



MeridienMarinas
ABEL POINT

STANDARD MARINA SITE LICENCE TERMS AND CONDITIONS

1. Application

These terms and conditions apply to the agreement (“the Agreement”) made between Meridien and the Licensee for the use of the Site and are taken to be incorporated in the Agreement as though they were set out in full in the Agreement.

2. Definitions

In these terms and conditions, unless a contrary intention appears:

Agreement means the agreement made between Meridien and the Licensee to which these terms and conditions apply.

Authority means any State, federal or local government or other person or authority having jurisdiction over the Site, the Boat or the Complex.

Site means the site specified in Item 3 (which is part of the Complex) and:

- (a) **Marina Berth** means a marina berth situated in the waters of the Marina designed for the mooring of a boat;
- (b) **Rack Storage Site** means a site contained in a storage shed in the Complex designed for the storage of a boat; and
- (c) **Trailer Site** means a site situated on a hardstand area in the Complex designed for the storage of a boat.

Boat means the boat specified in Item 2.

Claim includes any claims, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action and claim for compensation.

Commencement Date means the earlier of the dates specified in Item 3.

Common Areas means all parts of the Complex intended by the Land Owner for common use of the occupants of the Complex.

Complex means the Marina and all other land either adjacent to or in the vicinity of the Marina that may be acquired or leased by the Land Owner and incorporated into the Complex for any purpose.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure, including all reasonable legal fees.

Default Rate means the rate per annum equal to the aggregate of two per cent and the highest interest rate charged as at the due date for payment of the relevant money by Meridien’s principal bankers to its customers for unsecured overdraft accommodation in excess of one hundred thousand dollars. A certificate by an officer of the relevant bank or other financial institution is conclusive evidence of the rate.

Dry Storage Facility means the storage shed containing a Rack Storage Site or the hardstand area on which a Trailer Site is located.

Environment Protection Law means any Law or requirement of an Authority relating to waste, pollution, use of land or the protection, preservation and enhancement of the environment.

Expiry Date means the later of the dates specified in Item 3.

Facilities Area means that part of the Complex specified from time to time by the Land Owner which contains toilets, showers and other facilities for use by the Licensee and other occupants of the Marina.

Item means an item set out in the Reference Table in the Agreement.

Key includes any key, encoded card or other article issued or used for the purpose of obtaining access to the Complex, the Marina or the Site.

Key Deposit means the total of any deposits specified in Item 3.

Land Owner means:

- (a) in the case of freehold land, the owner of the land on which the Marina is situated; and
- (b) in the case of State leasehold land, the registered lessee from the State of Queensland of the land on which the Marina is situated.

Law means any statute, rule, regulation, proclamation, ordinance or by-law, present or future, State, Federal or otherwise.

Licence Fee means the amount specified as the licence fee in Item 3.

Licence Fee Date means the Commencement Date and then the corresponding day of each succeeding Licence Payment Period specified in Item 3 thereafter during the Licence Term.

Licence Term means the period of time specified in Item 3 commencing on the Commencement Date and expiring on the Expiry Date.

Licensee means the party specified in Item 1.

Licensee's Associates means each and every of the Licensee's employees, agents, contractors, customers, client's visitors (with or without invitation) who may at any time be on the Complex or the Site.

Manager means the Manager of the Marina from time to time, or his nominee.

Marina means the marina of which the Site is a part which comprises a group of floating mooring berths and waterways and includes the Facilities Area, Dry Storage Facility, walkways, pontoons, piles and access bridges associated with the Marina.

Meridien means the party specified in Item 1 and any subsequent owner of the Marina.

Permitted Use means:

- (a) in the case of a Marina Berth, the mooring of the Boat; and
- (b) in the case of a Rack Storage Site or a Trailer Site, the storage of the Boat.

Rules means the rules made from time to time by the Land Owner for regulating the use of the Marina and the Complex.

Services means the services which are separately metered and provided to the Site by Meridien or any Authority and includes but is not limited to, all electric current and water consumed in the use of the Site.

3. Licence

3.1 The Site is licensed to the Licensee for the Licence Term solely for the Permitted Use.

3.2 The Licensee has a personal right to use the Site on the terms and conditions of the Agreement and has no legal interest in the Site or any right to exclusive possession of the Site.

