

## MARINE CRAFT - BERTHING, STORAGE AND MOORING DEED POLL

<b>DEED:</b>			
<b>GIVEN BY:</b>			
<b>LICENSEE:</b>		ACN/ABN (if applicable):	
<b>Address:</b>			
<b>Telephone (Home/Bus):</b>		<b>Telephone (Mob):</b>	
<b>Email:</b>			
<b>IN FAVOUR OF:</b>			
<b>LICENSOR:</b> GLADSTONE PORTS CORPORATION LIMITED (GPC)		ACN / ABN: ACN 131 965 896 / ABN 96 263 788 242	
Address: 40 GOONDOON STREET, GLADSTONE, QUEENSLAND 4680			
Telephone (Bus): 07 4976 1399		Telephone (Mob): NIL	
Email: marina@gpcl.com.au			
<b>LICENSEE'S MARINE CRAFT (CRAFT)</b>			
<b>Name of Craft:</b>		<b>Registration No.:</b>	
<input type="checkbox"/> Mono <input type="checkbox"/> Multi <input type="checkbox"/> Sail <input type="checkbox"/> Power <input type="checkbox"/> Commercial <input type="checkbox"/> Fishing		<b>Manufacturer:</b>	
<b>Model:</b>		<b>Year:</b>	
<b>Hull Identification (Boat Code) No.:</b>			
<input type="checkbox"/> Inboard <input type="checkbox"/> Outboard <input type="checkbox"/> Stern Drive <input type="checkbox"/> Sail <input type="checkbox"/> Single <input type="checkbox"/> Twin <input type="checkbox"/> Petrol <input type="checkbox"/> Diesel <input type="checkbox"/> Fibreglass <input type="checkbox"/> Aluminium <input type="checkbox"/> Timber			
Colour / Markings:		<b>Beam:</b> m/f	<b>Draft:</b> m/f
<b>LOA (Length Overall):</b> As per Aust Standard Guidelines		_____ m/f	
Displacement:		kg	
Engine Brand:		HP:	Year:
<b>Insurance Company:</b>		<b>Policy No:</b>	<b>Expiry Date:</b>
<b>NOTE: ALL OWNERS MUST PROVIDE A COPY OF THE VESSEL'S INSURANCE CERTIFICATE WITH THIS APPLICATION: NON-COMPLIANCE WILL RESULT IN THE APPLICATION BEING REJECTED</b>			
<b>CRAFT STORAGE FACILITY DETAILS</b>			
Storage: <input type="checkbox"/> Berth <input type="checkbox"/> Mooring <input type="checkbox"/> Wharf <input type="checkbox"/> Fishbase <input type="checkbox"/> LOB - Please complete LOB Application			Berth/ID No:
Marina Name: Gladstone Marina		Address: 98 Bryan Jordan Drive, Gladstone	
<b>LICENCE TERM, FEE &amp; DEPOSIT</b>			
<b>LICENCE FEE</b>			
The Licensee must pay in advance to GPC a Licence Fee of \$..... per <input type="checkbox"/> day <input type="checkbox"/> week <input type="checkbox"/> month <input type="checkbox"/> 6 months <input type="checkbox"/> year or <b>as otherwise indicated in current schedule of fees.</b>			
Security Deposit: _____ NA _____			
<b>Note:</b> All fees and payments are inclusive of GST.			
<b>LICENCE TERM</b>			
The Licence Term shall be <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> 6 months <input type="checkbox"/> Yearly			
Commence at: ..... (am/pm) on ..... (DD/MM/YY)			
Unless terminated under this Deed Poll, the licence will remain in full force and shall continue on a Weekly / Monthly / 6 Monthly / Yearly or as required, basis. This deed will remain valid for multiple separate stays until this Deed Poll is terminated under the terms of this Deed Poll or the deed expires.			

**TERMS AND CONDITIONS:**

The Terms and Conditions on which this Deed Poll will be granted are attached to this Deed Poll (**Terms and Conditions**). It is very important that you read and understand these Terms and Conditions and retain them for your records. We strongly recommend that you read any relevant acts and regulations and seek independent legal advice before signing this Deed Poll.

**1 Definitions and interpretation**

**1.1 Definitions**

In this document unless the contrary intention appears:

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010*.

**Authority** means any government, semi or local government, statutory or other body having jurisdiction over the Marina.

**Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).

**Claim** means claims, demands, writs, summons, actions, suits, proceedings, judgments, orders, decrees, damages, costs (including legal costs), losses and expenses (including any consequential increase in any cost or expenses) and includes claims arising from negligence.

