

YARINGA BOAT HARBOUR, SOMERVILLE BERTHING, STORAGE AND MOORING AGREEMENT

This Agreement is between **Westernport Boat Harbour Pty Ltd [ACN 005 820 995]** and **Difau Pty Ltd [ACN 006 424 264]** both of 1 Lumeah Road, Somerville, Victoria

("Yaringa")

and

Full Name of _____
Telephone H: _____ B: _____ M: _____
Email _____
Identification: Licence # _____ DOB: _____

("the Boat Owner")

To provide berthing / storage / mooring services
 at **Yaringa Boat Harbour** at 1 - 4 Lumeah Road, Somerville, Victoria
 for the following boat:

("the Facilities")

Registration no: _____ **Name of Boat:** _____
Type: _____ **Model:** _____
Year: _____ **Manufacturer:** _____
Identification: HID: _____ Engine No: _____
Dimensions: LOA: _____ LOD: _____ Beam: _____ Draft: _____
Insurance: _____ policy no: _____
Delivered by: _____ This is information is required by Yaringa for the
Delivery date: _____ purposes of the lien claimed under the
 Warehousemen's Lien Act 1958 (Vic)

("the Boat")

Licence Particulars:

Term: day month quarter year commencing ____/____/20____
Location: Berth no. Hard Stand no.
Fees: daily monthly quarterly yearly \$.....
Payment: cheque credit card direct debit from nominated account

All fees are payable in advance and are non-refundable and non-transferable.
 Fees are charged in accordance with the fee schedule which then applies. The fee schedule may be varied from time to time but only after prior notice to the Boat Owner.
 The frequency and method of payment may be varied by written agreement with Yaringa or otherwise in accordance with this agreement
 If payment is to be made by credit card or direct debit a separate form needs to be completed.
 All fees and payments are inclusive of Goods and Services Tax.

I, the Boat Owner acknowledge that I have received a copy of this Agreement signed by me and confirm that I have carefully read the Agreement including the Conditions printed overleaf and agree to those Conditions as part of this Agreement. I am over 18 years of age.

Dated this _____ day of _____ 20____

Signature of Boat Owner _____
 Signed on behalf of Yaringa by it's
 authorised representative _____

CONDITIONS

1. LICENCE TO USE AND OCCUPY YARINGA'S MARINA FACILITIES

Yaringa grants to the Boat Owner a personal non-exclusive right to use and occupy the Facilities to berth / store / moor the Boat (as applicable) on the terms contained in this Agreement.

2. OBLIGATIONS OF THE BOAT OWNER

The Boat Owner agrees that:

- a) it shall pay to Yaringa the license fee set out in the Particulars of this Agreement at the times and in the manner set out in the particulars of this Agreement unless varied either by written agreement with Yaringa or otherwise in accordance with this Agreement.
- b) it shall operate, maintain and store the Boat and its equipment with due care and diligence;
- c) it shall, at the Boat Owner's own expense, keep and maintain the Boat and its equipment including but not limited to the ropes, lines, chains and tackle of, on or attached to the Boat (which ropes, lines, chains and tackle shall remain the property of the Boat Owner) in good and proper working order and condition and in good and substantial repair;
- d) it shall be responsible for all damage to the Facilities, or injury to persons using the Facilities, arising from any act, omission, neglect or default by the Boat Owner or its employees, agents, contractors or invitees;
- e) it shall indemnify and keep indemnified Yaringa from and against all actions, claims, demands, losses, damages, costs and expenses for which Yaringa shall or may become liable in respect of or arising from loss, damage or injury to any person or Facilities arising out of the use of the Facilities attributable to any act, omission, neglect, breach or default by the Boat Owner or its employees, agents, contractors or invitees;
- f) it shall comply with the Rules and Regulations determined by Yaringa from time to time with respect to the management of the Facilities, including any amendments made thereto by Yaringa from time to time;
- g) it shall comply with the requirements of all statutes, regulations and by-laws relevant to the use and occupation of the Facilities, including but not limited to any such statutes, regulations and by-laws relating to pollution affecting any part of the environment and however caused;
- h) it shall use the Facilities solely for the use and enjoyment of the Boat;
- i) it shall not assign, sub-license or transfer to a third party any right which this Agreement may confer on the Boat Owner;
- j) during the term of this Agreement and while the Boat is moored, stored or berthed at the Facilities, it shall not sell or attempt to sell the Boat or advertise the Boat for sale without the prior written consent of Yaringa or its authorised agent;
- k) during the term of this Agreement and while the Boat is moored, stored or berthed at the Facilities, it shall not carry out or have carried out repairs and/or maintenance on the Boat without the prior implied or express authority of Yaringa or its authorised agent.
- l) it shall take out and maintain proper and adequate insurance including public liability insurance in respect of the Boat and its fittings and contents;

3. LIABILITY OF YARINGA

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

4. EMERGENCY PROCEDURES

The Boat Owner agrees and acknowledges that Yaringa may in the event of an emergency and its sole discretion move the Boat at the risk and expense of the Boat Owner.

