



**THEVENARD MARINA FACILITY
MARINA PEN LEASE – SHORT / LONG
TERM**

between

The District Council of Ceduna

and

The party described in the First Schedule

2020

I/we agree to:

- the General Terms and Conditions and the First Schedule to this agreement;
- any/all additional Special Conditions included in the Second Schedule to this agreement or otherwise attached to this agreement; and
- pay the **Fee** and other costs and charges as required by this agreement.

Execution by individual

.....
Signature

.....
Name (print)

.....
Date

.....
Witness signature

.....
Witness name (print)

Execution by company

Executed by
pursuant to section 127 of the *Corporations Act 2001*

.....
Signature of Director/Sole Director and Secretary

.....
Signature of Director/Company Secretary

.....
Date

Execution by Incorporated Association

The Common Seal of
.....
was affixed pursuant to its Constitution

.....
Signature of Authorised Officer

.....
Signature of Authorised Officer

.....
Date

FOR COUNCIL USE ONLY

Signed for The District Council of Ceduna by its authorised delegate in the presence of:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name and Position of delegate

Date:.....

Reference number:

SAMPLE

GENERAL TERMS AND CONDITIONS

DEFINITIONS

Words that are in **bold** in these General Terms and Conditions and any Special Conditions have the meaning given to them in the First Schedule on the front of this agreement.

RIGHT TO USE

1. **You** will have exclusive use of the **Pen** during the **Term** for the **Permitted Use**.
2. **You** will also have non-exclusive use of the public areas of the Thevenard Marina Facility (walkways, toilets, car parks etc) during the **Term**.
3. The right to use the **Pen** is contractual only and does not grant to **You** any proprietary right or interest in the **Pen**.

CONTROL OF OTHERS

4. Where the context permits, where **You** are under an obligation to do or not do something under this agreement, **Your** obligation extends to **You** using **Your** best endeavours to ensure that all persons that are present at the **Pen** or in the Thevenard Marina Facility during the **Term**, including but not limited to **Your** employees, agents, invitees and other persons associated with the **Permitted Use**, do or refrain from doing those things also.

FEE

5. **You** must pay the **Fee** to Council at the times and in the manner set out in the First Schedule and Second Schedule to this agreement.
6. **You** will be responsible for and must pay when due all accounts, invoices and charges for the supply and use of electricity and water to or at the **Pen** during the **Term**.

SECURITY BOND

7. **You** must pay the **Security Bond** to Council in the manner required by Council before the start of the **Term**.
8. Council may use the **Security Bond** to pay or reimburse any costs that Council incurs repairing any damage that is caused to the **Pen** or surrounding areas (including but not limited to any improvements or equipment) during the **Term**.
9. Council will inform **You** of any damage and the amount that it will deduct from the **Security Bond**.
10. **You** must provide a replacement **Security Bond** if requested where Council has deducted the full amount of the original security bond provided.
11. The Council will return the **Security Bond** to **You** (less any amounts deducted under clause 7) after the end of the **Term**.

LEGAL REQUIREMENTS

12. This agreement gives **You** Council's approval as landowner to use the **Pen** for the **Permitted Use**. It does not give **You** any other approvals.
13. **You** must comply with all laws and legal requirements relating to **Your** use of the **Pen** and access to the surrounding areas including any work health and safety policies and procedures or general rules and regulations applying to the Thevenard Marina Facility.

RESTRICTIONS ON USE

14. **You** may only use the **Pen** for the **Permitted Use**. **You** may not use it for any other purpose, including undertaking repairs to **Your** vessel/s or equipment other than minor repairs.

15. **You** must control all liquid and solids transfers to ensure no material enters the harbour. **Your Pen** and adjacent pontoon areas are to be kept clean at all times. Any contamination of the harbour is to be notified to the relevant authorities and Council immediately.
16. **You** must not refuel **Your** vessel/s in the **Pen** but may use one of the berths at the wharf area (when vacant), which is the designated refuelling area within the Thevenard Marina Facility on such terms and conditions as may apply to those facilities. All vessels wishing to refuel must be head in to the wharf.
17. **You** may use any designated repair facilities within the Thevenard Marina Facility on such terms and conditions as may apply to those facilities.
18. **You** must use the **Pen** safely and so as not to cause any offence or create a nuisance or disturbance for other people.
19. **You** must use any facilities within the **Pen** and the Thevenard Marina Facility in a proper and safe manner and only in the manner in which they are intended to be used.