**Contamination** means has the same meaning as it is defined in the *Environmental Protection Act 1994* (Qld).

**Craft** means the Craft identified in the Details of this Deed Poll.

**Craft Storage Facility** is the facility listed in the Details of this Deed Poll.

**Deed** means this Deed Poll, including the Details, given by the Licensee in favour of GPC accordance with the Terms and Conditions.

**Details** means the particulars set out on the front pages of this Deed Poll.

**Emergency Evacuation Procedure** means the emergency evacuation procedure issued by GPC, as amended from time to time and available in the Marina office.

**Environment** has the same meaning as it is defined in the *Environmental Protection Act 1994* (Qld).

**Environmental Approval** means an approval, authorisation, consent, declaration, exemption, licence, permit or waiver, however described, granted under any Environmental Law.

**Environmental Law** means a law regulating or otherwise relating to the Environment or Contamination.

**Environmental Notice** means any written or verbal requirement issued in relation to the Environment to take an action or to refrain from taking an action and includes a direction, order, demand, notice or request issued under an Environmental Law.

**Equipment** means but is not limited to, ropes, lines, chains and tackle of, on or attached to the Craft.

**GPC** means Gladstone Ports Corporation Limited ACN 131 965 896.

**Licence Fee** means the amount set out in the Details.

**Licence Term** means the licence term specified in the Details.

**Licensee** means the licensee specified in the Details.

**Marina** means the Gladstone Marina and its associated surroundings.

**Marina Superintendent** means the superintendent of the Marina from time to time and his or her representative.

**Notice** means any communication given under clause 16.

**Officer** means:

- (a) a present director, whether validly appointed, or otherwise holding such office pursuant to Section 60(1) of the *Corporations Act 2001* (Cth); and

- (b) a future director; and
- (c) a past director; and
- (d) the chief executive officer; and
- (e) another person who is concerned, or takes part, in the management; and
- (f) an employee; and
- (g) a lawful agent.

**Personnel** means employees, agents, consultants, contractors, subcontractors and their respective employees or invitees of a party, and in relation to GPC and excludes the Licensee.

**PPSA** means Personal Property Securities Act 2009 (Cth).

**PPSR** means the Personal Property Securities Register (PPSR) maintained under the PPSA.

**Security Deposit** means the security provided by the Licensee to GPC in the Details (if applicable) which is to be in the form as directed by GPC.

**Vessel** means a vessel in the Marina.

**2 Interpretation**

This Deed will be construed as provided in this clause and the words and phrases set out below will, unless the context otherwise requires, have the meanings respectively set opposite. Unless the contrary intention appears:

- (a) the singular includes the plural and vice versa; and
- (b) person includes a firm, body corporate, an unincorporated association or an Authority; and
- (c) an agreement, representation or warranty:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally; and
- (d) a reference to:
  - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and
  - (ii) a document includes any variation or replacement of it; and
  - (iii) a law includes regulations and other instruments under it and amendments or replacements of any of them; and
  - (iv) a thing includes the whole and each part of it; and
  - (v) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually; and
  - (vi) the president of a body or Authority includes any person acting in that capacity; and
- (e) include (in any form) when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and

(f) the headings are for guidance only and do not affect the interpretation of this Deed Poll.

**3 Licence to Use and Occupy the Craft Storage Facility**

- (a) The Licensee is granted a non-exclusive and non-transferable licence to store the Craft and to occupy and provide reasonable access to the Craft Storage Facility on the terms of this Deed Poll.
- (b) The terms of this Deed Poll shall be subject to change from time to time at the absolute discretion of GPC provided that GPC provides the Licensee with notice of any such change in writing or publishes the changes on its website.

**4 Change of Vessel**

If the Licensee wishes to substitute another vessel for the Craft, then it shall give written notice to GPC and seek GPC's consent to the substitution of the Craft for another vessel. GPC may either consent to or reject any request by the Licensee to substitute the Craft. If GPC provides its consent to substitute the Craft, the parties shall execute a new Deed in accordance with the terms and conditions agreed upon which will replace this Deed Poll.

