

This agreement is made on the date shown at Item 1 by Latitude 35 Marina Pty Ltd ABN 38 601 471 835 as trustee for the Latitude 35 Marina Trust and trading as **35 SOUTH MARINA** ("Licensor") and the party named in Item 5 of the Reference Schedule ("Licensee").

The Licensor owns the Marina at Lots 1 to 5 on Community Title 26546, Allotment 2 (DP37279) and Lot 2 Community Plan 12479 at Alexa Road, North Haven, South Australia ("Marina"). The Licensee has requested that the Licensor grant a licence to the Licensee to occupy, berth, moor and dock a marine vessel ("Vessel") detailed in Item 6, within that part of the Marina described in Item 2 ("Berth") together with a right of access (jointly with others) to and from the Berth and over other parts of the Marina designed for that access. The Licensor has agreed to grant this licence on the terms and conditions of this agreement.

ITEM 1		DATE OF AGREEMENT	
ITEM 2		BERTH	
<b>Permitted use:</b> <b>A</b> Berthing, mooring & docking of a Marine Vessel <b>B</b> Accommodation aboard the Vessel <b>NOTE:</b> Licensees wishing to use the Vessel for accommodation must also sign the declaration at Annexure A	<b>Length</b>	(m)	
	<b>Berth number</b>		
ITEM 3		TERM	
<b>Period:</b> <b>Daily</b> <b>Weekly</b> <b>Monthly</b> <b>Quarterly</b> <b>Annually</b>	<b>Commencement Date</b>		
	<b>Expiry Date</b>		

ITEM 4		LICENCE FEE	
<b>Credit Card Name</b>		<b>Expiry</b>	
<b>Visa</b>	<b>Master Card</b>	<b>Amount</b>	<b>\$</b>
<b>Credit Card Number</b>			

ITEM 5		LICENCEE	
<b>Name</b>		<b>Phone</b>	
<b>Address</b>			
<b>Email</b>		<b>ID</b>	

ITEM 6		VESSEL	
<b>Vessel Name:</b>		<b>Registration:</b>	
<b>Manufacturer:</b>		<b>Model:</b>	
<b>Insurer:</b>		<b>Expiry:</b>	
<b>Length</b>	(m)	<b>Beam:</b>	(m)
		<b>Key Received</b>	<b>Y/N</b>
		<b>Gas Cylinder</b>	<b>Y/N</b>

EXECUTION	
I / We have been made aware of the Licence Terms and Conditions attached to this Reference Schedule and accept the conditions in full; and have been given a copy of the Marina Rules and understand that a serious breach of the Rules will be deemed as grounds for issuing a "Notice to Leave" the Marina.	
<b>Signature:</b>	<b>Signature:</b>
<b>Name (Licensee):</b>	35 South Marina Licensor
<b>Date:</b>	<b>Date:</b>

## 1. INTERPRETATION

In this agreement, including the recitals, unless contrary to or inconsistent with the context:

- a) words importing:
  - i. the singular include the plural and vice versa; and
  - ii. a gender includes every other gender.
- b) a reference to any thing or matter is a reference to the whole and any part of it;
- c) the word "person" includes a corporation and vice versa;
- d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- e) where any clause contains sub-clauses, paragraphs or sub-paragraphs, each sub-clause, paragraph and sub-paragraph however called will be read and construed separately and independently of each other;
- f) a reference to an Item is a reference to an Item of the Reference Schedule;
- g) headings are inserted only for guidance and do not affect the interpretation of this agreement;
- h) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws made or issued under that statute;
- i) a reference to a body other than a party to this agreement:
  - i. which ceases to exist; or
  - ii. the powers or functions of which are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement; and
- k) a reference to an Item in this Agreement means a reference to the Reference Schedule in this Agreement.

## 2. LICENCE

In consideration of the Licensee paying the licence fee referred to in Item 4 ("Licence Fee") to the Licensor, the Licensor grants to the Licensee a non-exclusive licence to use and occupy the Berth subject to the conditions of this agreement ("Licence").

### 3. TERM OF LICENCE

Subject to clause 14, this Licence will operate from the Commencing Date in Item 3 up to and including the Expiry Date in Item 3 ("Term").

