**SC696 Seawind 1260 Owners’ Agreement DRAFT 5Aug21**

# SEAWIND 1260 SC696 “Id”: CO-OWNERSHIP - HEADS OF AGREEMENT

**THIS AGREEMENT** is made between the parties named, and on the date, specified in Schedule 1.

**RECITALS: -**

1. The parties ("the Co-owners") have entered into a Co-owner Agreement together for the purposes of owning, using, maintaining and future sale of shares in the vessel described hereunder.
2. The Co-owners have agreed to be bound by the terms and conditions set out in this Heads of Agreement which are executed in the following three (3) Agreements:
* **SHARE PURCHASE AGREEMENT**
* **SERVICE AND MAINTENANCE AGREEMENT**
* **OWNERSHIP AND USAGE RULES**

**1) DEFINITIONS**

**“Co-owner or Owner**” means a person named in Item 1 (below) who has purchased a share or shares in the ownership of the vessel.

**“Vessel”** means the Seawind 1260 Build Contract SC696 catamaran with HIN (to be determined at completion) which is the subject of this Co-owner Agreement

**“Special Periods”** means the public holidays and periods of Christmas, New Year and Easter and other socially valuable dates agreed by the parties below.

**Interpretation:**

In this Agreement, unless the context otherwise requires

1. headings and under-linings are for convenience only and do not affect
2. the interpretation of this Agreement;
3. words importing the singular include the plural and vice versa;
4. words importing a gender include any gender;
5. a reference to a party to this Agreement or in any other document or agreement includes that party’s permitted successors and permitted assigns;
6. a covenant, agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or endures to their benefit jointly and severally.

2) **GENERAL**

 a) This Agreement does not constitute a partnership. In relation to joint ownership of the VESSEL, the Co-owners agree that:

i) Nothing in this Agreement will constitute or be construed to constitute a Co-owner as a partner, agent or employee of another Co-owner;

ii) A Co-owner has no power to incur obligations on behalf of, or pledge the credit of, another Co-owner in any manner whatsoever; and

iii) Except as specifically provided in this Agreement, a Co-owner has no authority to act for, or to create, or assume any responsibility or obligation for another Co-owner.

b) The purpose of this Agreement is to set rules, roles and responsibilities for the co- ownership of the VESSEL.

c) The Co-owners agree to appoint a Boat Secretary – Geoff’s Marine Services (GMS) to act as a concierge and motivated custodian of the Vessel and provide boat operating services including administration, maintenance and boat delivery support as shown on the Vessel Roster and rolling Calendar on the Vessel web site.

**3) Co-owner Shares**

 a) There are five equal ownership shares in the VESSEL

 b) A Co-owner may own more than one share.

 c) A Co-owner shall have usage rights, liability for expenses, and voting rights in proportion with their shareholding.

 d) Co-owners’ expectations are that the rights of minority shareholders will be respected and that voting on any issue will be a last resort and an inferior approach compared to the expected consensus based decision making.

4) **INSURANCE**

a) The Co-owners agree to take out and maintain throughout the duration of this Agreement the types of insurance and amounts of cover specified in Item 5, Schedule 1.

b) If the VESSEL (including any associated equipment) is damaged then the Co-owner in charge of the vessel at the time that the damage occurs (the responsible Co-owner) shall;

i) Be responsible for organising, under the direction of the Boat Secretary, all necessary action (including the completion of any paperwork) for repairs to the vessel and/or associated equipment; and

ii) Contribute the excess payable under the relevant policy of insurance; and

iii) pay the cost of any repairs to the vessel, or replacement of any associated equipment, or other work needed which is not covered by, or reimbursed by, the insurance; so as to restore the VESSEL (and/or any Associated Equipment) to the condition it was in prior to the damage occurring.

c) If the damage to VESSEL, and/or any subsequent repairs, prevents another Co-owner (the subsequent user) to use their allotted time period, then the responsible Co-owner will provide equivalent make-up time to the subsequent Co-owner from the responsible Co-owner’s allocated time.