3.3 If Meridien permits the Licensee to continue to use the Site after the Expiry Date, the Licensee will be a licensee of the Site on a weekly basis on the terms of the Agreement so far as they are applicable to a weekly licence. That weekly licence may be terminated by either party on one weeks written notice to the other expiring at any time. During any such weekly licence, Meridien may increase the Licence Fee by one weeks written notice to the Licensee.

3.4 The licence granted under the Agreement is not capable of assignment. If the Licensee sells the Boat or transfers ownership of the Boat to any person, unless that person has entered into a licence agreement with Meridien in relation to the Site, the Licensee must ensure that the Boat is removed from the Site and the Marina before the sale or transfer of the Boat is completed.

4. Licence Fee

4.1 The Licensee must pay the Licence Fee to Meridien, in advance, in full, on or before each Licence

Fee Date.

- 4.2 If the Licence Term shown in Item 3 is for a period of less than the period of the Licence Payment Period shown in Item 3, then the Licence Fee is to be apportioned to determine the amount of Licence Fee payable for the Licence Term.
- 4.3 Once paid, the Licence Fee is non-refundable and is not transferable.
- 4.4 From time to time Meridien may, by notice in writing to the customer, adjust the Licence Fee payable.

5. Other Charges

- 5.1 The Licensee must promptly pay all charges imposed from time to time during the Licence Term in respect of any Services to the Site or the Boat arising out of or incidental to the use by the Licensee or the Licensee's Associates of the Site, the Marina or the Boat.
- 5.2 If a charge for any Service is assessed directly against the Licensee, the Licensee must pay the charge to the relevant Authority by the due date for payment. If a charge for any Service used by the Licensee is assessed against Meridien, the Licensee must pay the charge to Meridien within 14 days of being billed for the charge by Meridien.
- 5.3 If, at the request of the Licensee, Meridien provides any additional services to the Licensee or procures additional services for the Licensee, the Licensee must pay Meridien for those services at the times agreed between the parties and, in the absence of any agreement, on demand.
- 5.4 The Licensee must:
 - (a) upon demand by Meridien, pay any duty from time to time assessed on the Agreement;
 - (b) make payments due to Meridien under the Agreement without set-off, counterclaim, withholding or deduction and by any method Meridien reasonably requires (and, if Meridien so requires, by way of electronic funds transfer or direct debit of a bank account operated by the Licensee); and
 - (c) pay to Meridien interest at the Default Rate on any Licence Fee or other moneys due by the Licensee to Meridien but unpaid for 14 days from the due date up until the money is received by Meridien.
- 5.5 Each party must bear its own costs in relation to the Agreement.
- 5.6 Time is essential for all obligations of the Licensee under the Agreement (including obligations to pay money).
- 5.7 The Licence Fee referred to in the Agreement is inclusive of GST. With the exception of the Licence Fee, if a party makes a taxable supply to the other party under or in connection with the Agreement for a consideration which represents its value, then the party liable to pay for the taxable supply must also pay to the maker of the supply, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the taxable supply.

6. Key Deposit

- 6.1 The Licensee must pay the Key Deposit to Meridien on or before the Commencement Date.
- 6.2 If on the Expiry Date the Licensee does not return to Meridien any Key provided by Meridien to the Licensee, Meridien may forfeit the Key Deposit and the Licensee must pay to Meridien any Costs incurred by Meridien in securing the Complex or the Marina as a result of the loss of the Key.
- 6.3 Meridien must refund to the Licensee the Key Deposit not called upon by Meridien pursuant to this clause at the expiration of the Agreement.

7. Licensee's Warranties

The Licensee warrants and represents to Meridien that:

- (a) all information provided by the Licensee in the Agreement is true and correct; and
- (b) the Licensee has full power and authority to enter into the Agreement including all authorities or consents needed by the Licensee to enter into this Agreement from any person who has an interest in the Boat.

