

Agreement

Marina Lease Ascot Waters

Sub-Lease of Ascot Marina Boat Pen

!SAMPLE!

Contents

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The agreement

Sub-Lease of Ascot Marina Boat Pen

Between the parties	
Lessor	Ascot Fields Nominees Pty Ltd as trustee of The Ascot Fields Property Trust ACN 068 085 011 of 49 Hampden Road, Nedlands, Western Australia (Lessor)
Lessee	The Lessee referred to in Item 7 of Schedule 1 (Lessee)
Background	<p>1 Pursuant to the Head Lease, the Lessor was granted:</p> <ul style="list-style-type: none">• a lease in respect of; and• a power to grant sub-leases over, <p>the Marina and Marina Boating Facility.</p> <p>2 The Lessor grants a sub-lease to the Lessee to use and occupy the Pen for the Term at the Rent and subject to the terms, covenants, conditions and provisions contained in this sub-lease.</p>
The parties agree	as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
Application to occupy a boat pen Form	the form set out in Attachment 2 to this sub-lease as amended from time to time by the Lessor.
Attachment	An attachment to this sub-lease.
Authority	Federal, State or local government, government department, instrumentality or authority, statutory body or agency, Court, tribunal, official acting under any written law, or other public body or authority of any kind.
Commencement Date	the date specified in Item 2 of Schedule 1.
Commercial Arbitration Act	the Commercial Arbitration Act, 1985 (W.A.).
Electrical Safety Certificate	means a certificate issued in accordance with Regulation 52B(1) of the Regulations or any amendment or replacement thereof.
Head Lease	the lease made between the Lessor and the Head Lessor dated 22 December 2000 in respect of the Marina.
Head Lessor	the City of Belmont and includes the Head Lessor's successors (in terms of clause 1.8), executors, administrators, personal representatives, successors and assigns.
Institute of Valuers	the Australian Property Institute Inc (W.A. Division).
Jetty Licence	licence granted to the Lessor for the construction and use of the jetty in the Marina.
Landgate	the government agency responsible for Western Australia's land and property information.
Lease Year	one calendar year from the date of commencement of the lease.
Lessee	the lessee referred to in Item 7 of Schedule 1 and includes in the case of a natural person the heirs, executors, administrators and permitted assigns of the natural person and in the case of a corporation includes the successors and permitted assigns of the corporation.

Lessee's Covenants	the terms, covenants, conditions, agreements, provisions, obligations and stipulations contained in, and implied by, this sub-lease which are required to be observed and performed by the Lessee and includes those terms, covenants, conditions, agreements, provisions, obligations and stipulations contained in and implied by the Head Lease which are to be performed by the Lessee pursuant to the terms of this sub-lease.
Lessor	includes in the case of a natural person the heirs, executors, administrators, assigns and transferees of the Lessor and in the case of a corporation the successors, assigns and transferees of the corporation from time to time.
LOV	overall length of the Vessel including bowsprit and swim board.
Marina	the area as shown in the Plan outlined in red and more particularly described as Lot 324 on Diagram 99838 being the whole of the land comprised in Certificate of Title Volume 2210 Folio 896 and includes the Marina Boating Facility.
Marina Boating Facility	the boating facility on the Marina outlined in blue on the Plan including without limitation all landings, structures (whether fixed or floating), walkways, pavements, entrances, passages and parking areas.
Marina Manager	the person or persons appointed by the Lessor, from time to time, to manage and maintain the Marina and any other such persons as specified by the Lessor in writing.
Metropolitan Region	the region described in the Metropolitan Region Town Planning Scheme Act 1959 (WA).
Pen	the boat pen described in Item 1 of Schedule 1.
Permitted Person	1 an agent, employee, licensee, or invitee of the Lessee; and 2 any person visiting or entering on the Marina or the Pen with the express or implied consent of any person mentioned in paragraph 1.
Permitted Use	mooring of the Vessel.
Plan	the plan annexed to this sub-lease.
Preceding Term	means the term of this sub-lease.
President	The President of the Institute of Valuers.
Recreational Skipper's Ticket	A certificate of competency issued to a skipper by the Department of Planning and Infrastructure.
Regulations	<i>Electricity (Licensing) Regulations 1991 (WA).</i>
Rent	the rent specified in Item 5 of Schedule 1.
Schedule	a schedule to this sub-lease.

Term	the term of this sub-lease commencing on the Commencement Date and expiring on the Termination Date and when the context requires, includes any shorter term (in the event of the early determination of the Term) and any holding over of the Term.
Termination Date	the date specified in Item 3 of Schedule 1.
Valuer	a person who is licensed under the Land Valuers Licensing Act 1978 (WA).
Vessel	the vessel described in Item 6 of Schedule 1.
Waterway	those waters incorporated in the Marina and under the control of the Waterway Owner.
Waterway Owner	the body with statutory responsibility for management of the areas and waterways within the Marina.

1.2 Singular, plural, persons

Words importing the singular number shall include the plural and the masculine gender the feminine or neuter and vice versa and words importing persons shall include corporations.

1.3 Joint and several liability

Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.

1.4 Headings

Headings have been inserted for convenience only and shall not be taken into account in interpreting the provisions of this sub-lease.

1.5 Governing law

This sub-lease shall be governed by and construed in accordance with the laws of Western Australia.

1.6 Statutes and regulations

References to statutes, regulations and by-laws shall include reference to all statutes, regulations and by-laws which amend, consolidate or replace the statutes, regulations or by-laws referred to and also include any notices or orders issued under any statutes, regulations or by-laws for the time being in force.

1.7 Public holidays

Where the day or the last day for doing an act or on which an entitlement is due to arise is a Saturday, Sunday or public holiday the day or last day for doing the act or on which the entitlement arises shall for the purposes of this sub-lease be the next following day that is not a Saturday, Sunday or a public holiday.

1.8 Bodies and associations

References to institutes, associations, bodies, government departments and authorities whether statutory or otherwise shall in the event that any institute, body, association, government department or authority ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other institute, association, body, government department or authority be deemed to refer respectively to the

institute, association, body, government department or authority established or constituted in place thereof or as nearly as may be succeeds to the powers or functions of the institute, association, body, government department or authority referred to.

1.9 Moratorium not to apply

Unless application is mandatory by law any statute, proclamation, order, regulation or moratorium (present or future) shall not apply to this sub-lease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, privileges remedies or discretions given or accruing to the Lessor.

1.10 Limitation on liability of named Lessor

The Lessor named and described in this sub-lease as the Lessor (**Original Lessor**) enters into this sub-lease to the intent to bind the Original Lessor and the lessee under the Head Lease from time to time **PROVIDED THAT** the Original Lessor shall not be liable to the Lessee for damages for breach of covenant or in any other manner under this sub-lease except while the Original Lessor remains the lessee under the Head Lease.

1.11 Date

This sub-lease is dated the date specified in Item 8 of Schedule 1.

2 Sub-Lease

The Lessor being registered or entitled to be registered as the lessee under the Head Lease **HEREBY SUB-LEASES** to the Lessee the Pen **TOGETHER ALSO** with the right at all times during the Term hereby granted for the Lessee and the Lessee's permitted assigns and the Permitted Persons in common with the Lessor and the Lessor's assigns and the Lessor's servants, employees, tenants, occupiers, customers, invitees and all other persons authorised by the Lessor to use the Marina Boating Facility **RESERVING AND EXCEPTING TO THE LESSOR** the right to install, maintain, use, repair, alter and replace pipes, ducts, conduits and wires leading through the Pen and to pass and run gas, water, sewerage, heat, oil, electricity and other power through such pipes, ducts, conduits and wires and to enter upon the Pen for such purposes.