**5 Obligations of the Licensee**

The Licensee agrees that:

- (a) during the course of this Deed Poll, GPC may store the Craft within the Craft Storage Facility as specified in the Details or at another place within the Craft Storage Facility / Marina which in GPC's reasonable opinion can safely store the Craft;
- (b) during the course of this Deed Poll, GPC is irrevocably authorised to move and store the Craft at either a place within the Craft Storage Facility or another place where:
  - (i) the Craft has sunk or partially sunk;
  - (ii) in the reasonable opinion of GPC, the Craft appears at risk of sinking or poses a risk to the safety of any persons, property, other vessels, the Environment or waterway;
  - (iii) GPC is complying with a lawful direction or notice issued by a relevant Authority; and/or
  - (iv) GPC is complying with any relevant law, while the Craft is anywhere within the Craft Storage Facility;
- (c) for the purposes of clause 5(b):
  - (i) any such taking of, moving, recovery, removal and/or storage shall be at the sole cost and risk of the Licensee and shall be a debt due and owing to GPC;
  - (ii) if the Craft is moved by GPC, GPC will not be responsible for the condition of the Craft (and any property or equipment on the Craft) and if the Craft (or part thereof) is damaged or in need of maintenance GPC is not obligated to rectify or undertake repairs or replacement or any kind; and
  - (iii) during the Licence Term, GPC is irrevocably authorised to move the Craft and to make reasonable use of the Craft's machinery gear and equipment free of cost for the purposes of clauses 5(a) and 5(b);
- (d) it shall be responsible for all damage to GPC's property, or to persons or vessels using GPC's property, arising from any act, omission, neglect or default by the Licensee;
- (e) it shall indemnify and keep indemnified GPC from and against all Claims and costs for which GPC shall or may become liable in respect of or arising from loss, damage or injury to any person or property arising out of the use of or access to the Craft Storage Facility or any act, omission, neglect, breach or default by the Licensee;
- (f) it shall comply with any rules and regulations determined by GPC, including any Marina rules provided by GPC or published

by GPC in a form that is available publicly to the Licensee, from time to time, including any amendments, with respect to the management of GPC's property;

- (g) it shall use the Craft Storage Facility solely for the storage of the Craft;
- (h) it shall not assign, sub-license or part with its rights under this Deed Poll;
- (i) during the Licence Term and while the Craft is moored, stored or berthed at the Craft Storage Facility, it shall not carry out or have carried out repairs and/or maintenance on the Craft or use the Craft Storage Facility for any commercial or business purpose without prior implied or express authority of GPC;
- (j) it shall pay interest at the rate of 10% per annum on any overdue amounts by the Licensee to GPC under this Deed Poll and the costs incurred by GPC to recover such payments or remedy any breach of this Deed Poll by the Licensee or its Personnel;
- (k) it shall immediately advise GPC of any damage or injury arising on or near GPC's property caused by the Craft or any Personnel of the Licensee or by any person or entity in or around the Craft;
- (l) it will pay GPC upon demand if required any utilities charges incurred as a result of the Licensee's use of the Craft Storage Facility and these shall be recoverable from the Licensee as though they formed part of the Licence Fee;
- (m) during the course of this Deed Poll, GPC reserves the right to vary the Licence Fee at its absolute discretion and the varied Licence Fee will replace the Licence Fee under this Deed Poll one (1) month from the date that GPC provides notice under this sub-clause of the amendment to the Licence Fee; and
- (n) should the Security Deposit be calculated on a monthly rate during the course of this Deed Poll, GPC reserves the right to vary the Security Deposit at its absolute discretion from time to time.

**6 Security Deposit**

- (a) The Security Deposit will be held by GPC (or in an account as nominated by GPC) as security for the performance by the Licensee of the terms of this Deed Poll.
- (b) Any Security Deposit provided by the Licensee will be held by GPC (or in an account as nominated by GPC) until the Craft is removed from the Craft Storage Facility and has made payment of all fees, charges and liabilities under this Deed Poll and has otherwise discharged all of its obligations under this Deed Poll to the satisfaction of GPC.
- (c) If the Licensee is in default under this Deed Poll, GPC may call on the Security Deposit without notice to the Licensee.

**7 Compliance with laws**

The Licensee shall comply with and shall cause all of its Personnel to comply with the requirements of all laws relating to the use and occupation of the Craft Storage Facility and GPC's property, including any requirement relating to Contamination. The Licensee shall indemnify and keep indemnified GPC from and against all Claims and costs for which GPC shall or may become liable in respect of or arising from any act, neglect, breach or default by the Licensee.

