

# Port Stephens Yacht Club Mooring Hire Agreement

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Between the Licensee (the hirer) \_\_\_\_\_

Of (home address): \_\_\_\_\_

\_\_\_\_\_ Post Code: \_\_\_\_\_

Telephone: Home: (\_\_\_\_) \_\_\_\_\_ Mobile: \_\_\_\_\_

Email: \_\_\_\_\_

And

Port Stephens Yacht Club Inc. of Ridgeway Avenue, Soldiers Point, NSW 2317 (the Licensor)

To supply mooring facilities (which includes oar storage facilities at the club) which for the purposes of this Agreement shall be referred to as the 'Mooring Facilities'.

## **LICENCEES MARINE CRAFT** ("the Craft")

Name of Craft: \_\_\_\_\_ Registration Number: \_\_\_\_\_

Description of type of Craft (yacht, displacement cruiser etc): \_\_\_\_\_

Make & Model: \_\_\_\_\_ Year Manufactured: \_\_\_\_\_

Hull Colour: \_\_\_\_\_ Sail Number (for yacht) \_\_\_\_\_

Construction: (e.g. fibreglass, timber, steel) \_\_\_\_\_

Engine Type: (e.g. inboard, outboard, sterndrive etc) \_\_\_\_\_

Company the Craft is insured with: \_\_\_\_\_

Policy Number: \_\_\_\_\_ Expiry Date: \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_

## **SECURITY DEPOSIT**

On signing of this Agreement the Licensee shall pay to the Licensor or its authorised agent the sum of **\$100.00** as a security deposit which shall be refunded to the Licensee on termination of this Agreement subject to the right of the Licensor to deduct from the security deposit any amounts whatsoever that are due and payable by the Licensee to the Licensor under this Agreement.

**LICENCE FEE**

The Licensee shall pay to the Licensor a fee for the use of the mooring of:

\$ 200.00 per calendar month (all fees are inclusive of Goods and Services Tax) payable monthly in advance or as the Licensor may direct in writing.

All license fees shall be paid by way of Bank Transfer.

**LICENCE TERM**

The term of the license shall be a month at a time on a temporary basis on the understanding that the mooring has already been reserved.

**LICENSEE’S ACKNOWLEDGEMENT**

I, the Licensee acknowledge that I have received a copy of this Agreement signed by me and certify that I have carefully read the agreement including the Conditions printed overleaf and agree to those Conditions as part of the Agreement. I am over eighteen (18) years of age.

Mooring Number:

Dated this: \_\_\_\_\_ day of: \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_\_

Signature of Licensee: \_\_\_\_\_

Name: (please print) \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Name: (please print) \_\_\_\_\_

Signature of Licensor: \_\_\_\_\_

Name (please print) \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Name: (please print) \_\_\_\_\_

Mooring Number: \_\_\_\_\_

## **Stephens Yacht Club Ltd.**

### **Mooring Hire Agreement Conditions**

#### **1. INTERPRETATION**

In this Agreement:

- a) words importing the singular number include the plural and vice versa and words denoting a gender include all other genders.
- b) the word person includes a firm, a body corporate, an unincorporated association and an authority;
- c) headings are for convenience only and do not affect interpretation; and
- d) references to any party to this Agreement shall include that parties executors, administrators and permitted assignees.
- e) the word Licensee shall include the Licensees employees, agents, contractors or invitees

#### **2. LICENCE TO USE AND OPERATE THE LICENSOR'S MOORINGS FACILITIES**

The Licensor grants to the Licensee a personal non-exclusive right to occupy the mooring.

#### **3. OBLIGATIONS OF LICENSEE**

The Licensee agrees that:

- a) it shall operate, maintain and store the vessel and its equipment with due care and diligence;
- b) it shall at the Licensee's own expense keep and maintain the Craft and its equipment including but not limited to the ropes, lines, chains and tackle of, on or attached to the vessel (which ropes, lines, chains and tackle shall remain the property of the Licensee) in good order and condition and in good and substantive repair;
- c) it shall be responsible for all damage to the Mooring Facilities arising from any act, omission, neglect or default by the Licensee;
- d) it shall indemnify and keep indemnified the Licensor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Licensor shall or may become liable in respect of or arising from loss, damage or injury to any person or property arising out of the use of the Mooring Facilities or any act, omission, neglect, breach, or default by the Licensee;
- e) it shall comply with the Rules and Regulations determined by the Licensor from time to time with respect to the management of the Mooring Facilities Property, including any amendments made thereto by the Licensor from time to time;
- f) it shall use the Mooring Facilities solely for the use and enjoyment of the Craft;
- g) it shall not assign, sub-license or part with possession of the Mooring Facilities;

h) during the term of this Agreement and while the Craft is moored, stored or berthed at the Mooring Facilities, it shall not sell or attempt to sell the Craft or advertise the Craft for sale without the prior written permission of the Licensor or its authorised agent;

i) during the term of this Agreement and while the Craft is moored, stored or berthed at the Mooring Facilities, it shall not carry out or have carried out repairs and/or maintenance on the Craft without the prior implied or express authority of the Licensor or its authorised agent;

j) the Licensor shall note that under the Pollution of the Environment (POEO Act) 1997, and in addition, all subsequent and relevant legislation, all forms of pollution are prohibited. Any person or Licensor contravening this legislation leaves themselves open to action by Council or the EPA.