5) **USAGE OF VESSEL:**

The allocation of time periods for a co-owner’s use of the VESSEL will be determined at an initial pre-commissioning meeting. Co-owners are expected to use their best efforts to produce a mutually acceptable 18 month in advance rolling Roster to be shown on the Calendar on the Vessel’s web site. Time allocations are detailed in the Operating and Usage Rules (below).

a) If a Co-owner wants to utilise a time period at a specific remote location then every endeavour will be made by the other Co-owner(s) to facilitate the availability of the vessel for a specified period during the year. Clearly for remote locations, arrival timing may be affected by weather and climatic conditions beyond the control of the Co-owner who is responsible for making the vessel available and the Co-owners agree to facilitate a broadly agreed Usage Calendar with trading between Co-owners permitted at all times.

b) Special Periods of Xmas, New Year, Easter, School Holidays and Whitsunday Winter Events will be allocated within a specified Time Period on rotation to give all Owners this Usage over time. The draft Roster will attempt to give each Owner 4 consecutive weeks use per year (unless otherwise varied on request). Stand-by Usage and all Usage Periods can be traded between Owners via email and confirmed in the current Roster published in the Vessel’s web site Calendar.

c). Each Co-owner will be entitled to have the usage of the vessel based on their ownership share.

The following **Safety and Best Practice Rules** must apply at all times:

i) A Co-owner must be on board while the VESSEL is being used.

ii) The VESSEL will be used and operated sensibly and responsibly and in accordance with the principles of good seamanship. Each Co-owner will, at all times, abide by the rules of boating.

iii) After each use the Co-owner will ensure that:

(1) the boat is left in a clean and tidy condition and fit for the next Syndicate Member’s immediate use;

(2) the fuel tanks are refilled; and

(3) that there is one fully charged LPG cylinder onboard.

 iv) No smoking is allowed on any part of the VESSEL.

v) No pets are allowed onboard the VESSEL.

vi) The Sullage tank must be emptied either at an appropriate on-shore facility or allowable open waters at the conclusion of use of the vessel.

**6) NON USE OF VESSEL**

If a Co-owner cannot use the vessel during any time allocated to them by the agreed Usage Calendar, that Co-owner is encouraged to make this time available to other Co-owners by exchanging their allocated time with another Co-owner.

7) **BOAT SECRETARY**

 a) A Boat Secretary – Geoff’s Marine Services (GMS) has been appointed by the Syndicate Members for an initial five (5) year term which can be reviewed at any Annual Meeting.

 b) Boat Secretary shall have the following duties:

 i) Maintain a bank account and keep financial records of operating income from Co-owners and the expenses of operating the Vessel.

ii) Maintain the online VESSEL usage calendar.

 iii) Determine the location (physical or virtual) and date in February each year for the Annual Meeting and advise all Co-owners accordingly at least 30 days in advance.

 iv) Keep a register of the current ownership of all shares.

 v) Prepare a Budget for Admin and Sinking Funds for agreement by Co-owners in advance of each operational year.

8) **MOORING & MAINTENANCE:**

a) The vessel will be kept on GMS’ jetty and pontoon berth at 46 Beltana Crescent Buddina Qld 4575 for the initial five (5) year term. An alternative mooring may be designated by Co-owners by agreement at an Annual Meeting.

b) Co-owners’ access to the berth through private property will be protected by Public Liability insurance for $20 million.

b) By agreement with GMS, the cost of the mooring will always be less than the price of a comparable berth nearby and reviewed at the Annual Meeting.

c) The vessel shall be maintained to a high standard, consistent with the maintenance program determined in each year’s Admin and Sinking Fund Budgets.

d) The cost of mooring and maintenance shall be borne amongst the Co-owners pro-rata in accordance with their shareholding.

**9) ANNUAL MEETING**

An annual meeting of the Syndicate Members shall be held in a mutually agreeable location and time in February each year.

Additional ordinary meetings may be held in person or by email at any other time as agreed by the Co-owners.

**10) ANNUAL LEVIES**

a) A Operating Levy will be established at the Annual Meeting (by Co-owners determining the Budget) to pay for any repairs, maintenance, cleaning and improvements to the vessel and/or associated equipment and any other agreed running costs for the following year. The amount should be established by the Boat Secretary and will be set by a vote.

b) Each Co-owner shall contribute to the Operating Levy in proportions equal to their ownership share. The Operating Levy shall be due quarterly and paid in advance.

c) In the event that the annual Operating Levy is not sufficient to cover the costs incurred, the co-owners may strike a Special Levy on all Co-owners to cover the short fall in proportion to each Co-owners shareholding.