**8 Liability, Risk and Insurance**

- (a) The Licensee acknowledges by entering into this Deed Poll that:
  - (i) the Licensee has not relied in any way on GPC's skill and judgement;
  - (ii) the Licensee has relied upon its own enquiries, inspection, investigation and knowledge to ensure the suitability of access to the Craft Storage Facility;

INITIAL:

- (iii) the Licensee has satisfied itself as to the condition and suitability of the Craft Storage Facility and GPC's property;
  - (iv) the Licensee has examined and satisfied itself as to the condition of and suitability of access to the Craft Storage Facility and that it will use such access at its own risk; and
  - (v) the Licensee warrants that the Craft has the dimensions and displacement set out in the section headed Licensee's Marine Craft in the Details. The Licensee will pay any adjusted fees and shall be liable for any damage or additional expense arising out of the failure of the Craft to have the said dimensions and displacement.
- (b) All conditions and warranties, express or implied, whether arising by law or otherwise, as to the condition, suitability, quality, fitness or safety of the Craft Storage Facility provided by GPC are hereby excluded to the full extent permitted by law. The Licensee acknowledges that GPC has not given any such warranty, express or implied, whether arising by law or otherwise, as to the condition, suitability, quality, fitness, or safety of the Craft Storage Facility provided by GPC. Nothing in this clause shall remove or abrogate the non-excludable warranties or guarantees provided under the *Competition and Consumer Act 2010* (Cth) as amended or the Australian Consumer Law, or any other law that may apply to the extent that they are applicable to this Deed Poll.
- (c) The Licensee assumes all risk and liability for and in respect of the use of the facilities of GPC and the use of their Craft and equipment including but not limited to ropes, lines and tackles and for all loss, damage, injury or death caused to persons or property howsoever arising from the use of the facilities, the Craft and its equipment. Notwithstanding whether or not the Licensee has effected insurance with respect thereof, the Licensee shall indemnify and release GPC against and from any Claims and costs resulting from loss of or damage to the facilities, other property or persons and any damage to the Environment, however caused.
- (d) The Licensee must insure and keep the Craft and its equipment insured with an insurer that is authorised to provide such insurance in Australia and is of recognised standing acceptable to GPC. The Licensee shall on demand produce to GPC a certificate of currency of the insurance.
- (e) The Licensee shall not do, or fail to do, any act or thing which might invalidate or prejudice any such insurance.
- (f) The Licensee acknowledges that pursuant to this Deed Poll, GPC may incur costs for cleaning and detailing, repairs to hull and other structure and fittings, mechanical repairs, registration, third party insurance and stamp duty charges, advertising, normal maintenance and, notwithstanding clause 8(e) above, insurance liabilities which the Licensee may in its absolute discretion pay. The Licensee agrees that such costs may be necessarily incurred for the purposes of sale of the Craft in exercise of the lien or in default as set out in clause 10 herein. Unless otherwise agreed between the Licensee and GPC, GPC shall not unreasonably incur such costs in the event that it is necessary for GPC to sell the Craft under lien or in default of payment or other breach by the Licensee.
- (g) The Licensee acknowledges and agrees that the Craft may undergo fair wear and tear and deteriorate whilst in the Craft Storage Facility, berthing, storage or mooring arrangement however described under this Deed Poll and this may include but not be limited to oxidization, corrosion, condensation, perishing of plastics, rubbers, seals and hoses, development or increase of leaking, water ingress, deterioration in electrical system, settling and sedimentation of oils and petroleum products, seizure of moving parts due to lack of use and deterioration of other mechanical, paint work, materials, hull and built up structure, deterioration arising from the Craft being in the said facility or arrangement for a long period.

- (h) The Licensee acknowledges that Licensee/user-generated or Licensee/user-stored data of an electronic nature may be lost during the duration of this Deed Poll and it is the Licensee's responsibility to save their data.

## 9 Emergency Procedures

The Licensee agrees and acknowledges that:

- (a) The use of the Craft Storage Facility must be in accordance with GPC's Emergency Evacuation Procedures.
- (b) In the event of an emergency occurring, GPC may move the Craft in any manner it considers necessary to anywhere it considers appropriate to preserve the integrity of the Marina, the Craft and/or other Vessels.
- (c) The Craft shall be equipped by the Licensee with at least 1 fire extinguisher of the type approved by the Marina Superintendent. Such fire extinguisher shall be:
  - (i) kept fully charged; and
  - (ii) maintained in good order and condition.
- (d) The Craft shall be equipped with an anchor and ground tackle sufficient to hold the Craft in severe wind and sea conditions. Such anchor and ground tackle shall be stored ready to be deployed.

