

The Permittee hereby applies to Far North Queensland Ports Corporation Limited ACN 131 836 014 trading as Ports North ("PN") for a permit to berth the vessel at the Cairns Marlin Marina ("Marina") or to moor the Vessel to a mooring pile within Trinity Inlet ("Pile") as stipulated in the Reference Data and agrees that if PN should grant the permit (and in consideration thereof), the Permittee will be bound by the following terms and conditions of this agreement.

## 1. Term of Agreement

This Agreement commences on the Arrival Date detailed above and ends on the Departure Date above or at the end of any extended or renewed periods approved by Ports North (PN). The terms and conditions of this Agreement remain valid for the entire length of stay, including all PN approved extended or renewed periods regardless of original Departure Date.

## 2. Charges

The Permittee must pay charges, levies, surcharges and other costs and expenses ("Schedule Charges") applicable to the berth, the vessel and the use of the vessel in accordance with the terms of this agreement and otherwise, the Schedule of Charges.

## 3. Schedule Charges (excluding Passenger Levy)

Save for the Passenger Levy (if applicable) all Schedule Charges fall due for payment in advance in accordance with the following table:

<u>Mooring Period</u>	<u>Payment Date</u>
• up to 1 month:	In advance on arrival date
• Greater than 1 month:	Payable monthly (or part thereof) in advance
• For Pile moorings exceeding 12 months	Payable annually, in advance

## 4. Passenger Levy

If applicable, the Permittee must pay the Passenger Levy in arrears for each Quarter, within 30 days of receiving a Tax Invoice from PN in respect of the quarter to which that invoice relates. The Permittee must, within seven(7) days of the end of each month, provide to PN a passenger movements return in the form required by PN.

## 5. Security Bond

Berth agreements exceeding 6 months (183 days) must pay a security bond, being the equivalent of one month's Schedule Charges (excluding the Passenger Levy) at the commencement of this Agreement, by way of security for the performance of its obligations under this agreement. In the event of default by the Permittee that gives rise to a liquidated entitlement to damages, PN may forfeit from the Security Bond a sum not exceeding its entitlement to liquidated damages under this clause, otherwise the security bond will be refunded to the Permittee when this agreement ends (unless the default gives rise to an unliquidated damages claim in which case, PN may retain the security bond until damages have been assessed – and to avoid doubt, an unliquidated damages claim will be converted to a liquidated one upon assessment).

## 6. Vessel Length Overall (LOA)

Subject to clause 22, Vessel length overall (LOA), is measured by including anchors, pulpits, pushpits, davits, outboard motors, sterndrives or other extensions both fore and aft, as declared by the Permittee accepting this Agreement. Subsequently, should the vessel be measured and the length found to be incorrect, PN reserves the right to increase the Schedule Charges in accordance with this agreement to the appropriate rate and recalculate fees from the Arrival Date. This may also require the vessel to be moved to another berth of appropriate size.

## 7. Indemnity

The Permittee (its successors, controllers (as that expression is defined by the *Corporations Act 2001*, if the Permittee is a company), the trustee (as that expression is defined in the *Bankruptcy Act 1966*, if the Permittee is a natural person), administrators and assigns indemnity and hold PN harmless from and against all actions, suits, demands, costs (including legal costs calculated on a full indemnity basis), losses, damages and expenses which may be incurred or otherwise brought or made against PN or for which PN is or becomes liable to pay by reason of:

- a. loss of life or injury to any person; or
- b. loss of or damage to the property of any person or entity (including the property of PN),

which is caused by or arises from any act, omission, matter or thing on the part of the Permittee (or anyone acting through or with the authority or acquiescence of the Permittee) in connection with the Vessel, property or equipment of PN made available for use by the Permittee, the Berth or, if applicable, the Pile (except to the limited extent that the loss, injury or damage referred to in clause 7a or 7b arise from the negligent or willful acts or omissions of PN).