**12) SALE OF SHARE**

a) If a Co-owner wishes to sell their share in the Vessel ("the Share"), then the following procedures must be followed:

i) the Co-owner (the "Vendor") must make an offer to sell the Share;

ii) the offer must first be made to all existing Co-owners;

iii) the offer must be in writing

b) Existing Co-owners shall have six weeks from the time of receipt of the offer within which to accept the offer. Acceptance of the offer must be made in writing. If more than one Co-owner wishes to accept the offer then they shall purchase the Share together in equal proportions unless otherwise agreed between them.

c) If the offer is not accepted by any Co-owner within the six week period or if all the Co-owners advise the Vendor prior to that time they do not wish to purchase the Share then on the earlier of these dates the Vendor may attempt to sell their Share of the VESSEL on the open market.

d) To avoid frustration of an individual Co-owner by other Co-owners, if no **buyer satisfactory to all the other Co-owners** has been found within three months of this time (and in this respect the other co-owners shall have full discretion as to whether or not to accept the proposed assignee of the Vendor’s Share) then at the end of that three month period the whole of the VESSEL (and any Associated Equipment) must be immediately advertised for sale at a realistic market price so that a buyer will be reasonably expected to be found within six months. This does not mean that a sale of any individual Co-owners share will cause the sale of the Vessel due to the passage of time taken to sell the share.

e) Settlement of the sale and purchase of the Share or VESSEL and Associated Equipment, as the case may be, shall take place as follows:

i) in respect of the Share, within fifteen weeks from the date when the last Co-owner received notice in accordance with clause 12(a);

ii) in respect of the VESSEL and Associated Equipment, within two months of an offer to purchase being accepted.

f) The Co-owners agree that VESSEL Ownership shall continue until the date of settlement.

g) All new Co-Owners must sign a copy of this agreement or an acceptable variation of the agreement.

**13) CO-OWNER IN DEFAULT OF PAYMENT**

a) All amounts payable to the Vessel’s Bank Account are payable within 7 days of the beginning of the quarter. In the event of a Co-owner being unable or refusing to pay any amount for which they are liable, they shall immediately lose all rights to the use of VESSEL until such amounts are fully paid. Late payments attract a 20% p.a. penalty unless excused by all other Co-owners.

b) If the amount is still unpaid 90 days after it is due to be paid, the Secretary will issue a written notice stating that if the amount is not fully paid within a further 30 days, that their share will be compulsorily acquired by other members of the syndicate. Should this situation arise, the price for the share will be $xxx,xxx (the Default Value which is to be determined by Co-owners upon Vessel Commissioning). This amount shall be discounted by 10% each year (or part thereof) from the date of this agreement unless otherwise determined by Co-owners.

c) The payment of the Default Share Value and the distribution of the proceeds of the subsequent sale will be shared among the remaining Co-owners in proportion to their shareholding.

d) Any Co-owner, or group of Co-owners, may elect to purchase the Default Share Value. If more than one Co-owner wishes to purchase the Default Share Value then they shall purchase the Share together in equal proportions unless otherwise agreed between them.

**14) DURATION OF THE SYNDICATE**

a) When the VESSEL reaches five years of age, co-owners will meet to discuss and if necessary, vote on a motion to arrange for the future of the Syndicate or for the VESSEL to be sold

as a whole or in part.

b) Existing Co-owners have the right to offer to purchase other shares before the vessel is offered on the open market.

c) If the vessel is placed on the open market, it will be sold when the majority of Co-owners agree on an acceptable offer.

**15) DISPUTES**

a) Except where unanimous consent is required by this Agreement, any disputes shall be decided by a majority vote of Co-owners (each Co-owner having the number of votes in proportion to their shares).

b) In the event of an even number of votes being cast on the matter, the Co-owners may refer the issue to an independent third party suitable to all Co-owners for the determination of the dispute.

**16) SERVICE OF NOTICES**

a) Any notice or account for payment shall be deemed to be served by being emailed, personally delivered, or being mailed to the intended Co-owner at the address most recently advised to VESSEL Secretary.

**17) LAW APPLICABLE**

 The Co-Owners Agreement shall be governed by and constituted in accordance with the laws for the time being in the State of Queensland.

**18) CHANGE OF THESE GUIDELINES:**

These Co-Owner rules can only be changed with the majority agreement of all Co-owners

**19) ENTIRE AGREEMENT**

a) This Agreement represents the entire understanding of the parties and supersedes and replaces all prior agreements amongst the parties.