## 10 Liens and Encumbrances

- (a) In consideration for any works to be undertaken on the Craft, or anything else to be done by GPC under this Deed Poll (including without limitation under clause 4), GPC shall have a lien on the Craft, its fittings and contents for the payment of all monies due to GPC under this Deed Poll.
- (b) In consideration for entering into this Deed Poll, the Licensee warrants that it is the beneficial owner of the Craft and that it is absolutely entitled to grant this Security Interest and hereby charges in favour of GPC all of its personal property present and future and wheresoever situated with the payment to GPC of all monies secured by this Deed Poll. Such Security Interest shall be a non-circulating and specific Security Interest on all of the abovementioned personal property now or in the future belonging to the Licensee and a circulating Security Interest on all other personal property of the Licensee.
- (c) In the event of the Licensee's default under this Deed Poll, GPC may appoint a receiver and or manager of the Licensee as the case may be without derogating from its other rights under this Deed Poll.
- (d) The Licensee irrevocably appoints GPC and any receiver or manager appointed by GPC to be the Licensee's joint and several attorneys to execute, sign and perform in its name and on its behalf all deeds, instruments, acts and things whatsoever which the Licensee is required or reasonably expected to execute, sign and perform under the covenants contained in this Deed Poll and generally to use GPC's name in the exercise of all or any of the powers conferred on the Licensee or any receiver or manager appointed by the Licensee as the case may be.
- (e) Notwithstanding GPC's rights under clause 10(a) – (d) above, the Licensee authorises GPC to take possession of the Craft, its fittings and/or contents on default in payment of an account and authorises GPC to sell the Craft, its fittings and/or contents either by public or private sale if the account remains unpaid for 21 days after demand for payment has been made in writing by GPC to the Licensee. Any such taking of possession shall be at the cost and risk of the Licensee including all costs (including of storing the Craft) and shall be a debt due and owing to GPC. GPC may, and the Licensee authorises GPC to, collect out of any sale or settlement proceeds however described the costs of taking possession and sale and the Licensee charges to GPC under this Deed Poll those costs against the Craft and the Licensee. GPC will pay the Licensee any funds remaining from the net sale proceeds of the Craft after all

- debts owed to GPC have been discharged. Where the proceeds of any sale under this clause are insufficient to fully discharge all debts owed by the Licensee to GPC the remaining balance of those debts remain due and owing to GPC until fully discharged by the Licensee.
- (f) Where the Craft is under finance or encumbrance, the Licensee covenants that the Licensee is not in default or arrears of any term of any applicable finance or encumbrance deed and that the encumbrance or finance provider as the case may be is aware of and consents to this Deed Poll and the use of the Craft Storage Facility set out herein.
- (g) The Licensee authorises GPC:
- (i) to undertake, and the Licensee agrees to pay to GPC whether in advance or in arrears at the discretion of GPC for searches undertaken of the PPSR, insurers, registration authorities, government authorities, Roads and Maritimes Services, courts and police for the purposes of ascertaining the Licensee's and the Craft's status, applicable finance, encumbrances or other noted items in the PPSR and relevant information as to title and condition concerning the Craft; and
- (ii) pursuant to section 18E of the Privacy Act 1988 (Cth) the Licensee authorises GPC to make confidential enquiries of and obtain information from finance providers, bankers, insurers, registration authorities, government authorities, Roads and Maritime Services, courts and police with respect to:
- (A) the Craft, its status, title and condition; and
- (B) the Licensee and the Licensee's legal status including any proceedings against the Licensee and/or the Craft, and any indebtedness of the Licensee and/or the Craft as to any specific credit debt and credit generally and to obtain information including but not limited to a payout figure, daily rate of interest, the nature of any security or finance interest claimed over the Craft or with respect to the Licensee.
- (h) The Licensee authorises GPC to communicate to and receive from the persons and entities outlined in clause 10(h) that would otherwise be confidential information concerning the Licensee and Licensee's indebtedness and the indebtedness of the Craft for the purposes of this Deed Poll including securing payment or repayment as the case may be for the Craft, discharge of indebtedness and remuneration of and payment to GPC and/or GPC's costs and expenses including but not limited to legal costs and expenses under this Deed Poll.
- (i) For the purposes of this paragraph:
- (i) **Financing Statement** has the meaning given to it by the PPSA;
- (ii) **Financing Change Statement** has the meaning given to it by the PPSA;
- (iii) **Security Deed** means the security deed under the PPSA created between the Licensee and GPC whether described as a Security Interest, charge or other expression herein and without limiting those other expressions; and
- (iv) **Security Interest** has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described.
- (j) The Licensee agrees that its execution of the respective parts of this Deed Poll and the provisions set out herein constitute a Security Deed for the purposes of the PPSA and create the Security Interest as set out in the respective executed document.
- (k) The Licensee shall indemnify or pay GPC at GPC's sole discretion for all costs incurred or to be incurred in registering a Financing Statement or Financing Change Statement in the PPSR or releasing any interest thereunder.
- (l) The Licensee shall not create or cause or set in chain to be created a Financing Statement or Financing Change Statement in respect of a Security Interest without the prior written consent of GPC.
- (m) The Licensee shall not register, cause to be registered or do any action or execute anything which may enable the registration of a Financing Statement or a Financing Change Statement in relation to the personal property secured herein in favour of a third party without the prior written consent of GPC.
- (n) The Licensee shall immediately advise GPC of any material change in its business practices, corporate structure, directorship, shareholdings, financial structure or solvency which would otherwise jeopardise the Security Interests of GPC.
- (o) GPC and the Licensee agree that sections 96, 115 and 125 of the PPSA do not apply to the Security Interest created by the Security Deed.
- (p) The Licensee hereby waives the Licensee's rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA.
- (q) The Licensee waives its rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.
- (r) The parties agree that the Licensee is the debtor for the purposes of section 275(6)(a) of the PPSA and that the parties shall not disclose information of the kind mentioned in section 275(1) of the PPSA. This clause constitutes a confidentiality deed for the purpose of section 275(6)(a) of the PPSA.