3 Vessel Requirement

- (a) The Lessee will provide to the Lessor an application to occupy a boat pen Form prior to or contemporaneously with the Lessee executing this sub-lease.
- (b) The Lessee warrants and undertakes that all information in the application to occupy a boat pen Form is true and correct.
- (c) If the Lessee wishes to renew this sublease for a further term of twelve (12) months at the end of the initial Term, the Lessee will provide to the Lessor an Application to renew this sublease Form.
- (d) The Lessee warrants and undertakes that all information in the Application to renew this sublease Form is true and correct.
- (e) The Vessel whilst berthed at the Pen must at all times be fully registered as required by the law from time to time.
- (f) The Lessee shall provide the Lessor with a copy of the registration certificate on each occasion that registration of the Vessel is renewed.

4 Term and Rent

4.1 Term

This sub-lease shall commence on the Commencement Date and shall end on the Termination Date.

4.2 Place of payment of Rent etc

All payments of Rent and other moneys to be made hereunder shall be made at the Place for Payment of Rent specified in Item 4 of Schedule 1 without any prior demand therefore and without any abatement deduction or set-off whatsoever otherwise than as provided in this sub-lease.

4.3 Rent

The Lessee shall pay to the Lessor the Rent in accordance with Schedule 1 as varied from time to time pursuant to clause 14 of this sub-lease (if applicable).

4.4 Payment for emergency services

The Lessee shall pay to the Lessor, Marina Manager or other such person as nominated by the Lessor, the total of all costs connected with or arising out of a response to an emergency situation occurring within the Marina if that emergency situation:

- (a) is connected with the Vessel;
- (b) is connected with or arises out of the Lessee's use of the Marina or the Pen; or
- (c) is connected with or arises as a result of the actions of a Permitted Person.

4.5 Lessor's certificate

In the absence of manifest error and unless the contrary is proved a certificate of the Lessor as to an amount which is required to be used for any calculation of any payment due pursuant to Clause 4.4 shall be conclusive evidence that the amount referred to therein is correct.

4.6 Control of Marina Boating Facility

The Marina Boating Facility shall at all times be subject to the control of the Lessor who shall have the right from time to time but subject always to Clause 6.3 to establish, modify and enforce reasonable rules and regulations with regard thereto.

4.7 Obstruction

The Lessee shall not in any way obstruct or permit the obstruction of the Marina or any part thereof and will not moor in the Pen a vessel other than the Vessel.

4.8 Additional Head Lease and Licence obligations

Except where inconsistent with the terms of this sub-lease the Lessee will observe and perform the obligations of the Lessor in respect of the Pen and any other areas occupied or utilised by the Lessee or its employees pursuant to the Head Lease (other than the obligation to pay rent under the Head Lease) and any Jetty Licence for any jetty adjacent to the Pen (other than the obligation to pay licence fees or to remove the jetty on termination of the Licence).

5 Repairs and Maintenance of Pen

5.1 Lessor's and Head Lessor's power to view and maintain

- (a) The Lessor shall have power by the Lessor's agents and workmen with all necessary appliances to enter upon the Pen at all reasonable times and without previous notice to view the condition of the Pen and the Marina Boating Facility and to serve upon the Lessee a notice in writing of any defect requiring the Lessee to carry out any works in accordance with any covenant herein contained. In default of the Lessee carrying out the works according to the notice within 7 days of the date of the notice the Lessor may by the Lessor's agents and workmen and/or any person authorised by the Lessor with all necessary materials and appliances enter the Pen and execute and carry out all or any of the required works as the Lessor shall think fit and the Lessee shall on demand pay to the Lessor the costs of remedying the default and the Lessor may recover the costs by action or otherwise as for rent in arrear.
- (b) The Lessor shall have power by the Lessor's agents and workmen with all necessary materials and appliances to enter upon the Pen at all reasonable times and without previous notice and to carry out any works which in the opinion of the Lessor are of an emergency nature. In the event that the Lessor shall pursuant to this power carry out any works which should be carried out by the Lessee in accordance with the agreements, terms and covenants to be observed by the Lessee herein expressly or impliedly contained then the cost of the works shall be paid by the Lessee to the Lessor upon demand being made for payment of the same.
- (c) In the event of the early determination of the Term the Lessor shall have power by the Lessor's agents and workmen with all necessary materials and appliances to enter upon the Pen at all reasonable times and without previous notice and to carry out any works which the Lessee has failed to undertake in accordance with the agreements, terms and covenants expressly or impliedly contained herein. In the event that the Lessor shall pursuant to this power carry out any works which should be carried out by the Lessee in accordance with the agreements, terms and covenants to be observed by the Lessee herein expressly or impliedly contained then the cost of the works shall be paid by the Lessee to the Lessor upon demand being made for payment of the same.
- (d) The Lessee will permit all authorised representatives of the Head Lessor to enter on the Pen at all reasonable times and without previous notice to view the condition of the Pen and to exercise or perform the Head Lessor's rights under the Head Lease in relation to the Pen.
- (e) The Lessee will permit entry to the Pen by the Lessor to tow away any vessel from the Pen which is not authorised under this sub-lease to be moored in the Pen.

5.2 Notification of defect

The Lessee shall give to the Lessor and the Marina Manager prompt notice in writing and in the case of an emergency, verbally details of any accident to or defect or want of repair to the structure of or in any service to or fittings in the Marina or in the Pen and of any circumstances likely to be or cause any danger risk or hazard to the Marina or the Pen or any person therein.

5.3 Surrender of Pen

- (a) At the expiration or sooner determination of this sub-lease the Lessee shall surrender and deliver up possession of the Pen to the Lessor clean and free from rubbish in good and clean condition in accordance with the Lessee's Covenants and agreements to maintain as contained in this sub-lease and shall surrender all keys for the Pen to the Lessor and shall inform the Lessor of all combinations on locks (if any) in the Pen.
- (b) If the Lessee surrenders this sub-lease before the term has expired or on the sooner determination of this sub-lease due to default by the Lessee, the Lessee forfeits to the

Lessor any Rent paid in advance under this sub-lease and the Lessor has no obligation to refund to the Lessee any such Rent.

- (c) The Lessee shall remove all vessels moored in the Pen and all of the Lessee's fixtures and fittings before delivering up possession of the Pen to the Lessor and shall repair any damage to the Marina caused thereby.
- (d) The Lessee's obligations to observe and perform this covenant shall survive the expiration or other termination of this sub-lease. Notwithstanding the expiration or other termination of this sub-lease from the date of expiration or sooner determination of this sub-lease until such time as the Lessee observes and performs this covenant in full to the reasonable satisfaction of the Lessor the Lessee will pay to the Lessor liquidated damages for breach of this covenant equal to the daily rate of the then current Rent or a commercial rent whichever is the greater, such liquidated damages to be due and payable on demand.

5.4 Head Lease provisions included

Save as is otherwise expressly or by necessary implication provided in this sub-lease, this sub-lease incorporates the terms and is subject to the same agreements on the part of the Head Lessor and the Lessor respectively and the same powers and conditions including the proviso for re-entry, as are expressed or contained in the Head Lease (but only to the extent that the same apply to the Pen) as if they were set out in this sub-lease at length and the lessor and the lessee under the Head Lease were the Lessor and the Lessee respectively and the demised premises were the Pen.