8. The Boat

8.1 The Licensee must:

- (a) keep the Boat in a sound, safe, secure, sea worthy and watertight condition at all times;
- (b) at its Cost, observe, perform and fulfil all requirements of any Law (including any Environment Protection Law) affecting the Boat;
- (c) maintain all licences and registrations required for the use of the Boat;
- (d) take all necessary precautions against the outbreak of fire in or upon the Boat while it is moored in the Site or is within the Marina;
- (e) at its Cost, dispose of any sewage ashore by using any sewage pump out station provided at the Marina;
- (f) keep the Boat free of pests, insects and vermin;
- (g) keep the Boat free of all infectious diseases and infections;
- (h) disconnect all fuel lines and batteries when the Boat is not in use;
- (i) remove and store auxiliary motors when not in use and otherwise take all reasonable precautions to protect the Boat and the Licensee's property from theft or vandalism; and
- (j) ensure that the Boat has adequate covers (eg, canopy, storm curtains and storm cover or tonneau covers) to protect the Boat from the weather.

8.2 The Licensee must not refuel the Boat from any other place in the Marina other than a marine fuelling facility designated by the Manager from time to time.

9. Use of Marina

9.1 The Licensee must

- (a) observe any Law in relation to navigational practices and navigate the Boat in the Marina at a speed and in a manner in accordance with the requirements of Manager from time to time and otherwise in a manner that does not endanger or inconvenience other users of the Marina;
- (b) ensure that all gates, entrances and exits within the Complex are properly closed after each use; and
- (c) observe and comply with the reasonable directions of the Manager.

9.2 The Licensee must not:

- (a) obstruct in any way the embarkation or disembarkation of other occupants of the Complex;
- (b) discharge anything of whatever nature into the waters in the Marina and must not (while the Boat is in the Marina or on the Complex) use any toilet on the Boat unless the toilet is connected to an approved holding tank in the Boat;
- (c) do anything on the Complex which is immoral, noxious, offensive, hazardous, or likely to cause nuisance or injury to the Land Owner or any other person; or
- (d) misuse, overload, interfere with or alter the connections, fittings or equipment in the Common Area or the Site (if any) relating to the supply of water, gas, electricity, lighting or other services.

9.3 The Licensee acknowledges that no promise, representation or warranty is given by Meridien:

- (a) that the Site is or will be fit, suitable or adequate for the Boat or the Permitted Use; or
- (b) regarding the sufficiency or efficiency of the Services.

9.4 Subject to the Agreement, the Licensee and the Licensee's Associates may use the Common Areas and the Facilities Area for the purposes for which they are intended, but must not obstruct the Common Areas in any way.

9.5 If, in connection with the Agreement, the Licensee must not do something, it must not allow or cause it to be done or do or omit to do anything which results in that thing happening. If, in connection with the Agreement, the Licensee must do something, it must, if appropriate, ensure that the Licensee's

Associates also do that thing.

10. Use of Marina Berth

10.1 This clause applies if the Site is a Marina Berth.

10.2 The Licensee must:

- (a) ensure that:
 - (i) the Boat is moored within the Marina Berth in accordance with the requirements of the Rules and does not encroach beyond the Marina Berth boundaries;
 - (ii) all dinghies, tenders and rafts are stowed aboard the Boat when the Boat is at mooring; and
 - (iii) no item of the Licensee's property is left on the piers at any time;
- (b) keep all mooring lines used to secure the Boat in good condition;
- (c) at its Cost, observe, perform and fulfil all requirements of any Law affecting the Marina Berth; and
- (d) keep the sight line of any navigation leads, light or mark which crosses the Marina Berth clear of obstruction to the satisfaction of the Manager and any relevant Authority.

10.2 The Licensee must not:

- (a) allow the Marina Berth to be used for mooring any boat that exceeds the engineering rating of the Marina Berth or is larger than that recommended under AS3962 "Guidelines for Marina Design"; or
- (b) carry out any repairs, sandblasting, painting, hull cleaning, fitting out or refitting of the Boat within the Marina Berth (other than minor internal repairs, mechanical adjustments and electrical work on the Boat for which the Licensee has obtained the prior written consent of the Manager).