## 11 Removal of Craft

- (a) If this Deed Poll is terminated, the Licensee will be required to:
- (i) remove the Craft from the Craft Storage Facility or Marina; and
- (ii) make good any damage caused or contributed to by the Licensee to the Craft Storage Facility and Marina.
- (b) If the Licensee fails to remove the Craft or any personal belongings from the Craft Storage Facility or Marina following the termination or earlier determination of this Deed Poll, GPC may in its absolute discretion:
- (i) remove the Craft and/or the personal belongings from the Craft Storage Facility or Marina at the Licensee's risk and keep it in a location which GPC deems appropriate. The Licensee must pay all of GPC's costs arising out of such removal, including alternative mooring or storage fees; or
- (ii) continue to charge the Licensee the fees which would have been payable by the Licensee as if this Deed Poll had not come to an end.

## 12 Termination

- (a) Either party may terminate this Deed Poll by providing not less than 30 days' written notice prior to the expiration of the Licence Term. Notice of termination from the Licensee shall be accompanied by payment of all fees and other amounts payable by the Licensee up until the point of termination for whatever reason. If no such notice is given, this Deed Poll shall automatically renew for a further period equal to the Licence Term commencing on the day after the expiry of the initial Licence Term on the same terms contained in this Deed Poll.
- (b) GPC may terminate this Deed Poll by written notice to the Licensee if:

- (i) the Licensee is in breach of any of the provisions of this Deed Poll or of any statute, regulation, by-law, common law or rules and regulations of GPC's property; or
  - (ii) in the opinion of GPC, the Craft Storage Facility becomes unserviceable; or
  - (iii) in the opinion of GPC, any conduct by the Licensee or its Personnel is prejudicial to the interests of GPC's property or of GPC.
- (c) Either party may terminate this Deed Poll by written notice to the other party:
- (i) if the other party is a corporation (however described), a receiver, liquidator, official manager, external administrator or similar is appointed to it or it is insolvent or unable to pay its debts as and when they fall due or has entered into any arrangement or composition or debt agreement however described with its creditors or in relation to any of its business property;
  - (ii) if a natural person, has a Trustee in Bankruptcy appointed, has committed an act of bankruptcy (as defined in the Bankruptcy Act), has entered into a personal insolvency agreement Part X Arrangement (as defined in the Bankruptcy Act) or any composition or debt agreement with creditors, is placed into receivership or has any of that other party's business property or personal assets so administered; or
  - (iii) if the other party enters into any discussion or negotiation with creditors, is subject to execution of debt proceedings, examination summons, writ of execution, charging order, injunction, has issued against it a statement of claim or statutory demand or any equivalent event however described.

**13 Licensee not to be a Tenant**

Nothing in this Deed Poll shall confer on the Licensee any right as a tenant of the Craft Storage Facility or GPC's property, nor create the relationship of landlord and tenant. The right granted by this Deed Poll is personal only.

**14 Rules and Regulations**

GPC reserves the right to create, amend or cancel any rules or regulations if GPC considers that such creation, amendment or cancellation is necessary for the proper management, safety, care or cleanliness of GPC's property and all such amendments and cancellations shall bind the Licensee when notice of them has been either given to the Licensee in writing by GPC or published by GPC in a form that is available publicly to the Licensee. GPC shall not be liable for any non-enforcement concerning any rule or regulation or the grant of any indulgence or other accommodation concerning any rule or regulation.