5.5 Indemnity in favour of Lessor

By this sub-lease the Lessee covenants with the Lessor to indemnify and hold the Lessor harmless from any loss or damage, of any nature whatsoever, arising out of, or resulting from, the breach by the Lessee of any of the Lessee's Covenants. It is expressly acknowledged and agreed that the liability of the Lessee under this covenant includes any loss or damage suffered by the Lessor from the termination of the Head Lease which is caused by the Lessee and, in particular, any liability of the Lessor to the Head Lessor or any person leasing any other part of the Marina.

6 Operation and Use of Pen

6.1 Use of Pen

The Lessee shall use the Pen for Permitted Use only and shall not permit or suffer the Pen to be used for any other purpose without the prior written consent of the Lessor. Without limitation the Lessee undertakes and covenants not to use the Pen for commercial purposes, or use or allow the Pen to be used in connection with commercial purposes during the Term without the prior written consent of the Lessor (which consent may be withheld or issued subject to conditions, in the Lessor's absolute discretion).

In the event that the Lessee acquires a new vessel, the Lessee shall notify the Marina Manager of the changed vessel details and will request the Lessor's approval to the new vessel being designated as the Vessel.

6.2 Conduct of operations on Pen and Marina

The Lessee covenants and agrees with the Lessor as follows:

- (a) Not to exercise, carry on, permit or suffer in or upon the Pen or the Marina any noxious, noisome, obstructive or offensive act, trade, business, occupation or calling nor to do, permit or suffer any act, matter or thing to be done in or upon the Pen which may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of the adjoining or neighbouring boat pens;

- (b) In case of fire or other emergency, the Lessee will be deemed to have granted any other lessee of the Marina, Permitted Persons or the Marina Manager, the right to make forcible entry into the Vessel for the purpose of dealing with such emergency or moving the Vessel;
- (c) Not to paint or place or permit the painting or placing on the Pen or the Marina of any exterior signs, placards or other advertising media;
- (d) Not to reside or stay overnight or permit any person to reside or stay overnight on the Pen or the Vessel moored in the Pen;
- (e) To keep the immediate surroundings of the Pen in a thorough state of cleanliness;
- (f) To store all garbage, rubbish and refuse in a proper hygienic manner and to attend to the expeditious disposal thereof and to observe any directions given from time to time by the Lessor relating thereto;
- (g) Not to burn any garbage, refuse or rubbish except in an incinerator or incinerators and in the place or places as shall be approved by the Lessor and any local or other authority for that purpose;
- (h) Not without the prior written consent of the Lessor to use or permit or suffer to be used chemicals, burning fluids, acetylene gas or alcohol in lighting the Pen or any other method than by electricity nor to use or permit or suffer to be used any method of heating other than by electricity, gas, oil or solid fuel;
- (i) To take all proper precautions to keep the Pen free from rodents, vermin, insects, pests, birds and animals and in the event of failing so to do if so required by the Lessor (but at the cost of the Lessee) to employ from time to time or periodically pest exterminators appointed by the Lessor for that purpose;
- (j) Not to make any alteration or addition in or to the Marina nor install any fitting or equipment nor to injure, mark, paint, drill or deface in any way any part of the Marina nor to overload or otherwise harm the same without the written consent of the Lessor on each occasion;
- (k) Not to do any act or thing or permit the doing of any act or thing which might result in excessive stress or floor loading to any part of the Pen or the Marina;
- (l) Not to repair or maintain the Vessel or permit the Vessel to be repaired or maintained alongside or in the vicinity of the Pen where that repair constitutes a nuisance, danger or inconvenience to any lessee or sublessee of the Marina or to members of the public without the prior written consent of the Lessor which consent may be withheld by the Lessor in the Lessor's absolute discretion;
- (m) No maintenance that is likely to cause environmental impacts such as noise, fuel or oil spills or waste to be stored or tipped onto the jetty or into the Waterway is to be carried out at the Pen;
- (n) Not without the prior written consent of the Lessor, to moor the Vessel or permit the Vessel to be moored other than completely within the Pen;
- (o) To use its best endeavours to ensure that at all times the Vessel is safely moored in the Pen;
- (p) To prepare for storms and use additional lines as required to connect to the Vessel to make it fast. Any additional lines are to be removed as soon as possible after the storm passes to prevent injury;
- (q) Not do or omit to do or permit to be done or omitted to be done any act which is likely to cause contamination to the water in the Marina, including but without limitation the Lessee must not:
 - (1) discharge or permit to be discharged any petroleum products from the Vessel moored to or in the vicinity of the Pen or in the seabed area of the Pen; or

- (2) discharge, dispose of or deposit or permit to be discharged, disposed of or deposited any waste material, whether solid or liquid or any pollutant into the Marina;
- (r) Not to obstruct, or permit the Waterway of the Marina to be obstructed, by any vessel, craft or object of the Lessee or in any other way whatsoever and without affecting any other right of the Lessor under this sub-lease, the Lessee authorises the Lessor and the Lessor's agents to, at the Lessee's cost and expense remove and store any vessel, craft or object of the Lessee which the Lessor, in the Lessor's absolute discretion considers is causing an obstruction to the Waterway of the Marina and the Lessee must pay to the Lessor on demand any costs and expenses incurred by the Lessor as a result of a breach by the Lessee of this clause 6.2 (r);
- (s) Not do or permit anything which may prejudice the security or safety of the Marina and in particular must ensure that all security doors and gates are kept locked or secure or in an operational state, as the case may be, when not in immediate use;
- (t) To exercise a high degree of caution and responsibility to ensure the security of any security keys or devices issued by the Lessor and will not duplicate or permit any security key or device to be duplicated and must not allow any party other than those notified to the Lessor in writing to have possession of any security key or device; and
- (u) To comply with and observe all directions and limitations which the Lessor shall impose from time to time with regard to access by vehicles and pedestrians to and from the Pen by land and the passage of the Vessel to and from the Pen by water.

6.3 Compliance with rules

The Lessee will abide by and comply with the following rules and regulations of the Marina and any variations, additions or amendments to such rules and regulations from time to time made by the Lessor **PROVIDED THAT** no such additions, variations or amendments shall be inconsistent with the rights of the Lessee as expressed in this sub-lease:

- (a) Registration numbers must be appropriately displayed on the Vessel and provided to the Marina Manager to allow identification of the Vessel in its Pen.
- (b) The Vessel must be maintained in good condition and must not be allowed to become unsightly or be reduced to a dilapidated state. Supplies, materials, accessories and debris must not be stored on the Vessel decks nor will laundry be hung from the Vessel at any time.
- (c) The safety of the Vessel and crew is the sole responsibility of the Lessee and Permitted Persons. The Lessee must comply with all applicable acts and regulations of the relevant authority in the use of the Vessel in the Waterway and the vicinity of the Marina. The Vessel must have all the required safety equipment aboard at all times.
- (d) The Lessee and Permitted Persons are responsible for the safety of guests including children. Children and non-swimmers must use personal flotation devices on the jetty. Children must be supervised by a responsible adult at all times. No running on, swimming or fishing from the jetties is permitted. The Lessee is responsible for first aid.
- (e) The Lessee and Permitted Persons are responsible for the operation of the Vessel within the Waterway. The Vessel must be operated with due care and diligence to prevent injury to any person or damage to the Marina Facilities and in accordance with good seamanship and marine regulations.
- (f) The Lessee must not store dinghies in unused pens and dinghies must be stored on the Lessee's Vessel when not in use.
- (g) No part of the Marina is to be obstructed or blocked by leaving or placing therein any article or thing or by any meeting of persons. Walkway and finger decks are to be kept clear of all Lessee's supplies, materials, accessories and debris. No mooring lines or cables are to be laid across walkways. The ends of lines must be kept short and in a tidy

state. Vessel extremities, including marlin boards, bow sprits, pulpits and the like, must not overhang walkways.

