

SWAN YACHT CLUB

Riverside Road, East Fremantle

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Email: reception@swanyachtclub.com.auwww.swanyachtclub.com.au**PEN LICENCE AGREEMENT****SCHEDULE 1.****ATTACHMENT TO APPENDIX C****RETURN COMPLETED AGREEMENT IN FULL WITH ATTACHMENTS PRIOR TO 30TH JUNE 2022****EMAIL –reception@swanyachtclub.com.au, and or hand in at reception.**

1 NAME OF PEN LICENCE HOLDER					
Surname		Other Name(s)			
2 ADDRESS					
Street No & Name					
Suburb/Postcode					
3 CONTACT NUMBERS			4 EMERGENCY CONTACT		
Phone Work				Name	
Phone Private				Phone Private	
Mobile				Mobile	
Email				Email	
5 VESSEL DETAILS					
Registration				Registration Expiry	
Vessel Make				Insurance Company	
Vessel Name				Policy No	
Vessel Length				Policy Expiry	
Vessel Beam				HIN Number	
Vessel Draught					
Fuel Type					
6 PARTNERS					
7 AGREEMENT PLEASE PROVIDE A COPY OF YOUR INSURANCE AND REGISTRATION					
Pen Number		Type		Annual	Term
Start Date		End Date		Financial Year	
				30 th June 2023	
<i>I the person named above ("the Member") apply for a licence to use the Pen referred to above (or as modified from time to time by the Club) and shall be bound by the License Agreement and the Rules and Guidelines of the Club as amended from time to time by the Club.</i>					
Licensee					
Signature			Date:/...../.....		
Print Name					
General Manager					
Signature			Date:/...../.....		

LICENCE AGREEMENT

RECITALS:

By a Lease from the Western Australian Land Authority the Club has the power to grant licences of Pens within the leased premises and enters into this Agreement pursuant to that power.

OPERATIVE PART:-

1 DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement unless the context otherwise requires, the following words and expressions have the following meanings:-

“**Act**” means any present or future Act of Parliament (Federal or State) and includes any amendments or re-enactment of it for the time being in force and includes by-laws and regulations under any Act;

this “**Agreement**” means this agreement and if varied as varied from time to time;

“**Authorised Officer**” means such person or persons as the Club may appoint from time to time;

“**Authority**” means any public body or authority of any kind having jurisdiction over the Club or its premises;

“**Club’s Employees**” means each of the Club’s employees, officers, agents, contractors, service suppliers, sub-Licensees, concessionaires, customers and those other persons who at any time are under the control of the Club and are on the Club’s premises or in the Marina or its surrounds with the consent (express or implied) of the Club;

“**GST**” means the goods and services tax introduced by the A New Tax System (Goods and Services Tax) Act 1999 or any amendment thereto;

“**Length**” means bowsprits; anchors, marlin boards, davits, dinghies or any other attachments at bow and stern are included for measurement purposes.

“**Licence Fee**” means the fee under control of the Club.

“**Marina**” means the portion of the Swan Yacht Club Marina from time to time under the control of the Club.

“**Particulars**” mean the Particulars as in Schedule 1 of this Agreement.

“**Party**” means a party to this Agreement;

“**Pen**” means as the case requires either of the particular section of Jetty and the water adjacent to it (“a Jetty Pen”) or alternatively, the area of the Dry Pens or as changed from time to time by the Club, and in respect to a Jetty Pen includes all equipment used on, or in connection with the Pen and any other improvements comprising or installed within the Pen;

“**Term**” means the term of this Agreement as specified in item 7 of the Particulars; and

“**Vessel**” means the vessel specified in item 4 of the Particulars or as notified to the Club by the Licensee from time to time in accordance with this Agreement.

The term “**Finger jetty**” is used for this as the purpose of a support for berthing and docking.

1.2. This Agreement binds each Party and their respective personal representatives, successors and permitted assigns. A reference in this Agreement to a Party means and includes that Party and its personal representatives, successors and permitted assigns.

1.3. This Agreement may only be varied by written instrument signed by each Party.

1.4. This Agreement is governed by and must be construed and interpreted in accordance with the law of Western Australia and where applicable, the laws of the Commonwealth of Australia.

2 GRANT OF LICENCE

2.1. In consideration of the Licensee paying the Licence Fee to the Club and performing all of the Licensee’s obligations under this Agreement, the Club hereby grants to the Licensee the Licence, to access and use the Marina and the Pen during the Term subject to the terms and conditions contained in this Agreement, and the Rules and Guidelines of the Club as from time to time amended.

3 FEES

3.1 Upon signing of this Agreement, the Licensee must:-

- (1) pay the Licence Fee (including the ingoings fee for first time allocations) within 7 days of allocation.
- (2) If allocated temporarily payment is due within 30 days.