## 8. Release

The Permittee will occupy and make use of the Berth or the Pile mooring at its own risk and PN gives no warranty or assurance concerning the state, condition or fitness of the Berth or the Pile (as applicable) for any purpose (the Permittee acknowledging that prior to applying to PN for a permit to make use of the Berth or the Pile, it has inspected the Berth or the Pile mooring, as applicable, and has satisfied itself of all such matters). To the maximum extent permitted by law, the Permittee releases and discharges PN from all actions, suits, demands, costs (including legal costs calculated on a full indemnity basis), losses, damages and expenses of every description arising out of or in any way connected with the Permittee's use of the Berth, the Pile, any service (including a service in the nature of electrical or water supply) to the Berth or, if applicable, the Pile and/or property or equipment of PN made available for use by the Permittee at or in connection with the Berth or the Pile, as and if applicable.

## 9. Insurance

The Permittee shall always maintain current policies of insurance referred to in the Reference Data at all times during the Term, at its cost. Each policy of insurance must note the interest of PN and evidence of such as insurances to be provided to PN upon request.

## 10. Electricity Connection / Services Charges

In connection with Vessel berthage within the Marina, the Permittee understands the obligations and requirements in connecting to shore power as provided on arrival in the written instructions from PN and in accordance with AS/NZ 3004 and AS/NZ 3760 standards. The Permittee must pay to PN all charges associated with any services provided by PN, including consumption charges and three phase power. Subject to clauses 7 and 8, connection and supply adaptors may be available from PN and subject to prior completion of separate indemnity in such form as PN may require.

## 11. Compliance with Policies Procedures and Notices

The Permittee or their agents must conduct all activities in accordance with the current Marina Policies, Procedures, Port Notices and Port Rules adopted by PN from time to time. Copies are available in the marina office on request or at [www.portsnorth.com.au](http://www.portsnorth.com.au).

## 12. Review of Commercial Operations

If the Berthage Particulars indicates that the vessel is operated in a commercial capacity and for the purpose of this agreement, the vessel is a Commercial Vessel, PN will conduct quarterly reviews throughout the term of this agreement to determine if the Vessel retains that status throughout the quarter year in respect of which the review is undertaken ("relevant quarter"). If PN, acting reasonably, determines that the vessel is not or has ceased to be a Commercial Vessel in a relevant quarter, PN may in its discretion reassess the Schedule Charges in respect of the Vessel for the relevant quarter as is applicable under the Schedule of Charges for Vessels that are not Commercial Vessels. A determination made by PN under this clause will be final and binding.

## 13. Notice of Early Departure

Subject to clause 15 but notwithstanding any other provision of this agreement:

- a. If the Vessel is a Commercial Vessel and:
  - i. the nominated Departure Date is six (6) months or more following the nominated Arrival Date; or
  - ii. the period of use of the Berth since the nominated Arrival Date is 6 months or more,

the Permittee may nevertheless terminate this agreement and its use of the Berth at any time (whether before or after the nominated Departure Date) if:

- iii. the Permittee gives Port North not less than 30 days written notice in advance of the date on which it will terminate its use of the Berth; and
  - iv. the Permittee has paid to Ports North all costs and charges payable under or in connection with this agreement up to and including the time the Permittee's use of the Berth comes to an end (and to avoid doubt, this agreement will continue in accordance with its terms should the Permittee discontinue its use of the Berth but fail to strictly observe and comply with this clause);
- b. If clause 13a does not apply, the Permittee may terminate its use of the Berth at any time provided that when doing so, the Permittee has paid to Ports North all costs and charges payable under or in connection with this agreement up to and including the time the Permittee's use of the Berth comes to an end (and to avoid doubt, this agreement will continue in accordance with its terms should the Permittee discontinue its use of the Berth but fail to strictly observe and comply with this clause).