ALCOHOL

20. **You** must not sell or provide alcohol for consumption within the **Pen** or surrounding areas.

SMOKE-FREE AREAS

21. **You** must not smoke in any areas designated as smoke-free by Council.

ALTERATIONS

22. **You** must not make any changes to the **Pen**.

VEHICLES

23. **You** must not drive any vehicles into the Thevenard Marine Facility other than by designated roads and car parks.

REPAIR OF DAMAGE

24. **You** must if required by Council repair all damage that is caused to the **Pen** or any other property (including but not limited to buildings and equipment) during the **Term**.

CLEANING

25. **You** must ensure that the **Pen** and adjacent pontoon areas are left clean and tidy and free from rubbish at all times and at the end of the **Term**.
26. Public bins within the Thevenard Marina Facility must only be used for general food, beverage and similar waste. **You** must not use public bins for business waste (including but not limited to boxes that contained supplies, liquid waste and other waste generated by **Your** operations) and **You** must ensure that all business and/or liquid waste is disposed of appropriately at **Your** cost.

YOUR RISK

27. **You** agree:
 - a. **Your** use of the **Pen** is at **Your** own risk;
 - b. Council has given you no warranty that the **Pen** is suitable for the **Permitted Use**;
 - c. to release Council from any claims that **You** may have against Council for loss, damage, injury or death suffered or incurred as a result of **Your** use of the **Pen**, except to the extent caused by Council's negligence or default; and
 - d. to indemnify Council against all claims that are made against Council for loss, damage, injury or death caused or contributed to by:
 - i. **Your** use of the **Pen**;
 - ii. matters occurring at the **Pen** during the **Term**; or
 - iii. any breach by **You** of this agreement.

INSURANCE

28. **You** must maintain a public risk policy of insurance in relation to **Your** vessel/s for at least \$20,000,000.00 for any one claim and unlimited in the aggregate, and which covers events occurring during the policy's currency regardless of when claims are made.
29. **You** must maintain a Marine Hull and Liability policy of insurance for **Your** vessel/s, which covers salvage costs, commercial towing fees and emergency costs occurring during the policy's currency
30. **You** must provide a copy of the Certificate of Currency for the public risk insurance policy and the Marine Hull and Liability Insurance Policy described above to Council before the start of the **Term** and at any time the policy is renewed.

NO TRANSFER

31. The rights granted in this agreement are personal to **You** and **You** cannot transfer this agreement or your rights to use the **Pen** or grant any other person rights to use the **Pen**.

COUNCIL'S RIGHTS

32. Council may:
- carry out works to the **Pen** or surrounding areas that may interfere with **Your** use of the **Pen**;
 - take any action that it considers to be reasonable if there is an emergency and **You** must comply with all directions of Council during the emergency; and
 - do anything that **You** are required to do under this agreement if **You** do not do it or do not do it properly and recover its costs of doing so from **You**.

COMPLY WITH DIRECTIONS

33. **You** must comply with all reasonable directions of Council in relation to **Your** use of the **Pen** and any other public areas used in conjunction with the **Pen** (including but not limited to car parks).

TERMINATION

34. Council may terminate this agreement with immediate effect by written notice to **You** if **You** fail to comply with any term or condition of this agreement within a reasonable time of being required to do so.

EXPIRY

35. This agreement expires at the end of the **Term**. **You** must not use the **Pen** after expiry of the **Term**.
36. At the end of the **Term** **You** must ensure the **Pen** and surrounding areas are left in a clean and tidy condition, including by appropriately disposing of all rubbish and removing all goods and equipment from the **Pen**.

GST

37. If any GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) is payable on a supply made pursuant to this agreement then the recipient of the supply must pay the additional GST amount at the same time as it pays for the supply.

COSTS

38. Council may recover from **You** all costs it incurs in consequence of any actual or threatened breach by **You** of this agreement.