### 4. LICENCE FEE

The Licensee agrees to pay to the Licensor or as directed by the Licensor the Licence Fee as provided in Item 4 in advance by cash, by automatic electronic funds transfer to the account nominated in Item 4 or, if the Licensee provides credit card details in Item 4, the Licensor will debit such credit card.

### 5. USE OF THE BERTH

- a) The Licensee may only use the Berth for the Permitted Use in Item 2. If the Permitted Use includes using the Vessel for accommodation, the Licensee must comply with the Environmental Protection Agency's **Code of Practice for Vessel and Facility Management** (as updated from time to time) and also sign the declaration at Annexure A.
- b) The Licensee is responsible for obtaining all consents required for its occupation and use of the Berth.
- c) The Licensor gives no warranty as to the suitability of the Berth or the use to which the Berth may be put.
- d) The Licensee must comply with any law, regulation, instrument, lease, legislation, government policy, notice or order affecting the Berth.
- e) The Licensee must use the Berth in a reasonable manner and in a way which causes no damage to the Berth or Marina.
- f) The Licensee shall use the Berth and Marina in strict accordance with the rules of the Marina (**Marina Rules**) made and enforced from time to time by the Licensor. The Licensor reserves the right to create new Marina Rules, to amend or cancel existing Marina Rules as it sees necessary for the better management and safe operation of the Marina. Entry into this Licence Agreement is subject to strict adherence to the Marina Rules.

### 6. CHANGE OF VESSEL

If the Licensee wishes to substitute another Vessel for the Vessel described in Item 6 then it shall give written notice to the Licensor. If the Licensor consents, the parties shall execute a fresh Licence Agreement in accordance with the terms and conditions agreed upon.

### 7. EMERGENCIES

- a) The Licensor, if in its sole subjective opinion believes that there exists a state of emergency, may move the Vessel to another mooring or Berth whether within the Marina or not at the risk and expense of the Licensee.
- b) Before mooring the Vessel in the Berth, the Licensee must provide the Marina with a copy of all keys, codes or other such devices required to enable the Licensor to move the Vessel in an emergency.

### 8. RISK PASSES TO LICENSEE

- a) The Licensee acknowledges that risk in respect of damage to the Berth passes to the Licensee on the date of this agreement
- b) The Licensee occupies the Berth at the Licensee's own risk and the Licensor is not liable for any damage or injury caused to:
  - i. any person entering on the Berth, with or without the permission of the Licensee;
  - ii. any property of the Licensee; or
  - iii. any damage arising from anything emanating from the Berth that may constitute a nuisance, during the Term excluding anything that arises because of the negligent conduct of the Licensor or the Licensor's agent.
- c) The Licensee must hold Public Risk insurance in an amount not less than \$10 million. The Licensee must provide to the Licensor a certificate of currency of such insurance from the insurer, on demand.
- d) The Licensee indemnifies and will keep indemnified the Licensor in respect to any damage (whether direct or indirect), cost, loss, expense or claim suffered or incurred by the Licensor and arising out of the Licensee's occupation or use of the Berth.
- e) The Licensee releases the Licensor in respect to any damage, cost, loss, expense or claim suffered or incurred by the Licensee and arising out of the Licensor exercising its rights under this Licence, the Marina Rules or any law.

### 9. POSSESSION DOES NOT PASS

- a) This Licence is a licence to occupy only and does not give the Licensee a right to possession or create any equitable estate or proprietary interest in the whole or any part of the Berth which at all times remains vested in the Licensor.
- b) The Licensee must not mortgage or charge this Licence or the Licensee's interest in the Berth or goods within the Berth or Marina without the Licensor's consent.

### 10. ACCESS TO THE BERTH

The Licensee must allow the Licensor or the Licensor's authorised representative to enter and inspect the Berth at all reasonable times and for reasonable purposes including, without limitation:

- a) inspection of the Berth to ensure that the Licensee is complying with its obligations under the this agreement;
- b) carry out any required maintenance or other necessary works to the Berth or Marina; and
- c) marketing and leasing purposes.