**SCHEDULE 1.**

**Item 1:**

|  |  |  |
| --- | --- | --- |
| PARTIES | SHARE SYNDICATE MEMBERSHIP |  |
| Geoff Johnson | 100% |  |
| B |  |  |
| C |  |  |
| D |  |  |
| E |  |  |
|  |  |  |
|  |  |  |

**Item 2: Commencing date**

This agreement commences on (date).

**Item 3:** **Associated Equipment**

As specified in the attached Inventory.

**Item 4:** **VESSEL “Id”:**

As specified in the attached build contract for SC696 dated June 2021.

**Item 5:** **Insurance**

1. Full insurance for the Vessel through its construction and shipping phases
2. Public Liability for A$20 miillion.
3. Full replacement cover for the Associated Equipment for $xxx,xxxx determined during construction.

**EXECUTED** as an Agreement on the date specified in Item 2.

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Signature of Witness

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Name (BLOCK LETTERS)

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Signature of Witness

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Name (BLOCK LETTERS)

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Signature of Witness

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Name (BLOCK LETTERS)

 **SHARE PURCHASE AGREEMENT**

**FOR THE PURCHASE OF A SHARE IN A VESSEL**

**FOR PRIVATE RECREATIONAL PURPOSES**

**DATE: …………………………**

**PARTIES: Geoffrey Edward Peter JOHNSON**

46 Beltana Crescent Buddina 4575

(“Seller”)

|  |  |
| --- | --- |
| **AND Name:**  | **ABN**  |
| **Address:**  |
| **Postal:**  | As above  |
| **Email:**  |
| **Phone:**  | **Mobile:**  |

**SCHEDULE 1**

**THE VESSEL**

MANUFACTURER Seawind

MODEL Seawind SW1260

NAME OF VESSEL “Id”

REGISTRATION NUMBER Contract SC696

HULL IDENTIFICATION NUMBER awaiting construction in Vietnam for Delivery to Brisbane September 2024.

INCLUSIONS Inventory as fitted in Commissioning Survey.

 **SCHEDULE 2**

**PURCHASE PRICE AND TERMS OF PAYMENT**

|  |
| --- |
|  PURCHASE PRICE  |
| 20% of A$814,000 = A$162,800 |

|  |
| --- |
|  DEPOSIT  |
| 20% of A$45,000 = A$9,000 |

|  |  |
| --- | --- |
|   |   |
| COST OF RYA TRAINING (TWO DAYS)  |
| A$ |
|  |
|  |
| **EXECUTED** as an Agreement. **EXECUTED** by the Seller **GEOFFREY EDWARD PETER JOHNSON**  | )  | ............................................................................... GEOFFREY EDWARD PETER JOHNSON  |

|  |  |  |
| --- | --- | --- |
| **SIGNED** by the Buyer/s  | ) )  | ............................................................................... Signature/s of Buyer/s  |

1. **DEFINITIONS**

“Accredited Skipper” means a person who is assessed by the Seller or the Trainer as being familiar with and competent to use the Vessel and all its plant, equipment and systems during the Usage Period in accordance with the Ownership and Usage Rules and Ship’s Operating Manual.

“Agreement” means this agreement including the above parties, particulars, all clauses, schedules, annexures and attachments and any amendments/variations to it/them in writing signed by the parties.

“Agreement Date” means the date above or if not specified, the date of execution of this Agreement by the last party to execute it.

“Authorised Representative” means:

(a) In respect of a party which is a corporation:

(i) a company secretary or director or any officer of the corporation with ostensible authority; or

(ii) a person acting with the title or in the office of manager or director; or

(iii) a duly constituted attorney of the corporation; and

(b) in respect of each party, a lawyer of that party or a person nominated by written notice to the other party as an authorised representative.

“Bank” means a bank lawfully carrying on business under the *Banking Act 1959 (Cwth).*

“Bank Cheque” means a cheque drawn by a bank on itself and includes a cheque drawn by a building society or a credit union on itself but does not include a cheque drawn by a building society or a credit union on a Bank.

“Business Day” means a day, not being a Saturday, Sunday, or gazetted public holiday on which Banks are open for commercial business.

“Buyer’s Warranties” means those representations and warranties contained in clause 14 of this Agreement.