#### 14. Commercial Vessel

For the purposes of clauses 12 and 13 "Commercial Vessel" means a vessel used in a full time capacity by the Permittee (or anyone acting through or with the authority of the Permittee) as a "Domestic Commercial Vessel" (as that expression is defined by subsections 7(1), 7(4) and 7(5), but not subsections 7(3)(a) and (b), of the Marine Safety (Domestic Commercial Vessel) National Law) and includes "Regulated Australian Vessels" and "Foreign Vessels" (as those expressions are defined by the *Navigation Act 2012*).

#### 15. Early Departure Policy

PN will recalculate Schedule Charges in respect of the period of the Permittee's use of the Berth in accordance with the following provisions:

- a. if the Permittee makes use of the Berth for a period of one week or less, the Schedule Charges will be calculated at the Daily Casual Rate for the period of use of the Berth;
- b. if the Permittee makes use of the Berth for more than one week but less than four weeks, the Schedule Charges will be calculated at the Weekly Casual Rate for the period of use of the Berth;
- c. if the Permittee makes use of the Berth for more than four weeks but less than six months, the Schedule Charges will be calculated at the 4 Weekly Casual Rate for the period of use of the Berth;
- d. if the Permittee makes use of the Berth for more than six months but less than one year, the Schedule Charges will be calculated at the 6 Monthly Casual Rate for the period of use of the Berth;
- e. if the Permittee makes use of the Berth for more than one year but less than a whole second or subsequent year, the Schedule Charges will be calculated at the Annual Casual Rate for the period of use of the Berth.

If a recalculation of Schedule Charges under this clause give rise to:

- f. a further payment on account of Schedule Charges by the Permittee, that sum will be payable as a debt to PN on or before the date on which the Permittee ceases its use of the Berth; or
- g. a refund of part of the Schedule Charges that have been paid by the Permittee, PN will, subject to its right of set off against any other sum payable by the Permittee to PN (including any payment on account of Passenger Levies), pay the sum in question to the Permittee on or as soon as is practicable following the date on which the Permittee ceases its use of the Berth.

In this clause, the Casual Rates referred to in paragraphs a, b, c, d and e are each of the corresponding rates of charge set forth in the Schedule of Charges.

#### 16. Infrequent User

If:

- a. the Reference Data indicates that the Permittee is an Infrequent User; and
- b. the Vessel will not be returned to the Berth on a daily basis for more than half of the Term,

then:

- c. to the extent that the Schedule Charge incorporates a "berthage charge" under the Schedule of Charges, the Permittee acknowledges and agrees that:
  - i. the Schedule of Charges allows for different rates of berthage charge, depending on the duration of use of the berth;
  - ii. for the purpose of calculating the Schedule Charge, PN will adopt a rate of berthage charge that it reasonably considers appropriate at or following the time of entering into this agreement ("initial berthage charge rate");
  - iii. if PN, acting reasonably, subsequently determines that the initial berthage charge rate is not the appropriate rate prescribed by the Schedule of Charges, PN will be at liberty to change the initial berthage charge rate to another berthage charge rate (prescribed by the Schedule of Charges) that it considers to be the appropriate rate ("substitute berthage charge rate");
  - iv. the substitute berthage charge rate will be adopted to calculate the Schedule Charge:
    - A. for that part of the Term that precedes the date on which PN adopts the substitute berthage charge rate; and
    - B. as and from the date on which PN adopts the substitute berthage charge rate; and
  - v. if, from the time PN adopts the substitute berthage charge rate:
    - A. there is a shortfall in the Schedule Charge under clause 16.c.iv.A., the Permittee must pay the shortfall to PN as a debt; or
    - B. there is an overpayment of the Schedule Charge under clause 16.c.iv.A, PN will either pay the overpayment to the Permittee or allow the Permittee to set off the overpayment against future Schedule Charges, at its discretion.
- d. clause 13 of this agreement will not apply;
- e. the Permittee has no rights of continued use of the Berth referred to in the Reference Data throughout the Term but, subject to clause 16f, will have a right of use of a berth within the Marina as nominated by Ports North on any given day during the Term;
- f. prior to returning the Vessel to the Marina on any day during the Term, the Permittee must:
  - i. inform the Marina Manager of the proximate return of the Vessel to the Marina and the approximate time of return;
  - ii. obtain from the Marina Manager particulars of the Berth at which the Vessel may be moored; and
  - iii. cause the Vessel to be moored at the Berth referred to in clause 16fii and at no other Berth;
- g. in this clause:

- i. Infrequent User is an operator of a Vessel described in clause 16b and, where the context permits, includes that Vessel; and
- ii. Marina Manager means the Ports North employee or representative charged with the management of the Marina from time to time.

#### **17. Check Out Time**

Check out time is 10:00am on the day of departure.

#### **18. Extension of Time**

The Permittee may apply to PN to extend or renew the term of this agreement. PN may accept, reject or approve any such application conditionally, at its discretion.

#### **19. Guarantee**

Where the Permittee is a Company, on or before executing this agreement, the Permittee must provide security against breach of this Agreement by providing a personal guarantee and indemnity in the form of that contained in Schedule 1.

#### **20. No Priority of Berth / Relocation at Any Time**

This Agreement does not grant to the Permittee any priority use of a particular berth. PN reserves the right, at its absolute discretion, to relocate the Vessel to another suitable berth in the Marina at any time.

#### **21. No Transfer or Assignment or Other Vessel**

This Agreement is not transferable to another and the Permittee must not assign or sublet the berth to another Operator.

#### **22. Substitute or Additional Vessel**

The Permittee must not berth (at the Berth) or moor (at the Pile), as applicable, a substitute or additional vessel without the prior written consent of PN first had and obtained. If consent is granted in respect of a substitute or additional vessel brought upon a Berth, the Permittee acknowledges that LOA will be determined with reference to all vessels brought upon the Berth and will include the distance of separation between each of them. However, under no circumstances will LOA be permitted to exceed LOA as stipulated in the Reference Date.

#### **23. Maintain Vessel / Safe Mooring / Survey & Registration**

The proper and safe mooring of the Vessel at the Berth or Pile is the responsibility of the Permittee. The Permittee must maintain the Vessel to the standard required by all applicable regulatory and statutory bodies to maintain it in full survey and registration.

#### **24. GST**

All sums of money payable by the Permittee under this agreement are expressed as GST exclusive amounts. Where money is payable to PN in consideration of a taxable supply, the Permittee must, in addition to and at or prior to the time payment of the consideration falls due, pay to PN any GST arising on that taxable supply. As a distinct obligation, the Permittee indemnifies PN from liability for the payment of GST on any taxable supply it makes to the Permittee in the terms of this agreement. PN must give the Permittee a tax invoice in respect of any such taxable supplies. In this clause, words and phrases which are defined in a *New Tax System (Goods and Services Tax) Act 1999* have the corresponding meanings, so far as the context permits.

#### **25. Default by Permittee**

Where the Permittee defaults under this Agreement, PN may remove the Permittee's property (including the Vessel) and store it at the Permittee's cost and give notice of the same. If the Permittee does not make good the default and claim the property within 14 days of the Notice, the property will be deemed to be abandoned and disposed of in accordance with the *Transport Infrastructure Act*.

#### **26. Permittee's Authority**

The Permittee warrants and assures PN that it enters into this agreement in its own capacity and, where applicable, as trustee of any trust and for and on behalf of the Owner of the Vessel (if not the Permittee). If the

Permittee is not the Owner of the Vessel, it further warrants and assures PN that it enters into this agreement with the full knowledge and authority of, and as agent for, the Vessel Owner.

#### **27. Acceptance**

This agreement will be concluded upon PN communicating its acceptance of this agreement (in writing, orally or by conduct) following receipt of this agreement, signed by the Permittee.