5. PAYMENT ARREARS

In the event that the Boat Owner is in arrears of any payment due to Yaringa, and until payments are brought up to date, licence fees will automatically become payable on a monthly basis at the then applicable monthly rate and a monthly accounting fee will apply.

6. SECURITY FOR PAYMENT

Yaringa may at its discretion rely upon any or all of the following options to better secure payment due to it pursuant to this Agreement

- a) Yaringa shall have a lien on the Boat, its fittings and contents for the payment of all moneys due to Yaringa under this agreement. The Boat Owner authorises Yaringa to take possession of the Boat, its fittings and contents on default in payment of an account and authorise Yaringa to sell the Boat its fittings or contents if the account remains unpaid for 60 days after demand for payment has been made in writing by Yaringa to the Boat Owner.
- b) Pursuant to the Warehousemen's Lien Act 1958 (Vic) Yaringa claims a lien on the Boat, its fittings and contents for the payment of all moneys due to Yaringa under this Agreement. The Boat Owner acknowledges that it has been served with the required notice under that Act.
- c) In consideration of Yaringa granting to it the licence under this Agreement, the Boat Owner charges the interest it has now or in the future either solely or jointly in the Boat to secure the repayment of any amount the Boat Owner owes to Yaringa from time to time. The Boat Owner acknowledges that the security interest granted to Yaringa is capable of registration pursuant to the Personal Property Securities Act 2009 ("PPSA"). The Applicant further acknowledges that the security interest will continue until all amounts which may be due to Yaringa under this Agreement have been paid. The Boat Owner acknowledges that Yaringa will take all necessary steps to register its security interest under the PPSA, and hereby consents to Yaringa doing so. The Boat Owner further undertakes to promptly provide any information and do all things as required by Yaringa to enable Yaringa to perfect its security interest in the goods

7. TERMINATION

- a) Either party may terminate this Agreement after the expiration of the Licence 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 Boat Owner shall be accompanied by payment of all fees and other amounts payable by the Boat Owner.
- b) Yaringa may forthwith terminate this Agreement by written notice to the Boat Owner:
 - i. if the Boat Owner is in breach of any of the provisions of this Agreement, any Rules and Regulations with respect to the management of the Facilities or any statutes, regulations and by-laws relevant to the use and occupation of the Facilities;
 - ii. if in the opinion of Yaringa any of the Facilities become unserviceable; or
 - iii. if in the opinion of Yaringa any conduct by the Boat Owner or its employees, agents, contractors, or invitees is prejudicial to the interest of the Facilities or of Yaringa
- c) Either party may forthwith terminate the Agreement by written notice to the other party if:
 - i. a receiver, liquidator, trustee in bankruptcy or official manager or administrator of the party or any of its business or Facilities is appointed;
 - ii. the other party enters into any discussion or liquidation proceedings or any event equivalent.

8. BOAT OWNER NOT A TENANT

Nothing in the Agreement shall confer on the Boat Owner any right as a tenant of the Facilities or any part, nor create the relationship of landlord and tenant.

9. RULES AND REGULATIONS

- a) The Rules and Regulations for the use of the Facilities are attached to this Agreement.
- b) Yaringa reserves the right to amend or cancel the Rules and Regulations or any of them if Yaringa considers that such amendment of cancellation is necessary for the proper management safety, care or cleanliness of the Facilities or for the preservation of good order therein and all such amendments and cancellations shall bind the Boat Owner when notice of them has been given to the Boat Owner in writing by Yaringa. Yaringa shall not be liable for any non-enforcement of any Rule or Regulation.
- c) Any amendment or cancellation of the Rules and Regulation will be notified to the Boat Owner. The up-to-date version is available at any time on the Yaringa website or from the Yaringa office.

10. AUTHORITY

The Boat Owner hereby certifies that it is the legal and beneficial owner or the duly authorised agent of the owner of the Boat and that it will be personally liable for all fees, amounts, costs, claims or liabilities of whatsoever nature arising out of this Agreement. The Boat Owner undertakes to pay all such moneys on demand.

11. BOAT OWNER'S RELIANCE ON OWN JUDGEMENT

The Boat Owner acknowledges and warrants that it has examined the Facilities and relies on its own judgement in accepting 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 or the post be delivered. The Boat Owner agrees to notify Yaringa of any change of the Boat Owner's address and/or contact details within 14 days of such change.

13. WHOLE AGREEMENT

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

14. GOVERNING LAW

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

15. 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 the interpretation; and
- d) references to any party to this Agreement shall include that party's executors, administrators and permitted assignees.
- e) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected

Yaringa authorised signature _____ Boat Owner _____