**15 Authority and Covenants**

- (a) The Licensee hereby certifies that it is the legal and beneficial owner or duly authorised agent of the owner of the Craft and that the Licensee shall be personally liable for all costs and Claims whatsoever arising out of this Deed Poll. The Licensee undertakes to pay all such moneys on demand.
- (b) The Licensee states as an essential term of this Deed Poll that the Craft is not the subject of any defect notice, registration cancellation, suspension, levy of debt, proceeds or crime order, injunction, charging order, seizure, confiscation or similar and is not stolen or otherwise illegally obtained or held, nor are there any proceedings against the Licensee or the Craft with respect to defect notice, registration cancellation, suspension, levy or debt, proceeds or crime, injunction, charging, seizure, confiscation or similar.

- (c) The Licensee covenants that the Craft has not had any alterations or changes to its serial number, hull identification (boat code) number or other registration or identification number.
- (d) The Licensee covenants that the Craft has not had any alterations or changes to any Australian compliance plate or manufacturer's plate or similar attached to the craft.
- (e) The Licensee covenants that the Craft is of genuine and original trim level, badging and specification ex-manufacturer and has not been modified or built up except as disclosed by the Licensee to GPC in writing.
- (f) The Licensee covenants that any accessories fitted or existing defects to the Craft are as notified by the Licensee to GPC in writing and that there are no other defects whether patent or latent (obvious or not to the naked eye) except those disclosed by the Licensee.
- (g) The Licensee covenants that any papers, receipts, invoices, log books or service history (the records) provided with the Craft are records for the Craft provided for the Craft Storage Facility and are genuine records and that the works, maintenance, and repairs set out in the records were in fact carried out.
- (h) The Licensee and GPC covenant to each other that if they are a natural person, they:
  - (i) are not insolvent;
  - (ii) are not bankrupt;
  - (iii) have not committed any act of bankruptcy (as defined in the Bankruptcy Act);
  - (iv) have not entered into a personal insolvency agreement Part X Arrangement (as defined in the Bankruptcy Act) or any composition or debt agreement with creditors; and
  - (v) are not the subject of official management nor the subject of receivership.
- (i) The Licensee and GPC covenant to each other if a corporation however incorporated that the corporation is not insolvent, has not committed any act of insolvency, is able to pay its debts as and when they fall due, has not entered into any arrangement or other composition or debt agreement with creditors, is not in liquidation, is not in receivership and is not under official management nor under external administration.
- (j) The Licensee and GPC covenant to each other that they individually are not subject to any legal proceedings however described, have not received any statutory demand for payment of debt, have not received any statement of claim, summons, interim order or interim injunction and are not the subject of any legal proceedings however described.
- (k) Where a natural person signs for themselves and/or a representative signs on behalf of an individual, trust, estate or corporation however that individual, trust, estate or corporation is described, the natural person or representative whether under a power of attorney, company authorised officer in writing or other authority or agency instrument declares that they have full knowledge of all relevant matters given by them in this Deed Poll and that they have full authority to bind the natural person, individual, trust, estate or corporation and that their authority or agency however described has not been revoked or limited in any way and that they act with the express consent of their principal, board of directors or legal personal representatives however described.

**16 Notices**

- (a) A notice must be:
  - (i) in writing;
  - (ii) in English; and

INITIAL:
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- (iii) signed by the party giving it, or by their agent and delivered by hand or sent by prepaid post or email to the party's address specified in this document, or any other address notified by a party to the other party as its address for service.
- (b) If sent by prepaid post a notice is taken to be received on the fourth business day after the date of posting (or on the fifth business day after the date of posting if posted to, or from, a place outside Australia).
- (c) If sent by email a notice is taken to be received when an electronic communication is taken to be received as determined under a law governing electronic communications applicable in the jurisdiction of Queensland. However, if the time at which a notice is taken to be received is not on a business day in Gladstone, or is after 5.00pm on a business day, it is taken to be received at 9.00am on the next business day.
- (d) A notice is taken not to be received if (in the case of service by post) it is returned to sender because the postal service was unable to deliver it or (in the case of service by email) the party sending the notice receives an automated email response specifying that the email containing the notice was undeliverable.
- (e) The Licensee agrees to notify GPC any change of address and contact details within 7 days.
- (f) For the purposes of interpretation of this clause and for any legal proceedings, the provisions of the *Evidence Act 1995* (Cth) shall prevail.

## 17 Whole Deed

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This Deed constitutes the whole agreement between GPC and the Licensee in relation to its subject matter and the Licensee warrants that it has not relied upon any statement, representation, or warranty made by GPC or its Personnel which is not expressed in this Deed Poll.