- (h) No boarding steps are to be placed on or attached to the Marina Pens without the consent of the Marina Manager.
- (i) All electrical connections must be made at the adjacent berth power outlets. Cables must be of an approved type for marina applications and maintained in good and safe conditions. All electrical cables must be kept out of the water. The boat electrical system and equipment must be maintained in good condition at all times. The Lessee must ensure that only approved electricians carry out wiring to the shore power cable or the Vessels electrical system and equipment. The Marina Manager reserves the right to check cable connections for their safety and stray current.
- (j) The Lessee must allow the Lessor or its authorised representatives to have access to the Vessel to conduct Vessel inspections during the Term of the sub-lease on 7 days notice being given to the Lessee by the Lessor or without notice in the case of an emergency.
- (k) No unreasonable noise is to be made upon any part of the Marina.
- (l) The appurtenances contained in or about the Marina are not be used for any purpose other than those for which the same were constructed nor are any sweepings rubbish rags or other deleterious substances be placed in the toilets urinals basins or drains therein.
- (m) The Lessee must ensure that the chafers in the seabed area of the Pen are positioned at the correct height to avoid any damage being caused to the structure of the Pen or the Marina Boating Facility and the Lessee must promptly replace any chafer which is damaged or worn.
- (n) The Lessee must keep the Pen and the seabed area of the Pen clean, tidy and free from rubbish.
- (o) The Lessee must not bring any animal or bird onto the Pen or the Marina or the seabed area of the Pen.
- (p) The Lessee must not sell any goods, products or services from the Marina or the Pen.
- (q) The Lessee must not display from or affix to Marina or the Pen, the improvements on the Pen, or the seabed area of the Pen any advertisement, sign or notice without the prior written consent of the Lessor.
- (r) The Lessee must not do or carry on the Marina or the Pen or the seabed area of the Pen any harmful, offensive or illegal act, matter or thing, or any act or thing which causes nuisance, damage or disturbance to the Lessor or any occupier of the Marina.
- (s) The Lessee must not do or omit to do or permit to be done or omitted to be done any act which is likely to cause contamination to the Waterway of the Marina.
- (t) The Lessee must not allow discharge of onboard sanitary facilities into the Waterway. Only vessels with holding tanks are to use Vessel sanitary facilities.
- (u) The Lessee must not repair or maintain the Vessel or permit the Vessel to be repaired or maintained in the Marina or the seabed area of the Pen where that repair constitutes a nuisance, danger or inconvenience to other occupiers of the Marina or to members of the public.
- (v) The Lessee must not obstruct the Waterway of the Marina.
- (w) The Lessee must not deliver or permit to be delivered goods or supplies to and from the Pen except in a manner which will cause minimum inconvenience to the public and to other occupiers of the Marina and the Lessee must only make those deliveries during the periods specified by the Lessor from time to time.

6.4 Fire and Safety

If the Vessel is fitted with a combustion engine, electrical equipment, gas or liquid fuelled appliances, it is not to be moored in the Pen unless the Lessee complies with the following rules:

- (a) Refuelling in the Pen is strictly prohibited. Only auxiliary fuel in approved containers manufactured to Australian Standards is to be carried within the Marina. No fuel or oil is to be discharged into or otherwise caused to enter the Waterway;
- (b) No Vessel is to be left unattended in the Pen with an engine running or any combustible fuel device lit including portable power supplies;
- (c) Fuel systems and fuel tanks are to comply with Australian Standard 1799 Small Pleasure Boats Code;
- (d) Fuel tanks are not to be installed above inboard engines or hot areas such as exhausts. Petrol fuel tanks are to be metal, vented to open air, electrically grounded and have fillers positioned so that spillage and fumes do not enter the Vessel. Welded construction is preferred and is mandatory for aluminium tanks;
- (e) Fixed fuel tanks are to have a shutoff valve or cock fitted directly to the tank outlet. Ball and diaphragm stopcocks and stopcocks on return lines in interlinked multiple tank installations are required;
- (f) Fuel lines are to be metal or other material certified as suitable by the manufacturer, clipped rigidly in place with flexible connection to the engine. Flexible lines are to be fire resistant and coded by the manufacturer as such;
- (g) Site gauges are not to be used on fuel tanks;
- (h) Inboard spark ignition engines are to be fitted with a spark arrestor at the carburettors or induction intake. Side draught carburettors are to have an approved sand filled drip tray;
- (i) To minimise risk of fire, bilges are to be kept free of fuel, oils or rags that have soaked up flammable liquids. Storing of flammable liquids such as paint or thinners is not permitted;
- (j) Low voltage (<32V DC) electrical installations are to comply with Australian Standard 1799 Small Pleasure Boats Code. Cable identification is required. Batteries are to be firmly secured. Switchboards are to be fire resistant and non-corroding. Rubber insulation is not permitted. Mains shore power installations are to comply with the relevant power supply authority regulations and installed by a licensed electrician;
- (k) All LPG installations are to comply with the relevant gas supply authority regulations and are to be installed by a licensed gas fitter experienced in marine installations. The installer shall issue the appropriate compliance sticker to the Vessel. Vessels without a compliance sticker are required to have an inspection testing the installation for leaks and certified;
- (l) Gas will only be permitted for cooking. All new work must comply with Australian Gas Standard 601 and include a combustible gas detection system;
- (m) Maximum gas capacity will be 10 kg per bottle. The installation will ensure that gas containers and regulating valve greater than 3 kg are stored above the waterline in a vented gas tight container vented at its bottom to the outside of the hull. Containers less than 3 kg are considered portable and must not be left aboard the Vessel. Each appliance must have its own diaphragm type shut off valve. Post a notice of a proprietary type with white letters on a red background reading "Remember to turn the gas off at bottle";
- (n) The use of petrol (or similar hydrocarbons with flash point below 60 degrees) for lighting, cooking or heating is prohibited. Kerosene refrigerators are not permitted;
- (o) Fire extinguishers are to be located in conspicuous, readily accessible places and in suitable places around the Vessel. Where they are not conspicuous their position must be conspicuously indicated with a sign. Only extinguishers complying with Australian

Standard 1841 Portable fire extinguishers for dry and carbon dioxide extinguishers are acceptable;

- (p) The following minimum requirements are mandatory:

LOV	Conditions	Minimum requirements
Under 8 m	Carries petrol or LPG below decks	2 x 5B(E) + Fire blanket
8 m and over (max 12m pens)	Carries petrol or LPG below decks	2 x 10B(E) OR 2 x 5B(E) + Fire blanket
Under 8 m	Any form of auxiliary engine or naked flame other than LPG	2 x 5B(E) + recommend Fire blanket
8 m and over (max 12m pens)	Any form of auxiliary engine or naked flame other than LPG	3 x 5B(E) + recommend Fire blanket
Open boat < 4.8m	Any form of auxiliary engine or naked flame	2 x 5B(E)

- (q) Fire extinguishers are to be regularly tested in accordance with the manufacturer's specifications or as provided for in Australian Standard 1851 Maintenance of fire protection systems and equipment. Automatic extinguishers in machinery spaces will count as 1 x 10B (E) fire extinguisher; and

- (r) Bilge pumps must be set up in the lower part of the bilge. To prevent discharges other than for emergency when there is no one on board, the sender switches must either be of the electronic hydrocarbon sensing type or positioned above the level in the bilge where the pumps would be able to pump out fuel even if the entire contents of the Vessel's fuel tank had leaked into the bilge.