If the Club is put to any expense by the Licensee during or at the expiry of the Term, the Licensee must pay all outstanding fees prior to removal of the vessel from the Clubs grounds.

4 LICENSEE’S COVENANTS

The Licensee covenants with the Club, on his own behalf and on behalf of the Licensee’s Employees, Agents and invitees, that throughout the Term the Licensee will:-

4.1. Use of Pen

Not use, or permit the use of, the Pen for any purpose which is not permitted by the Club.

4.2. Indemnity

At all times during the Term and notwithstanding any policy of insurance required by this Agreement or the Rules and Guidelines of the Club, indemnify and keep indemnified the Club from and against:-

- (1) all damage to, or loss of, any property of the Club, or any other person or any injury to any person; and
- (2) all actions, suits, proceedings, claims costs, expenses and demands (on a full indemnity basis), caused by, arising out of, or incidental to any negligent act, default or omission of the Licensee or its Employees, Agents and Invitees in relation to use or misuse of the Licence, the Pen, or the Vessel whilst within the Marina.

4.3. Compliance with Legislation and Notices

Comply with and perform all requisitions and all works as are required of, or directed to be done by, the Licensee (as occupier or otherwise) pursuant to any Act affecting the Pen or the Marina and/or by the direction of any Authority, including any structural works or alterations required or directed, and will indemnify the Club from and against being required to comply with and perform any such requisitions or work and from any claims, moneys and expenses relating, and incidental, to any such requisitions or work.

4.4. Licences and Permits

Keep in force all licences and permits required by the Licensee or others in relation to the Pen or within the Marina.

The Licensee must;

- (i) Submit a copy of registration papers in his own name, for the registered boat against the pen.
- (ii) Submit full details of the partners or other parties having a financial interest in the ownership of the vessel, including their full names and addresses, their membership numbers and their respective pen deposit receipt numbers and dates thereof.

4.5. Maintenance and Repair

- (i) In the case of a Jetty Pen keep and maintain the Pen in good and tenantable repair, fair wear and tear accepted, and will replace all or any item of the Pen as and when a prudent Licensee would do so.
- (ii) In the case of a Dry Pen keep the surface of the area of the Pen in good repair and condition, fair wear and tear excepted, and free from the Licensee's plant and equipment and rubbish as well as free from all oil and other stains.

And in addition in either case the Licensee will make good any damage occurring after the commencement date of the Term and undertake any reasonably necessary repairs to any part of the Pen as soon as practicable after receiving a notice in writing from the Club or any Authority to that effect and if remedy of those defects or necessary repairs has not commenced within seven days of receiving notice, or where those repairs involve major structural work then the Club may arrange for all necessary work to be done at the sole expense of the Licensee and all moneys due for that work will be deemed to be a debt due from the Licensee to the Club.

4.6. Additions by Licensee

Not make any addition or alteration to any part of the Pen whatsoever without the Club's and any relevant Authority's prior written consent. All permitted alterations or additions shall be made, completed and carried out to the entire satisfaction of, and the materials used therein shall be approved by, the Club and any relevant Authority.

4.7. Negligent Use of Pen

Not commit, or permit, anything whereby any insurance taken out in respect of the Pen, or the Marina may be rendered void or voidable or whereby any relevant insurance premium may be increased.

4.8. Notices to be delivered to the Club

Deliver copies of all notices, orders, requisitions directions and summonses which affect the Pen, the Marina or surrounding areas in any way, to the Club immediately upon receipt of the same.

4.9. Entry by the Club to Rectify Breach

Permit the Club to do, or cause to be done, all things necessary to rectify any breach by the Licensee of any of the terms, conditions, covenants and agreements in this Agreement (without the Club being under any obligation to do so and without prejudice to the Club's other rights, powers, remedies or discretions) and all reasonable costs and expenses incurred by the Club resulting from such breach (including the wage, fees and remuneration of any workmen, servants, agents, solicitors, surveyors or architects employed or engaged in that respect) will be a debt due and payable by the Licensee to the Club upon demand.

4.10. Encumbrances, Sub-licensing and Assignment

- (I) Not allow any encumbrance over the Pen nor assign, transfer or part with possession of the Pen or the Licence or any entitlement in relation to the Pen arising under this Agreement, to any person without the Club's prior written consent which may be given or withheld in the absolute discretion of the Club.
- (II) In the event that the Licensee wishes to assign transfer or part with possession of the Pen the Licensee shall give written notice to the Club of the Licensee's wishes whereupon the Club, if it consents in its absolute discretion to such assignment transfer or parting of possession, the Club may assign transfer or allow possession of the Pen to another Licensee on such conditions as the Club thinks fit.
- (III) The Licensee shall be entitled to receive from the Club for the balance of the Term or such part of the Term as the Licensee is not in possession or entitled to possession of the Pen reimbursement of that portion of the Licence Fee paid by the Licensee in respect to the portion of the Term during which the Licensee is not in possession of the Pen and the Pen is occupied.