## 18 Governing Law

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This Deed shall be governed by and construed in accordance with the laws in the State of Queensland and the parties agree to submit to the jurisdiction of the courts and tribunals of Queensland.

## 19 Time is of the Essence

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Time is of the essence in this document in respect of an obligation to pay monies.

## 20 Accounts

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All accounts and/or invoices rendered by GPC to the Licensee are on the basis of errors and omissions excepted and may be amended subsequently notwithstanding any error or omission and the parties hereto shall be responsible to pay or be credited such properly amended accounts and/or invoices. All accounts and/or invoices are payable monthly in advance at all times at the time and in the manner GPC directs, which may vary from time to time.

## 21 Assistance and Good Faith

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The parties to this Deed Poll agree to do all things, take all steps necessary and execute all relevant documents to give commercial effect to this Deed Poll. The parties shall act honestly and in good faith to achieve the commercial intention of this Deed Poll.

## 22 Severability

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If any provision of this Deed Poll offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from this Deed Poll in which event the remaining provisions of the Deed operate as if the severed provision had not been included.

## 23 Not Transferrable

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The Licensee must not assign this Deed Poll or the rights and obligations under it without the prior written consent of GPC.

## 24 GST

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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*. Unless otherwise expressly stated all amounts stated to be payable under this Deed Poll are exclusive of GST. If GST is imposed on any supply made by GPC under or in accordance with this Deed Poll, the Licensee must pay to GPC an additional amount equal to the GST payable on or for the taxable supply.

## 25 Survival of Rights

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Rights accrued to a party up to the expiry, termination or replacement of this Deed Poll and indemnities given by a party under this Deed Poll survive the expiry, **termination** or replacement of this Deed Poll. It is not necessary for GPC to incur cost or make payment before enforcing a right of indemnity under this Deed Poll.

## 26 Environment

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The Licensee must:

- (a) not violate, contravene or breach any Environmental Law or any Environmental Approval in connection with this Deed Poll;
- (b) comply with any verbal or written directions by GPC in respect of the Environment;
- (c) use all reasonable endeavours (including reporting, providing information, and any clean-up if liable) to ensure that GPC is able to comply with its obligations under this Deed Poll;
- (d) give written notice as soon as possible to GPC of any factors that will or would reasonably be likely to, give rise to any liability for GPC under or arising from any act or omission of the Licensee that is a breach of or inconsistent with its obligations under any Environmental Law or any Environmental Approval, including any Contamination;
- (e) give written notice as soon as possible to GPC of any Environmental Notice that is issued in respect of the Licensee's Craft and use of the Craft Storage Facility;
- (f) give written notice as soon as possible to GPC of any potential or actual court proceedings in respect of the Licensee's Craft and use of the Craft Storage Facility which relate to the Environment; and
- (g) not carry out any development, alterations or works that would require an Environmental Approval which has not been obtained and all conditions attaching to any such approval have been fully complied with.

Any waste generated by the Licensee's Craft and use of the Craft Storage Facility must be stored, transported and disposed of in accordance with all Environmental Laws.

## 27 Counterparts

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This Deed may be signed by identical counterparts and each counterpart will be deemed to be an original and together they constitute one document.

**SIGNED, SEALED AND DELIVERED AS A DEED POLL**

The Licensee declares that the information provided in this Deed Poll is true to the best of its knowledge, it has read the Terms and Conditions and agree to be bound by them by either signing and returning this deed poll or storing the Craft in the Marina in accordance with the Terms and Conditions and paying the Licence Fee to GPC. The Licensee consents to be bound to this Deed Poll and the Terms and Conditions on this basis.

The Licensee consents to the GPC collecting, using and storing the personal information provided in the Application in accordance with the National Privacy Principles as set out in the *Information Privacy Act 2009* (Qld). The Licensee agrees to notify the GPC in writing if there are any changes to the details set out in this Deed Poll.

**LICENSEE**

(IF INDIVIDUAL)

Signature: \_\_\_\_\_ Witness signature: \_\_\_\_\_

Name in full: \_\_\_\_\_ Witness name in full: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Witness signature: \_\_\_\_\_

Name in full: \_\_\_\_\_ Witness name in full: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

***The Licensee acknowledges and agrees that the Licensee must provide a valid driver's licence or any other form of identification upon request from GPC.***

(IF COMPANY)

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name in full: \_\_\_\_\_ Witness name in full: \_\_\_\_\_

Designation: Director Designation: Director/Company Secretary

Date: \_\_\_\_\_ Date: \_\_\_\_\_