The Marina Manager may request checks for compliance with these rules. The Vessel shall comply with the relevant sections of Australian Standard 1799 Small Pleasure Boats Code. The rules above do not replace but rather supplement the rules of the relevant government authorities, which must be complied with at all times.

6.5 Provision of current electrical safety certificate

- (a) The Lessee must, before bringing or causing the Vessel to be brought into the Marina Boating Facility, provide to the Lessor a copy of a current Electrical Safety Certificate for the Vessel certifying that the electrical equipment or electrical components of the Vessel including any Private Generating Plant as defined in the Regulations affixed to or for use on board or ancillary to the use of the Vessel:
- (1) has been checked and tested and is safe and complies with all regulatory requirements and the requirements of any Authority; and
 - (2) the Vessel is safe to connect to the Marina's electricity supply.
- (b) The Lessee must within 2 Business Days of any electrical fitting work or modifications being made to the Vessel during any term of this Sub-Lease provide to the Lessor a copy of a current Electrical Safety Certificate for the Vessel certifying that:
- (1) the electrical fitting work or modifications were completed by a licensed electrician;
 - (2) the Vessel has been checked and tested and is safe and complies with all regulatory requirements and the requirements of any Authority; and
 - (3) the Vessel is safe to connect to the Marina's electricity supply.

- (c) The Lessee must disconnect the Vessel from the Marina's electricity supply during the period any electrical fitting work or modifications are required to or are being made to the Vessel as referred to in above sub-clause (b), and must not reconnect the Vessel to the Marina's electricity supply until the Lessee provides the Lessor with a copy of a current Electrical Safety Certificate for the Vessel certifying that:
- (1) the electrical fitting work or modifications were completed by a licensed electrician;
 - (2) the Vessel has been checked and tested and is safe and complies with all regulatory requirements and the requirements of any Authority; and
 - (3) the Vessel is safe to connect to the Marina's electricity supply.

6.6 Mooring of Vessel

- (a) The Vessel must be properly secured to the mooring attachments with a minimum of 4 mooring lines typically provided with bow, stern and spring lines as necessary to provide a safe and secure attachment to the satisfaction of the Marina Manager;
- (b) Mooring lines must be maintained in good order;
- (c) Chafing gear or other line protectors must be used as necessary;
- (d) Any mooring line system, considered by the Marina Manager to be inadequate, worn or damaged must be replaced by the Lessee, without delay. If required work is not carried out in a timely manner, the Marina Manager may refit the mooring lines and the cost will be debited to the Lessee and will be due and payable on demand;
- (e) The Vessel in the mooring Pen shall have a LOV not greater than the length of the Pen;
- (f) The minimum requirements for mooring rope size are as follows:

Mooring Rope Minimum Requirements (diameter)

LOV	Polyethylene (silver)	Nylon
Under 8m	16 mm	12 mm
8m and over (Max 12m pens)	20 mm	16 mm

- (g) The Lessee must provide fenders for their Vessel to ensure that no chafing or damage is caused to the floating units or walers and edge strips; and
- (h) The Lessee must report to the Marina Manager any accidents which occur during berthing or mooring to allow an inspection of structural damage.

6.7 Recreational Skipper's Ticket

The Lessee must ensure that any person operating a Vessel in the Marina holds a Recreational Skipper's Ticket.

6.8 Lessee liable for Permitted Persons

The Lessee is liable for the acts and omissions of Permitted Persons arising out of or in connection with the rights and obligations created by this sub-lease.

7 Insurance and Indemnity

7.1 Insurance Policies

- (a) The Lessee covenants that it shall, at the Lessee's cost, effect in the respective names of the Lessee and the Lessor for their respective rights and interests a policy of Public Liability Insurance which covers a minimum of \$10,000,000 for any one claim.
- (b) The Lessee covenants that it will have and maintain in effect, during the Term, an "all risk" insurance policy including hull insurance in an amount at least equal to the value of the Vessel and its content.

7.2 Production of policy

The Lessee shall, if required by the Lessor, forthwith produce to the Lessor a copy of any policy of insurance effected pursuant to clause 7.1 and a current certificate of renewal in respect thereof.

7.3 Indemnification of Lessor

- (a) The Lessee shall indemnify, and keep indemnified, the Lessor from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with loss of life personal injury and/or damage to property arising from or out of any occurrence in upon or at the Pen or the Marina or the use by the Lessee of the Pen or the Marina or any part thereof or to any person or the property of any person using or entering on or near the Pen or the Marina howsoever occasioned or wheresoever it may occur if that loss or damage is caused or constituted to be a wilful or negligent act or wilful or negligent omission of the Lessee or a Permitted Person.
- (b) The Lessee's indemnity for the Lessor in this clause includes, but is not limited to all loss, damage or expense which the Lessor suffers or incurs in respect of the cost of repair or replacement in respect of any damage caused to:
 - (1) any part of the Marina;
 - (2) any service, including energy, water, sewerage disposal or other like service,if that damage is caused or constituted to be a wilful or negligent act or wilful or negligent omission of the Lessee or a Permitted Person.

7.4 Increase in Lessor's insurance premium

The Lessee shall not, without the prior written consent of the Lessor, bring to or keep any article or thing or do any act, matter, or thing upon the Marina, Marina Boating Facility, Water Way or Pen which shall or may increase the rate of premium under any policy of insurance taken out by the Lessor in respect of the Marina, Marina Boating Facility, Water Way or Pen or any part or parts thereof. If the Lessee shall bring or keep any such article or thing upon the Marina, Marina Boating Facility, Water Way or Pen or shall do any such act, matter or thing upon the Marina, Marina Boating Facility, Water Way or Pen then the Lessee shall pay the amount of the increased premium to the Lessor upon demand.

7.5 Avoidance of Lessor's policy

The Lessee shall at all times in the Lessee's use of the Pen comply with the requirements of the relevant authorities and all laws and regulations for the time being relating to fires and the provisions of any and every relevant statute, regulation and ordinance. If the Lessee shall do or permit to be done any act, matter or thing which has the effect of invalidating or avoiding any policy of insurance taken out by or effected by or for the benefit of the Lessor then the Lessee shall be responsible for any damage or loss which the Lessor may suffer or incur as a result thereof.

7.6 Lessee's risk

- (a) The Lessee shall use and occupy the Pen at the Lessee's own risk and the Lessee hereby releases to the full extent provided by law the Lessor and the Lessor's agents, servants, contractors and employees from all claims and demands of every kind resulting from any accident, damage or injury occurring therein.
- (b) Without limiting clause (a), the Lessee acknowledges that the Vessel moored in the Pen and all equipment attached to or associated with the Vessel (including mooring ropes) are entirely at the risk of the Lessee and the Lessor will not be responsible to the Lessee for any loss or damage caused to the Vessel (including any equipment attached to or associated with the Vessel and any mooring ropes) or sustained by the Lessee, including but without limitation any loss or damage caused or sustained:
 - (1) as the result of any accident or of any negligent act or omission of the Lessor, its agents, servants or any other person using the Marina; and
 - (2) as a consequence of the Lessor evicting or causing the Vessel to be towed away from the Pen or the Waterway of the Marina in accordance with this sub-lease.