k) it shall take out and maintain proper and adequate insurance including public liability insurance to a minimum value of \$10 million, in respect of the Craft and its fittings and contents;

l) it shall promptly comply with the requirements of all statutes, regulations and by-laws relating to the use and occupation of the Mooring Facility. Without limiting the generality of the foregoing, the Licensee shall comply with and shall cause all of its employees, agents, contractors and invitees to comply with the provisions of any legislation and regulations made thereunder relating to pollution affecting any part of the environment and however caused including but not being limited to the Pollution of the Environment (POEO Act) 1997 and the Environmental Protection Act, State Pollution Control Commission Act 1970 and under the Maritime Services Act 1935. The Licensee shall indemnify and keep indemnified the Licensor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Licensor shall or may become liable in respect of or arising from any act, omission, neglect, breach or default by the Licensee, under this clause.

#### 4. LIABILITY OF LICENSOR

The Licensee agrees and acknowledges that the Licensor shall not be liable for the care and protection of the Craft or its fittings and contents and shall not be liable for any loss or damage (including consequential loss or damage) however caused which may have suffered or incurred or which may arise directly or indirectly by or in respect of the Craft or its fittings or contents. To the full extent permitted by law, all implied terms and conditions are hereby excluded. Where an implied term cannot be excluded, the liability of the Licensor is limited (to the extent permitted by law) to the resupply of the affected goods or services or the cost of resupply of those goods or services.

#### 5. EMERGENCY PROCEDURES

The Licensee agrees and acknowledges that the Licensor may in the event of an emergency and at its sole discretion move the Craft at the risk and expense of the Licensee.

#### 6. LIEN

The Licensor shall have a lien on the Craft, its fittings and contents for the payment of all moneys due to the Licensor under this agreement. The Licensee authorises the Licensor to take possession of the Craft, its fittings and contents on default in payment of an account and authorise the Licensor to sell the Craft, its fittings and contents if the account remains unpaid after the demand for payment has been made in writing by the Licensor to the Licensee.

#### 7. TERMINATION

a) Either party may terminate this Agreement after the expiry of the License Term by not less than one month's prior written notice expiring at the end of that period or at any time thereafter. Notice of Termination from the Licensee shall be accompanied by payment of all fees and any other amounts payable by the Licensee.

b) The Licensor may forthwith terminate this agreement by written notice to the Licensee:

i. if the Licensee is in breach of the provisions of this Agreement or the Rules and Regulations;

- ii. if in the opinion of the Licensor any of the Mooring Facilities become unserviceable; or
- iii. if in the opinion of the Licensor any conduct by the Licensee is prejudicial to the interests of the Mooring Facilities or of the Licensor.

- c) Either party may forthwith terminate this Agreement by written notice to the other party if:
- i. A receiver, liquidator, trustee in bankruptcy or official manager of the other party or any of its business or property is appointed;
  - ii. The other party enters into any dissolution or liquidation proceedings or any event equivalent.

#### 8. LICENSEE NOT TO BE A TENANT

Nothing in this Agreement shall confer on the Licensee any right as tenant of the Mooring Facilities property or any part, nor create the relationship of landlord and tenant.

#### 9. RULES AND REGULATIONS

The Licensor reserves the right to amend or cancel the Rules and regulations or any of them if the Licensor considers that such amendment or cancellation is necessary for the proper management safety; care or cleanliness of the Mooring Facilities or for the preservation of good order therein and all such amendments and cancellations shall bind the Licensee when notice of them has been given to the Licensee by the Licensor. The Licensor shall not be liable for any non-enforcement of any Rule or Regulation.

#### 10. AUTHORITY

The Licensee hereby certifies that the legal and beneficial owner or duly authorised agent of the owner of the Craft and that it will be personally liable for all fees, accounts, costs, claims or liabilities of whatever nature arising out of this agreement. The Licensee undertakes to pay all such moneys on demand.

#### 11. LICENSEE'S RELIANCE ON OWN JUDGEMENT

The Licensee acknowledges and warrants that it has examined the Mooring and relies on its own judgement in accepting the use of the Facilities.

#### 12. NOTICES

Any notice to be served hereunder shall be duly served if delivered personally to the other party or sent through the post in a prepaid envelope addressed to that party at its address set out in this Agreement or any other address notified by one party to the other in writing as being its address for service of notice and any notice sent through the post shall be deemed to have been duly served at the time when such letter would in the ordinary course of the post be delivered. Licensee agrees to notify Licensor of change of address and contact details within 14 days.

#### 13. WHOLE AGREEMENT

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

#### 14. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the courts of New South Wales.