“Completion” means completion of the sale and purchase of the Share as provided for in clause 8 of this Agreement.

“Completion Date” means the date upon which the Buyer pays to the Seller the instalment as provided for In Schedule 2 to this Agreement or such other Business Day as may be agreed between the Buyer and the Seller.

“Completion Place” means a location nominated by the Seller.

“Covenantor” means the Buyer in respect of the Obligations under the Ownership and Usage Rules.

“Default Interest Rate” means 20% per annum.

“Deposit” means that amount specified as a deposit in Schedule 2.

“Government Authority” means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or regulatory authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them.

“GST” means a tax imposed under the GST law.

“GST Amount” means an amount calculated by multiplying the consideration for a Taxable Supply by the GST rate, but in any event not more than the GST required to be paid in respect of that Taxable Supply.

“GST Invoice” means an invoice for the GST Amount, which must include all particulars required by the GST Law and any other information a party may reasonably require to enable it to obtain an input tax credit under the GST Law for the GST Amount.

“GST Law” has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cwth)* or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made pursuant to it and includes, where the context permits, any ATO ruling or determination.

“Notice” means a written notice, consent, approval, direction, order or other communication.

“Obligation” means any legal, equitable, contractual, statutory, or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

“Owner” means an owner of a share in the Vessel and includes any guest or invitee of an owner.

“Ownership and Usage Rules” means the covenants and rules with respect to the ownership and Usage of the Vessel executed by the Buyer contemporaneously with this Agreement.

“Parties” means the Buyer and Seller.

“Purchase Price” means that amount specified as the purchase price in Schedule 2.

“Right” includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

“Rules” means the Ownership and Usage Rules.

“Seller’s Warranties” means those representations and warranties contained in clause 13.

“Share” means a one fifth (1/5) share in the Vessel.

“Ship’s Operating Manual” means the manual relating to the operation and use of the Vessel, and its plant, equipment and operating systems (copies of which are in the possession of the Owners and are located on the Vessel) as may be varied from time to time.

“Taxable Supply” means any supply made by a party as a consequence of the transaction contemplated by this Agreement in respect of which the other party is or becomes liable to pay GST.

“Trainer” means a person who is an Accredited Skipper appointed by the Seller to undertake training in accordance with clause 11.

“Training and Accreditation Period” means that period of time following Completion and prior to the Usage Period.

“Usage” means any:

(a) use of the Vessel in any manner by, or at the direction of, or with the actual or ostensible authority of an Owner; and,

(b) includes any arrangement between the Owners for the use of the Vessel by the Owners for private and recreational purposes.

“Usage Period” means that period of time (not exceeding 5 years) between the commencement of the syndicate and the Review of the Syndicate Agreement. The usage period may be extended or varied by agreement of a majority of owners. “Vessel” means the vessel specified in Schedule 1.

**2. INTERPRETATION**

2.1 In the interpretation of this Agreement, unless the context or subject matter otherwise require:

(a) singular includes plural and vice versa and any gender includes every gender;

(b) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, includes successor bodies;

(c) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

(d) references to months mean calendar months;

(e) references to statutes include statues amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;

(f) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

(g) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;

(h) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;

(i) each clause or sub-clause in a list is to be read independently from the others in the list;

(j) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;

(k) a reference to a party includes that party’s executors, administrators, substitutes, successors and permitted assigns; and

(l) where the Buyer is more than one person, corporation or entity the Buyer’s Obligations under this Agreement are joint and several.

**3. SALE AND PURCHASE**

3.1 The Seller agrees to sell and the Buyer agrees to purchase the Share as tenant in common for private recreational purposes upon the terms and conditions of this Agreement.

**4. USE OF VESSEL**

4.1 The Buyer must use the Vessel:

(a) only for private recreational purposes; and

(b) at all times in compliance with

(i) the laws, statutes and regulations of all relevant Government Authorities; and

(ii) the conditions of insurance specified in a policy of insurance of the Vessel; and

(iii)the Rules and the Ship’s Operating Manual.

**5. OWNERSHIP AND USAGE RULES**

5.1 The Rules:

(a) regulate the ownership and Usage of the Vessel for private and recreational purposes; and

(b) are agreed

(i) between the Seller and the Buyer;

(ii) between the Seller and the Owners of shares in the Vessel; and

(iii) between the Owners inter se for their benefit for the purposes of regulating their ownership and Usage of the Vessel; and

(c) constitute a valid and binding agreement between them.

