3 The rights granted to the Licensee under this Agreement are only of a contractual nature and do not in any way give the Licensee any estate or interest in the Marina or the Berth.

3. BERTH

3.1 The Licensor reserves the right to change the Berth at any time and will advise the Licensee should such change be required.

3.2 The Licensee must ensure that the Vessel is moved to the new berth on or by the date specified by the licensor and from that date the term "Berth" in this Agreement will refer to that berth.

3.3 The Licensor also reserves the right to ask the Licensee to temporarily relocate the Vessel to another place in the Marina or, subject to the Licensor being satisfied as to the safety and security of and access to the Vessel, another place made available by the Licensor.

4. LICENCE FEE

4.1 The Licensee must pay to the Licensor the Licence Fee in advance on or before the Commencement Date.

4.2 The Licensor reserves the right to change the Licence fee at any time and will advise the Licensee seven (7) days in advance of any such change coming into effect.

4.3 The Licensor may, at its absolute discretion, rebate or refund the Licensee all or part of the Licence Fee for any period that the Vessel does not occupy the Berth.

4.4 In the event that the Licensee fails to pay any amount payable under this Agreement as such amount becomes due under this Agreement, the Licensee must pay interest (at the rate determined by the Licensor) on the amount owing from when it becomes due up until and including the date it is paid.

4.5 Expiry or termination of this Agreement does not affect the Licensee's obligation to pay any money due or owing under the Agreement for the period before the expiry or termination of this Agreement.

5. LICENSEE'S OBLIGATIONS

5.1 The Licensee must only use the Berth in accordance with the term of this Agreement.

5.2 The Licensee must not use or permit the use of the Berth other than for the Permitted Use

5.3 The Licensee must comply with the Rule.

5.4 The Licensee must maintain the Vessel in a seaworthy condition.

5.5 The Licensee must not dispose of any interest in the Vessel without advising the Licensor prior to disposing of any such interest.

5.6 The Licensee must maintain, repair and keep the Licence Area in good and substantial repair, order and condition and at the expiration or sooner determination of this Agreement, peaceably surrender and yield up the Berth in such good and substantial repair order.

5.7 The Licensee must not to make any alteration or addition on or to the Berth without the prior written consent of the Licensee.

5.8 The Licensee must, to the extent permitted by law, promptly and efficiently satisfy and observe all present and future laws and comply with the requirements, direction and orders of any Governmental, semi-Governmental, civic health, safety, licensing or other authority with competent jurisdiction relating to or affecting the use or condition of the Berth whether such compliance or obligations are imposed on the owner or the user of the Berth.

6. DECLARATION BY THE LICENSEE

6.1 The Licensee declares that:

- a) The Licensee, either solely or in partnership, own the Vessel or are the lessee(s) or charterer(s) of the Vessel;
- b) That the Licensor is authorized by all parties that have an interest in the Vessel to enter into this Agreement;
- c) Other than by virtue of paragraph (a), the Licensee has not entered into this Agreement as the trustee of any trust or on behalf of any person;
- d) All of the information provided to the Licensor is correct and is in no way misleading.

6.2 Should any of the declarations made pursuant to Clause 6.1 no longer be accurate, the Licensee must inform the Licensor immediately.

7. LICENSOR'S RIGHTS

The Licensor, its employees or agents, may at any time, carry out works to the marina or to the Berth or to the Vessel and carry out work (at the Licensee's cost) that the Licensor considers necessary for the safety of the Vessel or any other vessel or the Marina.

8. INDEMNITIES AND RELEASES

8.1 The Licensor shall occupy, use and keep the Berth at the risk of the Licensee and at all times indemnify the Licensor against all damages, cost, charges, expenses, actions, claims and demands which may be sustained, suffered, recovered or made against the Licensor by any person for any damage to property, death or injury any person may sustain when using, entering or being near any part of the Berth or Vessel arising as a result of any cause or reason whatsoever, or arising from the use of the Berth or Vessel by or through the Licensee, whether arising naturally, negligently or otherwise howsoever, except where caused by a willful or negligent act of the Licensor or its employees or agents.