8 Annual notice requirement by Lessee

- (a) If the Lessee desires to renew this sub-lease for the Pen at the end of the then Term, the Lessee must provide to the Lessor a fully completed Application to renew this sublease Form including all annexures/attachments referred to in the Application Form. In particular the Lessee must ensure that a current certificate of insurance is annexed to the Application Form. The Lessee must ensure that the Application Form is received by the Lessor at least 4 weeks prior to the end of the then Term.
- (b) Nothing in this clause obliges the Lessor to renew this sub-lease, and the Lessor retains an absolute discretion as to whether to grant any renewal of this sublease.
- (c) If the Lessor agrees to grant the Application and agrees to renew this sublease, the renewal shall be for a fixed term of twelve (12) months commencing at the end of the then Term. In that event this sublease shall be renewed for the fixed term of twelve (12) months upon the same terms and conditions as this sublease, including this clause 8 which allows the Lessee to make application for the grant of a further renewed term at the end of the first twelve (12) month renewal period, and so on.

9 Covenants by Lessor

The Lessor covenants with the Lessee that subject to the Lessee paying the Rent and other moneys hereby reserved and observing and performing all the terms, covenants, conditions and provisions on the Lessee's part to be observed and performed the Lessee may peaceably possess and enjoy the Pen without any interruption or disturbance from the Lessor or any person or persons lawfully claiming under or in trust from the Lessor.

10 Default by Lessee

10.1 Right of Re-entry

- (a) If:
- (1) the Rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for 14 days after the same shall have become due (whether any formal or legal demand therefore shall have been made or not); or
 - (2) the Lessee shall at any time fail or neglect to perform or observe any of the other terms, covenants, conditions or provisions herein expressly or impliedly contained and on the Lessee's part to be performed and observed and the default is continued for a period of 21 days after service of a notice calling upon the Lessee to remedy the breach or default; or
 - (3) the Lessee while the Pen or any part thereof shall remain vested in the Lessee being a company shall enter into liquidation whether compulsory or voluntary not being a voluntary liquidation for the purpose of amalgamation or reconstruction or shall enter into arrangement or composition for the benefit of the Lessee's creditors or not being a company shall assign the Lessee's estate or enter into a deed of arrangement for the benefit of the Lessee's creditors (provided always that any deed of assignment or deed of arrangement made under the *Bankruptcy Act* 1966 (Cth) and any act or actions by or against the Lessee or the Lessee's property which is or may be deemed to be an act of bankruptcy under the *Bankruptcy Act* shall be excluded from the operation of this clause) and in any such case any default in terms of paragraphs (1) or (2) occurs; or
 - (4) any execution either by writ or warrant or by appointment of a receiver be levied on or against any of the property or assets of the Lessee, or a receiver, liquidator or administrator is appointed to the Lessee and in any such case any default in terms of paragraphs (1) or (2) occurs,

THEN AND IN ANY SUCH CASE the Lessee will be deemed to be in default under this sub-lease and it shall be lawful for the Lessor or any person or persons duly authorised by the Lessor to re-enter the Pen or any part thereof in the name of the whole and to hold and enjoy peaceably the Pen thenceforth as if this sub-lease had not been made without prejudice to any right of action or remedy of the Lessor in respect of the breach, non-performance or non-observance of any terms, covenants, conditions or provisions hereof by the Lessee and thereupon the Lessor shall be freed and discharged from any action, claim or obligation howsoever arising from the Lessee.

- (b) For the purposes of re-entry the Lessor or the Lessor's appointed agent or servant shall have power to open by any means any door, gate or fastening for the purpose of resuming possession of the Pen and to expel and remove all persons and other property (including the Vessel) therefrom (without being liable for any action for trespass, assault or other proceedings whatsoever for so doing).

10.2 Acceptance of Rent or other moneys hereby reserved not to prejudice Lessor's rights

Acceptance of Rent or other moneys hereby reserved by the Lessor after default by the Lessee under this sub-lease shall be without prejudice to the exercise by the Lessor of the powers conferred upon the Lessor by Clause 10.1 hereof or any other right, power or privilege of the Lessor under this sub-lease and shall not operate as an election by the

Lessor either to exercise or not to exercise any of the Lessor's rights, powers or privileges.

10.3 Lessor's right to remedy defaults

The Lessor may but shall not be obliged to remedy at any time without notice any default by the Lessee under this sub-lease and whenever the Lessor so elects all costs and expenses incurred by the Lessor (including legal costs and expenses) in remedying a default shall be paid by the Lessee to the Lessor on demand.

10.4 Effect of waivers of default

No consent or waiver expressed or implied by the Lessor to or of any breach of any covenant condition or duty of the Lessee shall be construed as a consent or waiver to or of any other breach of the same or any other covenant condition or duty.

10.5 Damages claimable after re-entry

In regard to payment of the Rent and any other moneys payable by the Lessee to the Lessor hereunder (for the purposes of this clause **Lease Moneys**) the time for payment shall be of the essence, and in addition to any rights of action or remedies of the Lessor referred to in clause 10.1 the Lessor shall be entitled in any case where the Lessor has re-entered the Pen as a result of non-payment of the Lease Moneys or any part thereof or any other failure on the part of the Lessee to perform or observe the terms, covenants, conditions or provisions of this sub-lease (whether express or implied), to recover as damages from the Lessee the difference between the amount of the Lease Moneys for such part of the term of this sub-lease as had not expired at the date of such re-entry, and the amount of Lease Moneys it may reasonably be anticipated the Lessor will receive for that period from another or other tenants.

10.6 Termination of Head Lease

In the event that the Head Lease is terminated, this sub-lease will under the terms of the Head Lease be deemed to become a lease between the Head Lessor as Lessor and the Lessee as Lessee with all of the Lessee's rights and obligations contained in this sub-lease preserved and the Lessee will not be entitled to any compensation whatsoever for the early termination of this sub-lease arising out of the termination of the Head Lease for whatever reason.

11 Additional covenants by Lessee

11.1 Compliance with legislation and notices

- (a) The Lessee shall comply with and observe at the Lessee's own expense:
- (1) all present and future legislation, regulations, by-laws or orders of any competent authority affecting the use or cleanliness of the Pen by the Lessee;
 - (2) with all notices received either by the Lessor or the Lessee from any statutory or public authority including notices requiring the carrying out of any maintenance or works and will keep the Lessor indemnified in respect of all such matters,

PROVIDED THAT nothing herein contained shall make it obligatory upon the Lessee to carry out any work of a structural nature except as may be required or necessary by reason of the Lessee's use of the Pen.

- (b) In the event of any dispute arising as to whether any work is of a structural nature the question in dispute shall be determined by an architect or structural engineer who shall be nominated by the Lessor and shall act as an expert and not as an arbitrator and whose fees shall be paid by the party against whom the decision is made.
- (c) Without limitation to the generality subclauses (a) and (b), the Lessee will do all things and comply and observe all requirements contained in the Occupational Safety and Health Act 1984 and obtain and maintain any permits or certificates of registration which the Act may require to be obtained or maintained.
- (d) If the Lessee fails to comply with subclause (c), the Lessor may with workmen and others and with all necessary materials and appliances enter upon the Pen and may do any act for the purpose of complying with the Act and for that purpose the Lessee hereby irrevocably appoints the Lessor to be the Lessee's true and lawful attorney and any expense incurred by the Lessor in so doing shall constitute a liquidated debt and be payable to the Lessor by the Lessee on demand.

11.2 Licences and permits

The Lessee shall keep in force all licenses and permits required for the use and occupation by the Lessee in or upon the Pen.