10.3 The Licensee must not, without the prior written consent of the Manager:

- (a) engage any tradesmen to work on the Boat;
- (b) permit any fishing trawler to be moored in the Marina Berth;
- (c) display any "for sale" or other sign on any Boat moored in the Marina Berth or offer a Boat for sale from the Marina Berth;
- (d) carry on from the Boat or the Marina Berth any business or activity of a commercial nature whatever and not conduct any sale or transact any business on or from the Boat while it is moored in the Marina Berth or is in the Marina;
- (e) use the Boat as a permanent place for human habitation; or
- (f) keep any animal or pet on the Boat.

11. Use of Rack Storage Site and Trailer May Site

11.1 This clause applies if the Site is a Rack Storage Site or a Trailer Site.

11.2 The Licensee must use the Services provided by the Manager for removing the Boat from the Site, launching the Boat in the waters of the Marina and for returning the Boat to the Site once the Licensee has finished using the Boat.

11.3 The Licensee must not at any time:

- (a) enter the Site or the Dry Storage Facility;
- (b) attempt to retrieve the Boat from the Dry Storage Facility; or
- (c) attempt to launch the Boat.

12. Repair to Site

12.1 The Licensee must:

- (a) repair damage to the Services, the Site or the Complex caused by any act, omission, negligence or default of the Licensee or the Licensee's Associates, or on demand by Meridien, pay to Meridien the Cost of such repairs;
- (b) must give immediate written notice to Meridien and the Manager of any damage, accident or defects in the Services, the Site or the Boat; and
- (c) not undertake any works or make any alterations to the Site without first obtaining the written consent of Meridien.

12.2 Meridien or the Manager may enter the Site at any time to:

- (a) view its state of repair and condition and that of the Boat; and
- (b) undertake any repair to the Site that is reasonably necessary.

13. Reservations

13.1 The Licensee acknowledges that:

- (a) the Land Owner has the exclusive right to:
 - (i) use any part of the Complex that is not rented or licensed for any purpose;
 - (ii) control the Common Areas in its absolute discretion; and
 - (iii) construct or permit the construction of any building, marina or other works on any other part of the Complex;
- (b) at its discretion, Meridien may move the Boat to another Site in the Marina; and
- (c) at any time, Meridien may enter upon the Boat and carry out inspections of the Boat, and the Licensee may not make any objection or Claim in respect to any of these matters.

13.2 Meridien is not liable to the Licensee for any damage which the Licensee may suffer because of any interruption to any Service.

13.3 The Licensee acknowledges that the Land Owner may hold events at the Marina (for example, an annual boat show open to the general public or a racing carnival) for a period or periods of up to 28 days each year ("the Marina Events"). Meridien reserves the right to require the Licensee to vacate the Site and the Marina for the duration of the Marina Events by giving the Licensee 7 days written notice. The Licensee is not entitled to any compensation for vacating the Site and the Marina for the duration of the Marina Events but is not required to pay the Licence Fee during that period.

14. Rules

The Licensee must comply with the Rules from time to time in force for regulating the use of the Marina and the Complex.

15. Insurances and Indemnities

15.1 The Licensee must take out and maintain:

- (a) comprehensive insurance on the Boat for its market value, from time to time;
- (b) public risk insurance in respect of the Boat for at least \$10,000,000 in respect of any single accident; and
- (c) any other insurance reasonably required by Meridien.

15.2 The Licensee must give Meridien evidence that it has taken out adequate insurance and give Meridien immediate notice if any insurance policy is cancelled.

15.3 The Licensee must not:

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

- 15.4** The Licensee is liable for and indemnifies Meridien, the Land Owner and the Manager against any liability for any Claim arising from:
- (a) the use by the Licensee or the Licensee's Associates of the Site, the Complex or the Boat;
 - (b) any damage, loss, injury or death caused or contributed to by any act, omission, negligence or default of the Licensee or the Licensee's Associates;
 - (c) the condition of the Boat;
 - (d) the sale of the Boat under clause 17.2(c); and
 - (e) a breach by the Licensee of the Agreement.
- 15.5** A person who has the benefit of an indemnity under this clause may enforce an indemnity before incurring an expense.
- 15.6** The Licensee releases Meridien from, and agrees that Meridien is not liable for any Claim arising from:
- (a) damage, loss, injury or death unless it is caused by the negligence or default of Meridien;
 - (b) anything Meridien is permitted to do under this Agreement including the sale of the Boat under clause 17.2(c);
 - (c) any defect in or faulty operation of any Service; or
 - (d) the Common Areas not being clean.
- 15.7** The Licensee acknowledges that the Boat and all property which may be on the Site or the Boat during the Licence Term are at the sole risk of the Licensee.