8.2 The Licensee acknowledges and agrees that the Licensor has not made any representations or warranty as to the adequacy, suitability or safety of the Berth, the Marina and any incidental equipment, and that the Licensee has satisfied itself as to these matters.

9. INSURANCE

9.1 The Licensee agrees to take out and maintain proper and adequate insurance as reasonably required by the Licensor, including public liability insurance in respect of the Vessel and its fixtures and fittings.

9.2 The Licensee must produce to the Licensor upon demand all relevant policies of insurance and certificate of currency in respect of the policy.

10. TERMINATION

10.1 The Licensor may terminate this Agreement by written notice to the Licensee if;

- a) The Licensee is in breach of any of the provisions of this Agreement or the By-Laws or Rules concerning the Berth or the Marina;
- b) In the opinion of the Licensor either the Berth or marina becomes unseaworthy; or
- c) If in the opinion of the Licensor any conduct by the Licensee or its employees, agents, contractors or invitees is prejudicial to the interests of the Berth, Marina or the Licensor.

10.2 Either party may terminate the Agreement by written notice to the other party if;

- a) A receiver, liquidator, trustee in bankruptcy or official manager or administrator of the party or any of its business or property is appointed; or
- b) The other party enters into any discussion or liquidation proceedings or any other equivalent event.

11. GST

11.1 Notwithstanding any other provision of this Agreement, if GST applies to any supply made by either party under or in connection to this Agreement, the consideration (or payment) provided or to be provided for that Supply will, upon production by the Supplier of an appropriate tax invoice, be increased by an amount equal to the GST liability properly incurred by the party making Supply.

11.2 Each party here warrants that at the time any supply is made under this Deed on which GST is imposed they are or will be registered under the GST Law. If the other party requests written evidence and registration, the first party will properly produce evidence satisfactory to the other party of such registration.

11.3 In this clause;

- a) **GST** means any tax on Goods and/or Services including any value added tax, broad based consumption tax, or other similar tax introduced in Australia, including that tax imposed under GST law;
- b) **GST Law** means a *New Tax System (Goods and Services Tax) Act 1999* and any other Act, Order, Ruling or regulation which imposes or otherwise deals with the administration of imposition of GST in Australia; and
- c) **Supply** and **Supplier** have the meanings given to them in GST Law.

12 NOTICES

12.1 A notice required under this Agreement must be in writing and may be given or made by:

- a) Leaving the notice at the address of the relevant party stated in this Agreement;
- b) Leaving the notice at the last known place of residence or business of the recipient of the notice;
- c) Posting the notice in a prepaid envelope to the recipient at the address of the recipient given in this Agreement. Any notice served by post is deemed to have been served at noon on the second business day after the day in which the envelope containing the notice was posted; or

- d) By sending the notice by facsimile transmission to a facsimile number for the recipient. In this case the notice is deemed to have been received upon the receipt by the sender of the message on the sender's facsimile machine confirming that the facsimile transmission has been completed.

12.2 Any such method of service is valid even if;

- a) The person intended to receive the notice is dead or bankrupt; or
- b) If the person receiving the demand is a corporation, that corporation is in liquidation, provisional liquidation, receivership, voluntary administration or in the process of such a step.

12.3 Either party may notify the other party by written notice of a change of address at which notices may be served upon the other party.

13 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

14 ASSIGNMENT

The rights and obligations of each party under this Agreement are personal. They cannot be assigned, encumbered or otherwise dealt with and no party will attempt, or purport, to do so without the prior written consent of the other

party which may be withheld or made subject to such conditions as the consenting party determines in its absolute discretion.

15 NO WAIVER

No failure to exercise nor any delay in exercising any right power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

16 FURTHER ASSURANCES

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

17 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws in force in South Australia.

18 SEVERANCE

18.1 Any provision of this Agreement which is invalid, unlawful, void or unenforceable shall be capable of severance.

18.2 Such provisions, or such severance, shall not prejudice or in any way affect the validity or enforceability of any other provision of this Agreement.