### 11. MAINTENANCE OF THE BERTH

- a) Having regard to its condition at the date of this agreement and excluding fair wear, the Licensee must keep the Berth in good condition and must not cause the Berth to be damaged.
- b) The Licensee must notify the Licensor as soon as possible of any significant wear or damage to the Berth and allow the Licensor (or its agents) access as required in order to inspect and repair the damage.
- c) The Licensee is liable for the cost of repairing any damage (excluding fair wear and tear) that it or its agents cause to the Berth.
- d) The Licensee must not make any structural or external alterations or additions to the Property.

### 12. RENEWAL OF LICENCE

#### 12.1 Automatic Renewal of Licence

- a) If, following the expiry of the Term:
  - i. neither the Licensor nor the Licensee objects to the Licensee remaining in the Berth; and
  - ii. the Licensee is not in breach of its obligations under this Licence, then this Licence will automatically renew for a further term (on the terms and conditions contained in this Licence) commencing on the day immediately following the Expiry Date of this Licence.

- b) The Licence Fee for the further term will be the standard marina berthing rates as determined by the Licensor from time to time.

- c) If either the Licensor or Licensee does not wish for this Licence to automatically renew then that party must give the other party written notice to that effect no later than seven (7) days prior to Expiry Date.

## 13. DEFAULT AND ENFORCEMENT

### 13.1 Termination

- a) The Licensor may terminate this Licence by written notice if the Licensee does not comply with any of its obligations under this Licence and does not remedy that failure within a reasonable time after the Licensor gives the Licensee a notice to do so.
- b) Termination of this Licence does not affect any prior claim that the Licensor may have against the Licensee.

### 13.2 Removal of Vessel on Termination

- a) The Licensee must remove themselves and the Vessel from the Marina within one (1) week of this Licence being terminated under clause 13.1(a). If the Licensee fails to remove the Vessel from the Marina the Licensor may:-
  - i. enter the Berth with force if necessary and eject the Licensee and all other persons; and
  - ii. impound the Vessel; and/or
  - iii. remove the Vessel from the Marina.
- b) If the Licensee is in default in respect of payment of moneys the Licensor:
  - i. shall have a lien over the Vessel (including any personal property stored in the it) or other vessel moored in the Berth and may detain it until all monies payable by the occupant to the Licensor are paid in full or satisfied; and
  - ii. may remove any vessel moored in the Berth to another wet or dry area within the Marina or waterway or elsewhere at the Licensee's sole cost and expense.

### 13.3 Consent to Charge Vessel

- a) Licensee consents to charge its interest in the Vessel (including in any personal property stored in it) or any other vessel moored that may be moored in the Berth to secure all amounts and other monetary obligations payable under this agreement.
- b) The Licensor's acceptance of the Licence Fee or other money is not a waiver of any breach of this Licence.
- c) This clause prevails despite anything to the contrary contained in this agreement and is in addition to any other rights which the Licensor may have.

### 13.4 Personal Property Securities

- a) In this clause 'registrar', 'security agreement' and 'security interest' have the meaning given to those terms by the Personal Property Securities Act 2009 (Cth) (PPSA).
- b) The Licensee acknowledges and agrees that these terms and conditions:
  - i. constitute a security agreement for the purposes of the PPSA; and
  - ii. create a security interest in the Vessel, any other vessel moored in the Berth and any personal property stored in a vessel moored in the Berth by the Licensee, to secure payment of all monies (including but not limited to the Licence Fee and any interest) owing by the Licensee to the Licensor from time to time under this agreement, the Marina Rules or under any other agreement or arrangement between the Licensee and the Licensor.
- c) The Licensee undertakes to:
  - i. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Licensor may reasonably require to:
    - a) register any statement or change of statement in relation to a security interest on the Personal Property Securities Register (PPSR) and otherwise do all things necessary and required by the Licensor to ensure that any security interest registered by the Licensor is a perfected security interest under the PPSA;
    - b) register any document on any register reasonably necessary to secure the Licensor's interest under these terms and conditions;
    - c) register any other document required to be registered under the PPSA; or
    - d) correct a defect in a statement referred to in this clause;
  - ii. indemnify, and upon demand reimburse, the Licensor for all expenses incurred in registering an interest on the PPSR or releasing the Vessel, other vessel moored in the berth or other personal property that are the subject of a security interest;
  - iii. not make an amendment demand in respect of a security interest or apply to the registrar to register any change in respect of a security interest, without the prior written consent of the Licensor;
  - iv. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Vessel or any other vessel moored in the Berth in favour of a third party without the prior written consent of the Licensor; and
  - v. the Licensor and the Licensee agree that sections 96 and 125 of the PPSA do not apply to the security interest created by these terms and conditions.
- d) The Licensee hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- e) The Licensee waives its rights as a grantor and/or a Licensee under sections 142 and 143 of the PPSA.
- f) Unless otherwise agreed to in writing by the Licensor, the Licensee waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- g) The Licensee unconditionally ratifies any actions taken by the Licensor under clauses 13.4(c) to 13.4(d).
- h) The Licensee irrevocably appoints the Licensor to be its attorney to do such acts and execute such documents as the Licensee could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Licensor (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on the Licensor by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions.
- i) The provisions of this clause 13.4 will survive termination of this Licence or any other agreement between the Licensor and the Licensee for whatever reason.