RULES

39. **You** must comply with any general rules published or notified to **You** by Council from time to time in relation to the use of the Thevenard Marina Facility, provided that such rules must not be inconsistent with **Your** rights as expressed in this agreement. A failure to comply with the rules will be a breach of this agreement.

SPECIAL CONDITIONS

40. **You** must comply with all **Special Conditions** contained in the Second Schedule to this agreement.

SECOND SCHEDULE SPECIAL CONDITIONS

1. NATURE OF PERMITTED USE

If the Permitted Use:

- 1.1 specifies a named vessel, **You** are only permitted to moor that particular vessel in the **Pen**;
- 1.2 is for company vessels, **You** may moor such vessels as are owned by **You** from time to time (having regard to the number of **Pens** leased) and **You** will be responsible for each vessel moored in each **Pen** under the terms of this agreement; or
- 1.3 is for industry association vessels, this allows mooring of vessels owned by **Your** current members from time to time (having regard to the number of **Pens** leased) and **You** will be responsible for each vessel moored in each **Pen** under the terms of this agreement.

2. FEES

2.1 Flat Fee

If the **Term** is a term greater than one week but less than four weeks, the **Fee** shall be calculated on the basis of the Weekly Marina Pen Lease fee as specified in the current schedule of fees adopted by Council pursuant to section 188 of the Local Government Act 1999 SA, whereby any part of a whole week shall be calculated on a daily pro-rated portion (one seventh) of the Weekly Marina Pen Lease fee.

2.2 Flat Rate

If the **Fee** specified in the First Schedule is a **Flat Rate**, the **Fee** specified will not be subject to change throughout the **Term**.

If the **Term** is a term greater than four weeks but less than 12 months, the **Fee** shall be calculated on the basis of the relevant Annual Marina Pen Lease fee as specified in the current schedule of fees adopted by Council pursuant to section 188 of the Local Government Act 1999 SA, whereby any part of a whole month or part thereof of the **Term** shall be calculated on a monthly pro-rated portion (one twelfth) of the Annual Marina Pen Lease fee relevant to the **Pen** as specified in the First Schedule.

2.3 Indexed Rate

2.3.1 If the **Fee** specified in the First Schedule is an **Indexed Rate**, the **Fee** specified is the starting fee payable at the commencement of the **Term** only.

2.3.2 If the **Term** is a term of 12 months or greater, the **Fee** specified as the starting fee payable at the commencement of the **Term** shall be the relevant Annual Marina Pen Lease fee as specified in the current schedule of fees adopted by Council pursuant to section 188 of the Local Government Act 1999 SA, and any part of a whole month or part thereof of the **Term** shall be calculated on a monthly pro-rated portion (one twelfth) of the Annual Marina Pen Lease fee relevant to the **Pen** as specified in the First Schedule

2.3.3 An Indexed Rate will be increased on each anniversary of the commencement of the **Term** as follows:

$$R_2 = R_1 \times \frac{\text{Current CPI}}{\text{PreviousCPI}}$$

Where:

R₂ is the Fee on and from the Review Date; and

R₁ is the Fee immediately before the Review Date (disregarding any abatements, incentives or reductions).

2.3.4 In this special condition:

2.3.4.1 **CPI** means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide).

2.3.4.2 **Current CPI** means, for a Review Date, the CPI number for the quarter ending immediately before that Review Date.

2.3.4.3 **Previous CPI** means, for a Review Date, the CPI number for the quarter ending immediately before the last Review Date (or if there has not been a review, the commencement of the Term).

2.3.4.4 **Review Date** means each anniversary of the commencement of the **Term**.

2.4 **Payment of the Fee**

Unless **Council** directs otherwise, the **Fee** will be payable by electronic funds transfer to **Council's** account as detailed in the First Schedule or as otherwise notified to **You**.

If the **Term** is a term greater than one week but less than four weeks, the **Flat Fee** shall be payable in advance.

If the **Term** is a term greater than 4 weeks but less than 12 months, the **Flat Rate** shall be payable monthly in arrears as invoiced by Council.

If the **Term** is a term of 12 months or greater, the **Indexed Rate** shall be payable monthly in arrears as invoiced by Council.

Annexure A – Plan