16. Damage to Site

If the Site is damaged (through no fault of the Licensee) so that the Licensee's use of the Site is adversely affected, Meridien may, at its discretion:

- (a) relocate the Boat to a similar Site within the Complex; or
- (b) terminate the Agreement.

17. Default of Licensee

17.1 The Licensee will be in default if:

- (a) the Licence Fee, any part of it or any other moneys payable by the Licensee to Meridien are in arrears and remain unpaid for seven days after any of the due dates for payment (whether demanded or not);
- (b) the Licensee fails to comply promptly with any of the conditions in the Agreement which ought to be performed or observed by the Licensee or fails or refuses to comply with any rules or directions of the Manager;
- (c) the Licensee abandons, vacates or otherwise surrenders the Site or the Boat (which will be deemed to occur if the Licence Fee remains unpaid for more than one month); or
- (d) the Licensee (if a company) enters into any form of liquidation or insolvency or is wound up or dissolved, enters into a scheme of arrangement for creditors, is placed under administration or a receiver and manager is appointed or (if an individual) is declared bankrupt.

17.2 If the Licensee is in default under the Agreement, Meridien may terminate the Agreement by notice in writing to the Licensee and, in such a case, without prejudice to its other rights, Meridien:

- (a) may remove the Boat to another area within the Marina or the Complex;
- (b) shall have a lien over the Boat and may detain it until all moneys payable by the Licensee to Meridien under the Agreement are paid in full; and
- (c) may sell the Boat by private sale or public auction (and in the event of default, evidence of which will be a certificate signed by the Manager to that effect, the Licensee unconditionally and irrevocably appoints Meridien its duly constituted attorney for that purpose) and apply the proceeds of such sale, first, in satisfaction of any registered bill of sale or registered

encumbrance over the Boat, second, in payment of the Costs of the sale or auction, third, in payment of all outstanding moneys owing to Meridien under this Agreement and, lastly, the balance (if any) shall be paid to the Licensee.

- 17.3 Termination of the Agreement by Meridien does not effect any prior Claim that Meridien may have against the Licensee.
- 17.4 Meridien's acceptance of any money payable under the Agreement (before or after termination) is not a waiver of a breach or an acceptance of the repudiation of the Agreement by the Licensee.
- 17.6 No waiver by Meridien or variation of the Agreement will be effective unless it is in writing.

18. Determination of Term

- 18.1 On the Expiry Date or earlier termination of the Agreement the Licensee must:
 - (a) deliver all Keys to Meridien;
 - (b) vacate the Site and leave it in a clean state; and
 - (c) remove the Licensee's property and the Boat from the Site.
- 18.2 The Licensee must not cause any damage to the Site or the Complex in the removal of anything from the Site. If any such damage is caused, the Licensee must, at its Cost, promptly repair that damage to the satisfaction of the Manager.

19. General Provisions

- 19.1 Notices from one party to the other must be in writing and either delivered personally, by facsimile transmission or in any other way permitted by law. Each party must notify the other of any change in address or facsimile number.
- 19.2 If anything in the Agreement requires the consent or approval of Meridien, Meridien may withhold that consent or approval in its absolute discretion or grant its consent subject to conditions.
- 19.3 The Agreement constitutes the entire agreement and understanding between the parties about its subject matter including the Site.
- 19.4 The Agreement is governed by the law in force in Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland in relation to it.
- 19.5 Any covenants implied by Law or otherwise are not excluded but will be taken to have been modified (where permitted) to the extent of any inconsistency with the Agreement.
- 19.6 If there is more than one Licensee or Guarantor under the Agreement, their liability to Meridien under the Agreement is joint and several.
- 19.7 Meridien is not a bailee or a warehouseman of the Boat and is not deemed to be in possession of the Boat.
- 19.8 If the whole or any part of a provision of the Agreement is void, illegal or unenforceable in a jurisdiction, it is severed for that jurisdiction. The remainder of the Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause will not operate if the severance alters the basic nature of the Agreement or is contrary to public policy.