11.3 Sub-lease, assignment, underletting etc

- (a) The Lessee shall not sublet, assign, transfer, mortgage, charge or otherwise part with possession of the Pen or any part thereof or any estate or interest therein without the prior written consent of the Lessor or any other person or authority required by law.
- (b) If the Lessor grants consent for assignment that consent shall be subject to the Lessee, at the Lessee's expense, withdrawing any subject to claim caveat lodged by the Lessee against the title for the Marina or any part thereof and to the assignee executing, at the cost of the Lessee or assignee, a deed of covenant with the Lessor prepared by and in the form required by the Lessor's solicitors for the due compliance by the assignee of the terms, covenants, conditions and provisions of this sub-lease and where the proposed assignee is a corporation the Lessor may, as a condition to the Lessor's consent to the assignment, require that the covenants by the assignee contained in the deed of covenant shall be guaranteed by the directors and principal shareholders of the corporation.
- (c) Any change in the principal shareholding altering the effective control of the Lessee (if a company) shall be deemed an assignment of this sub-lease and shall require the consent of the Lessor as aforesaid.
- (d) It is hereby expressly agreed that the provisions of sections 80 and 82 of the *Property Law Act 1969* are excluded from this sub-lease.

11.4 Registration of Lease

- (a) If this sub-lease is capable of registration and subject to the Head Lease being registered and the Lessee gives written notice to the Lessor that the Lessee wishes to have this sub-lease registered, this sub-lease will be registered at Landgate.
- (b) The Lessor will at the Lessor's cost and expense produce or cause to be produced the duplicate Certificate of Title at the Land Titles Office for the purpose of registration of this sub-lease.
- (c) The Lessor will execute all documents and undertake all acts, matters and things as may be necessary to enable registration of this sub-lease.

- (d) The Lessor will, at the Lessee's cost and expense, arrange preparation of a sketch depicting the Pen in a form suitable for annexation to this sub-lease and registration at Landgate.
- (e) The Lessee covenants and agrees with the Lessor that forthwith upon the expiration or the sooner determination of this sub-lease the Lessee will, at the Lessee's cost and expense, do all things necessary to enable this sub-lease to be noted as surrendered at Landgate and, if the Lessee fails to do so, the Lessee will pay the Lessor's costs of causing the same to be effected.

11.5 Forbidding Lodging of Absolute Caveats

- (a) Neither the Lessee nor any agent or other person on behalf of the Lessee will lodge a caveat in respect of the title for the Marina or any part thereof other than a "subject to claim" caveat.
- (b) The Lessee covenants and agrees that at the expiration or sooner determination of this sub-lease, the Lessee will withdraw any caveat lodged by or on behalf of the Lessee in respect of this sub-lease.
- (c) In the event of the Lessee lodging an absolute caveat or of the Lessee failing to withdraw a caveat at the expiration or sooner determination of this sub-lease, the Lessee in consideration of the Lessor having granted this sub-lease irrevocably constitutes and appoints the Lessor and if the Lessor is a corporation each and every one of the directors and other officers of the Lessor jointly and severally the agent and attorney of the Lessee to surrender and withdraw the caveat and for those purposes to sign any withdrawals, surrenders and any other instruments and documents and to do all acts, matters and things as may be necessary or expedient for carrying out the powers granted in this clause 11.5 and the Lessee hereby ratifies, confirms and allows and agrees to ratify, confirm and allow all and whatsoever the Lessor lawfully does or causes to be done under or by virtue of this clause 11.5, the cost of which shall be borne and paid by the Lessee upon demand.

11.6 Legal costs etc

The Lessee shall pay all costs, charges and expenses of and incidental to the stamping and registration of this sub-lease in triplicate and all registration fees payable (including any requisition fees payable) in the registration of this sub-lease and all stamp duties hereon and in case of default by the Lessee in performing or observing any terms, covenants, conditions and provisions herein contained or implied the Lessee shall pay to the Lessor all legal costs on a full indemnity basis, charges and expenses for which the Lessor shall become liable in consequence of or in connection with such default, including all costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purpose of and incidental to the preparation and service of a notice under Section 81 of the Property Law Act 1969 (W.A.) requiring the Lessee to remedy a breach of the terms, covenants conditions and provisions herein contained or implied notwithstanding forfeiture for the breach shall be avoided otherwise than by relief granted by the Court.

12 Miscellaneous Provisions

12.1 Total or partial destruction

The following provisions shall apply:

- (a) If the Pen or the Marina or any part of the Pen or the Marina shall at any time during the continuance of the sub-lease without neglect or default of the Lessee be destroyed or

damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee then and as often as the same shall happen the Lessor may elect to terminate this sub-lease and refund to the Lessee a proportionate part of the Rent paid for the Term in the same proportion as the unexpired period of the Term bears to the total period of the Term or failing that election the other moneys payable hereunder or a proportionate part thereof according to the nature and extent of the damage shall abate until the Pen or the Marina shall have been rebuilt or made fit for the occupation and use of the Lessee and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Commercial Arbitration Act.

- (b) If the Lessor does not elect to terminate this sub-lease under the last preceding sub-clause but if other moneys payable hereunder do not abate in the terms of the last preceding subclause the same shall continue to be payable by the Lessee in the terms of this sub-lease.
- (c) The Lessor and the Lessee agree that if the Pen is rendered unfit for the use and occupation by the Lessee, then if the Lessor elects not to terminate this sub-lease the Term will be extended by the same period of time from which the Pen is rendered unfit for use and occupation by the Lessee until the Pen is made fit for the use and occupation by the Lessee.

12.2 Alterations or additions

The Lessor reserves the right to add on to or alter the Pen and the Lessee hereby agrees that the Lessor shall be at liberty so to do provided that any alterations or additions are carried out with reasonable dispatch and provided further that the leased premises to be made available to the Lessee for the balance of the term of this sub-lease shall be of comparable size and situation to the Pen.

12.3 Holding over

Should the Lessee continue to occupy the Pen beyond the expiration of the Term with the consent of the Lessor the Lessee shall do so hereunder as a monthly tenant at a monthly rent equal to 105% of the amount equal to the pro-rata monthly rent paid during the Preceding Term and other moneys paid by the Lessee for the last month of the Term with the tenancy being determinable by 30 day's written notice given by either party to the other and the Lessee shall remain to be entitled and subject to the rights and obligations contained herein.

12.4 Notices

Any notice or other document or writing required to be served, delivered or given hereunder to the Lessee may be served, delivered or given personally to the Lessee or any responsible employee of the Lessee or may be served delivered or given to the Lessee by sending the same to any address (including email) or facsimile machine number specified in Item 7 of Schedule 1 or any other address notified by the Lessee to the Lessor in writing and any such notice or other document in writing sent shall be deemed to be given to the correct address and at the time when the same would normally be delivered in the ordinary course. Where the Lessee comprises more than one person, service of a notice on any one Lessee will be deemed service on each and every person comprising the Lessee.

12.5 Inspection and "To Let" notices

The Lessee will at all reasonable times permit the Lessor to exhibit the Pen to respective tenants or proposed lessees of the Pen or the Marina.

12.6 Heavy equipment

The Lessee shall not without the written consent of the Lessor bring on to the Pen or the Marina any heavy plant, machinery or equipment which will or may be liable to cause damage to the structure of the Pen or the Marina or any building or other permanent improvement on the Marina.