4.11. Insurance

The Licensee must at all times keep the Vessel and any other property owned or brought into the Marina by the Licensee and/or invitees of the Licensee fully insured whilst within the confines of, or near to the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of God.

The Licensee will SUBMIT a current copy of the insurance policy referred to in section 4. And will deliver copies of the receipts for payment of premiums to the Club within 7 days.
Third party insurance minimum value of 10 million dollars.

If a Club member is unable to obtain comprehensive insurance cover for their boat, they must advise the Mooring committee reasons in writing and it will be at the committee's discretion to grant occupation continued or otherwise, subject to at least third party liability cover.

4.12. Costs

Pay the costs of and incidental to the instructions for the preparation, execution and stamping of this Agreement and all costs charges and expenses incurred by the Club for the purpose of or incidental to the preparation and service of any notice requiring the Licensee to remedy a breach of any of the covenants contained in this Agreement.

4.13. Removal of Licensee's Property

Upon expiry of the Term or earlier termination by the Licensee or Club, leave the Pen and the Marina (including the seabed) in a clean and tidy condition entirely at the Licensee's own cost, including, if required by the Club, the removal of any mooring equipment installed by the Licensee and repair any damage caused by that removal and if the Licensee fails to do so then the Club may do, or cause to be done, all things which are required to be done by the Licensee by this clause at the sole cost of the Licensee.

5 RESPONSIBILITY FOR DAMAGE

5.1. The Club will not be responsible in any way for:-

- (1) any damage from any cause whatsoever that any Vessel owned or used by the Licensee, or by any person lawfully authorised by the Licensee pursuant to this Agreement, may at any time sustain while in the Pen or entering or leaving the Pen;
- (2) any loss resulting from the theft of any Vessel owned or used by the Licensee, or any person lawfully authorised by the Licensee pursuant to this Agreement, while in the Pen or for the theft of any parts, equipment or contents of any such Vessel; and
- (3) any injuries which the Licensee or any of the Licensee's Employees, Agents and Invitees may at any time sustain while in or upon the Pen however occurring.

6 REMOVAL OF VESSEL

6.1 The Club may (at the cost and expense of the Licensee) in case of an emergency, or any other reasonable reason or upon the termination of this Agreement, remove any Vessel from the Pen and anchor, moor or store it at such place and by such means as the Club (using reasonable care) determines. The Club will not be liable in any way whatsoever to the Licensee or any person claiming through or under the Licensee in respect of anything done by the Club pursuant to this clause. The Club will notify the Licensee in writing of the location of any Vessel so removed from the Pen as authorised by this clause which notice will be dispatched by both pre-paid post and, where possible, by facsimile or other electronic means, on the day following such removal.

6.2 The Club may at any time require the Licensee to vacate the Licensee's Pen either temporarily or permanently and to take up another Pen within the Marina and/or to another suitable location nominated by the Club to assist the Club for any reason required by the Club acting reasonably. The Club will not be liable to pay any compensation to the Licensee in respect to any period during which the Licensee is so required to vacate the Licensee's Pen. Where the Licensee is required to move permanently to another Pen the terms of this Agreement shall apply for the remainder of the term to the new Pen.

6.3 If the Licensee is temporarily not occupying the Licensee's Pen then the Club may let the Pen on such conditions as it thinks fit until the Licensee again occupies the Pen

7 NATURE OF RIGHTS

7.1. The rights conferred by this Agreement are in contract only and do not create in or confer upon the Licensee any tenancy of, or any proprietary rights in, and to, the Licence or physical ownership of any part of the Pen or the Marina.

8 DEFAULT

8.1. A Default occurs if:-

- (1) the Licensee commits a fundamental breach of this Agreement; or
- (2) any moneys payable under this Agreement, or pursuant to the Club's Rules and Guidelines are at any time in arrears and unpaid for 7 days after written demand for payment has been given by the Club; or
- (3) the Licensee does not comply with any of its other obligations under this Agreement and that non-compliance continues for 7 days after written demand for rectification has been given by the Club.

9 CLUB'S RIGHT TO TERMINATE

9.1 If a Default occurs, the Club may terminate the Licensee's right to use the Pen by notice in writing to the Licensee effective immediately upon receipt of that notice by the Licensee.

9.2 The Club's rights in clause 9.1 are in addition to any other rights which the Club may have against the Licensee under this Agreement or at law.

9.3 Termination of the Licensee's entitlement to use the Pen under clause 9.1 entitles the Club to all unpaid moneys due as at the date of termination together with all costs, expenses and damages arising from termination and the loss of the Licence Fee (if any) or any other moneys due under this Agreement.