### 14. TERMINATION OF THE LICENCE

This Licence will terminate on the earlier of:

- a) the date the Licensee receives written notice of termination from the Licensor given in accordance with clause 13.1(a) of this Licence; and
- b) the Expiry Date in Item 4 subject always to:
  - i. the automatic renewal of this Licence in accordance with clause 12.1; or
  - ii. any other extension of the Term granted by the Licensor (in writing).

### 15. VACATION OF THE BERTH

On or before the termination of this Licence, the Licensee must:

- a) vacate the Berth; and
- b) leave the Berth in a clean and tidy state.

### 16. LICENCE NOT TRANSFERABLE

This Licence is personal to the Licensee and the Licensee must not assign this Licence or let or part with possession of any part of the Berth without the prior written consent of the Licensor.

### 17. COSTS, CHARGES AND EXPENSES

The Licensee must pay (to the extent permitted by law) any taxes or government charges applicable to this agreement promptly and must indemnify or keep indemnified the Licensor for failure to do so and must pay or reimburse the Licensor for all costs, charges and expenses for its preparation and execution including, in all cases and without limitation, solicitor and other legal costs.

### 18. NOTICES

Notices under or relating to this agreement may be served on the Licensee by delivering, posting or emailing them to the respective address or email stated in Item 5.

### 19. GST

- a) In this clause the expressions "GST", "supply", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- b) With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this Agreement are exclusive of GST.
- c) If GST is imposed on any supply made by the Licensor under or in accordance with this Agreement, the Licensee must pay to the Licensor an additional amount equal to the GST payable on or for the taxable supply. Any such additional payment is payable on the date(s) when the principal amount is payable.

### 20. COUNTERPARTS

If this agreement is signed in counterparts then each is deemed to be an original and together, they constitute one document.

# Annexure A – Declaration

**If the Licensee wishes to use the Vessel for accommodation, it must complete the following declaration**

35 South Marina is committed to operating to best environmental practices within the marine industry. The Environmental Protection Agency has published the Code of Practice for Vessel and Facility Management (the “Code”) (updated March 2019) which, amongst other things, prohibits the discharge of black water (ie. sewerage) and grey water (ie. used for washing, laundering, bathing or showering) into the Marina or any waters within 3 nautical miles of the nearest land.

The Licensee wishes to use the Vessel for accommodation and hereby declares:

- I am aware of the Code of Practice for Vessel and Facility Management and will comply at all times with the Code;
- I shall not discharge black or grey water from the Vessel into the Marina;
- I shall retain black and grey water within the Vessel for disposal by the portable pump-out cart operated by the Licensor or the pump-out facility operated by the Cruising Yacht Club of South Australia;
- I shall, where possible, use land-based toilet, shower and laundry facilities provided by the Licensor; and
- I acknowledge that the Environmental Protection Authority may conduct random inspections of vessels to monitor compliance with the Code.

Signature:

Name (Licensee):

Date:

# Annexure B – Marina Map