12.7 Entire Agreement

The Lessee acknowledges and declares that in entering into this sub-lease the Lessee has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor in respect to the suitability of the Pen or the facilities, amenities or services thereof for any purpose or use to be carried on therein and all warranties if any implied by law are hereby so far as legally possible expressly negated and that the terms, covenants, conditions and provisions contained in this sub-lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties hereto and it is expressly agreed and declared that except as otherwise provided in this sub-lease that no further or other terms, covenants, conditions or provisions whether in respect of the Pen or otherwise shall be deemed to be implied herein or to arise between the parties hereto by way of collateral or other agreement.

12.8 Interest on default

In the event of any payment of Rent and any other payments payable by the Lessee to the Lessor hereunder not paid on the due date that indebtedness shall bear interest at the rate being 4% per annum above the Westpac Indicator Lending Rate published by Westpac from time to time computed from the date that the same shall have become due and payable to the date of payment, the interest to accrue from day to day and to be payable and paid on demand.

12.9 Severability

To the extent that any one or more of the provisions herein contained is prohibited by any applicable law including the *Trade Practices Act 1974* such provisions and each of them shall to such extent be ineffective without invalidating or modifying the remaining provisions hereof which shall continue in full force and effect as if the provisions so prohibited had not been included herein as from the date hereof.

12.10 Commercial Arbitration Act legal representation

Where it is necessary for any dispute under this sub-lease to be determined by an arbitrator or umpire under the Commercial Arbitration Act then each party to the proceedings before an arbitrator or umpire may be represented by a duly qualified legal practitioner.

12.11 Access to Pen

Each reference in this sub-lease to the right of the Lessor of access to the Pen includes a similar right to the Head Lessor and to all persons authorised by the Lessor or the Head Lessor including, but not limited to, their respective employees, agents, contractors and sub-contractors.

12.12 Consent

Wherever the Lessee is required to obtain the consent or approval of the Lessor under this sub-lease, the Lessee is also required to obtain the consent or approval of the Head Lessor.

12.13 Marina Manager

- (a) The Lessee must comply with the directions of the Marina Manager, from time to time, provided those directions are not inconsistent with this sub-lease.
- (b) Directions of the Marina Manager will be deemed to be directions of the Lessor.

13 Goods and services tax

13.1 Definitions

Unless the contrary intention appears, in this clause:

- (a) **GST** means a tax levied on a Supply including but not limited to the value represented by the Rent or other money payable to the Lessor for goods or services or any other thing under this sub-lease.
- (b) **Supply** means a good or service or any other thing supplied under this sub-lease, to the Lessee or the Pen or howsoever and includes, without limitation utilities and other goods or services or property.

13.2 Lessee must pay GST

The Lessee must pay to the Lessor the amount of GST, if any, which the Lessor is required by legislation to account for on any Supply made under the terms of this sub-lease.

13.3 Lessee must pay GST at same time

The Lessee must pay to the Lessor the amount of the GST that the Lessee is liable to pay or account for under clause 13.2:

- (a) at the same time; and
- (b) in the same manner,

as the Lessee is obliged to pay for that Supply, including in relation to other money payable under this sub-lease at the time the Lessee is obliged to pay those amounts under this Sub-lease.

13.4 Prices do not include GST

The price for each Supply, including Rent and other money payable under this sub-lease, fixed or determined under this sub-lease have been determined prior to the introduction of GST and accordingly do not include GST on that Supply and the Lessee must pay the amount of GST in addition to the price for that Supply fixed or determined under this sub-lease.

13.5 Apportionment of GST

Where a Supply is not separately supplied to the Lessee, the liability of the Lessee for any amount for GST in relation to that Supply will be determined by the Lessor acting reasonably.

13.6 Statement of GST paid is conclusive

A written statement given to the Lessee by the Lessor of the amount of GST that the Lessor pays or is liable to pay or account for is conclusive as between the parties except in the case of an obvious error.

13.7 Application of Part

This clause 13 applies notwithstanding any other provision of this sub-lease.

14 Rent Review

14.1 Party may nominate amount of varied Rent

- (a) The Lessor may nominate to increase the Rent at the date of the commencement of any renewal of this sublease granted pursuant to clause 8 (**Rent Review Date**) by an amount not exceeding the greater of:
- (1) the current annual market rent for the Premises; and
 - (2) an increase of 5% of the Rent applicable in the Lease Year immediately prior to the relevant Rent Review Date,
- by giving the Lessee a written notice to that effect (**Rent Notice**).
- (b) The Lessor may only give a Rent Notice to the Lessee during the period of two months prior to the expiry of the lease (**Permitted Period**).

14.2 Parties treated as having agreed Rent if no Rent Notice given

If the Lessor does not give the Lessee a Rent Notice during the Permitted Period, the Lessor and the Lessee are deemed to have agreed that the Rent from and including the relevant Rent Review Date will be the amount of the Rent payable for the previous Lease Year.

14.3 Rent nominated is the varied Rent if not disputed

If the Lessor has given the Lessee a Rent Notice during the Permitted Period, the Rent from and including a Rent Review Date will be the amount nominated in the relevant Rent Notice unless the Lessee gives the Lessor written notice that, in the Lessee's opinion, the amount nominated exceeds an increase permitted by clause 14.1. within 2 weeks of being given the Rent Notice.

14.4 Reviewed Rent if nominated rent is disputed

If the Lessee by notice, pursuant to clause 14.3, disputes that the validity of a nominated increase, then it becomes necessary to determine the current annual market rent. The current annual market rent will be determined by a Valuer either:

- (a) appointed by both the Lessor and the Lessee by agreement within 1 week of the Lessee giving the notice pursuant to clause 14.3; or
- (b) nominated by the President at the request of either the Lessor or the Lessee.

14.5 Determination of current market rent by Valuer

- (a) The Valuer must determine the current annual market rent on the assumption that:
- (1) the Parties have complied with each term of this lease;
 - (2) the Lessee occupies the Premises on the terms of this lease;
 - (3) the Premises are not damaged or destroyed;
 - (4) the only value that attaches to each Lessee's fixture is the value, if any, contributed by the Lessor;
 - (5) no value attaches to any licence or permit for any activities carried on by the Lessee at the Premises; and
 - (6) the period of the Term remaining is the same period as the Term.

- (b) Both the Lessor and the Lessee may make submissions to the Valuer in respect of the value of the current annual market rent.
- (c) The Valuer must determine the current annual market rent within 1 month of appointment and must give written reasons for the determination.

14.6 Valuer expert not arbitrator

The Valuer appointed under this clause will act as an expert not as an arbitrator.

14.7 Alternate Valuer

If a Valuer appointed under this clause:

- (a) does not accept the appointment to act;
- (b) becomes incapacitated or dies; or
- (c) resigns,

either the Lessor or the Lessee may request the President to appoint an alternate Valuer.

14.8 Determination of Permitted Increase

Once the Valuer has determined the current annual market rent, the reviewed Rent will be the greater of:

- (a) the current annual market rent for the Premises as determined by the Valuer; and
- (b) the Rent paid in the Lease Year immediately prior to the relevant Rent Review Date.

14.9 Rent payable from relevant Rent Review Date

The Lessee must pay the Lessor the reviewed rent from the relevant Rent Review Date.

14.10 Payment of costs

The Lessee must pay the cost of the Valuer appointed under this clause unless the amount nominated in the Rent Notice exceeds the current annual market rent as determined by the Valuer in which case the Lessor must pay the cost of the Valuer.

14.11 No decrease in Rent

Nothing in this clause 14 will allow for the Rent to be decreased in any Lease Year.