9.4 Failure to comply with any club rules, regulations and guidelines as from time to time amended.

Including failure to undertake 5 designated club events which are; AGM, Half Yearly Meeting, Busy Bees (2), Open Mooring Meetings (4), Commodores Ball, Sail Past on Open Day, Voting and any other events nominated by the Committee.

9.5 If the Licensee or any partner in the vessel disposes of his/hers interest in the vessel to any person who is not a financial member of the club and is not registered with the club pen wait list.

9.6 If permanent power is required to be delivered to the vessel, purchase from the club, the approved Swan Yacht Club extension cord and pay the power supply fee as set out in Appendix A.

10 WAIVER

10.1 Waiver by the Club of the Licensee's breach or non-observance of any of the covenants or conditions of this Agreement will not be construed as a general waiver and any waiver will relate only to the particular breach or non-observance in respect of which it was made. Acceptance by the Club of any Licence Fee or other moneys payable under this Agreement does not constitute a waiver by the Club.

11 GOODS AND SERVICES TAX

11.1 Subject to this Clause any payment made by the Licensee to the Club is inclusive of GST and represents the value of the taxable supply for which payment is to be made.

12 CHANGE OF DETAILS

12.1 If any of the details contained in the Particulars change during the Term, the Licensee must notify the Club within seven days of the change occurring.

12.2 The Licensee must obtain the consent of the Club (which consent will not be unreasonably withheld) before changing the Vessel occupying the Pen.

13 CLUB'S LIEN

- 13.1 Where the Club removes any Vessel in accordance with this Agreement or the Club's Marina Rules and Guidelines or the Clubs By-laws, the Club is entitled to a lien over the Vessel to the extent of all costs incurred by the Club.
- 13.2 If the Licensee fails to claim such Vessel and pay all outstanding costs owed to the club within a within the period of three months after the date of such removal, the Club may at any time hereafter offer the Vessel for sale and appropriate the proceeds of any resultant sale in satisfaction of all expenses as may be incurred by the Club.
- 13.3 The Club may place and maintain on any such Vessel such person or persons as may be necessary and the Club will be entitled to a lien on the Vessel to cover the costs associated with appointing the custodian.

14 RENEWAL OF LICENCE

- 14.1 Prior to the expiration of the Term, the Club may in its absolute discretion offer to the Licensee, the right to renew the Licence for such period and for such fee as the Club determines in its absolute discretion.

15 EARLY TERMINATION OF THIS AGREEMENT

- 15.1 The Licence granted pursuant to this Agreement is personal to the Licensee and may not be transferred or assigned;
- 15.2 If the Licensee wishes to terminate this Agreement prior to the end of the Term the Licensee shall first apply in writing to the Mooring Committee for its consent so to do which consent may be granted or refused in that Committee's discretion;
- 15.3 On the Mooring Committee consent in writing to the termination of this Agreement being given to the Licensee the Licence granted by this Agreement shall be surrendered by the Licensee to the Club. A refund of fees charged for a period of less than twelve months may be made at the sole discretion of the General Manager on the surrender of the Licence, and if so approved by the General Manager, on the strict condition that the Pen has been licensed to another Club member. Part of a month's occupancy, shall be considered a complete month of occupancy

16 MOORING FINGER (Finger Jetty)

- 16.1. The fingers are to be constructed and supplied by the SYC preferred supplier from the same materials as used in existing Marina system.
- 16.2. Fingers and installation cost shall be at the penholders expense. No remuneration shall be made by the Club.
- 16.3. NO alterations to electrical bollards and water systems are to be made by the Licensee.
- 16.4. The Club shall own the Mooring Finger once installed.
- 16.5. The lessee shall not remove or move the finger at anytime without the written permission of the Club.
- 16.6. Notwithstanding clause16.1, the Club will not be responsible in any way for any damage from any cause whatsoever that any Vessel owned or used by the Licensee, or by any person lawfully authorized by the Licensee pursuant to this agreement may at any time sustain while in the pen or entering or leaving the pen.

17 DISPUTES AND PENALTIES

Any member who is aggrieved by a decision of the Mooring Committee or any sub-committee of it may complain by notice in writing to the Management Committee within 21 days of the decision complained of. The complaint shall be placed on the agenda of the meeting of the Management Committee next after receipt of the complaint. The Management Committee may refer the complaint to any sub-committee of the Club and may in its discretion consult with the complainant or inform itself of any other matter it may think fit. A decision of the Management Committee in respect to any complaint shall be final and binding upon the complainant.

18 DELEGATED AUTHORITY

The Club confirms that the Clubs General Manager has authority to sign the License on behalf of the Club.