**6. PURCHASE PRICE AND PAYMENT**

6.1 The Buyer must pay to the Seller the Purchase Price.

6.2 The Purchase Price must be paid in the amounts and at the times set out in Schedule 2 to this Agreement.

6.3 The Purchase Price must be paid by Bank Cheque, cash, electronic funds transfer or direct deposit of cleared funds to a nominated account of the Seller with a Bank or other means specified by the Seller in its sole discretion.

**7.BREACH OF AGREEMENT**

7.1 If the Buyer fails to pay the Purchase Price in the amounts and at the times provided for or fails to fulfill any other Buyer’s Obligation in this Agreement it will be in substantial breach of this Agreement and the Seller may exercise and pursue any/all of its rights at law and in equity including a claim for damages for any loss occasioned by a resale of the share for a price less than the Purchase Price.

**8.COMPLETION**

8.1 The Buyer and the Seller must effect Completion of this Agreement at the Completion Place on or before the Completion Date.

8.2 On or before Completion the Buyer must nominate in writing to the Seller one person (and may nominate 2 persons) for accreditation as the Buyer’s Accredited Skipper and provide comprehensive particulars of each person’s qualifications and experience including copies of relevant licences, certificates, and other documents evidencing them.

8.3 The Buyer must on Completion pay to the Seller the balance of the Purchase Price.

8.4 On Completion in exchange for the balance of the Purchase Price, the Seller must deliver to the Buyer or at the Buyer’s direction the following:

(a) a certificate of title issued and signed by the Seller naming the Buyer as the Owner of the Share;

(b) if applicable, any declarations, transfers, documents or instruments required by any Government Authority to record the transfer of the Share from the Seller to the Buyer and naming the Buyer as the Owner of the Share;

(c) releases of all encumbrances or charges over the Share;

(d) any other documentation necessary to vest in the Buyer unencumbered title to the Share;

(e) a valid GST Invoice if the supply of the Share is subject to GST;

(f) assignment (if necessary/required) to the Buyer commensurate with the Share of all manufacturer’s and suppliers’ warranties applicable to the Vessel and all documentation reasonably required to effect that assignment;

(g) a Policy and Certificate of Currency of Insurance applicable to the Vessel with the insurable interest of the Buyer commensurate with the Share endorsed and all documentation reasonably required to evidence that insurance;

(h) access to the online reservation Roster for reservation of Usage of the Vessel by Owners during the Usage Period and a secure user name and password for that purpose;

(i) training dates for the Training and Accreditation Period prior to the commissioning of the Vessel for Usage.

8.5 Following Completion the Buyer must:

(a) be bound by the Ownership and Usage Rules and strictly comply with all of the obligations of the Covenantor in it; and

(b) ensure that the person/s nominated as the Buyer’s Accredited Skipper undertakes the Training.

**9.INTEREST ON LATE PAYMENTS**

9.1 If any moneys due and payable under this Agreement are not paid on the due date for their payment, then without prejudice to any other rights or remedies under this Agreement or at law or in equity available to the Seller, the Buyer must pay to the Seller interest on such unpaid moneys or on that part as shall from time to time remain unpaid at the Default Interest Rate of 20% per annum.

9.2 Interest payable under this clause must be paid by the Buyer on demand from the Seller.

9.3 Any judgment for any such moneys shall likewise bear interest from the date of judgment until the date of payment.

**10.FIT OUT AND SEA TRIALS**

10.1 The Seller must at its cost complete the fit-out of the Vessel and undertake sea trials of the Vessel, its equipment, and operating systems to ensure its readiness for use by Owners during the Training and Accreditation Period and the Usage Period.

**11.TRAINING AND ACCREDITATION**

11.1 During the Training and Accreditation Period the Seller must provide the person nominated for accreditation as an Accredited Skipper with training in the use and operation of the Vessel and all its plant, equipment and systems to ensure they are familiar with and competent to use the Vessel during the Usage Period.

11.2 Training must be provided by a Trainer appointed by the Seller.

11.3 Training must be provided over two consecutive days prior to the commencement of the Usage Period.

11.4 The Buyer must pay for the Trainer for both days. The Buyer must pay for the Trainer if additional training is recommended by the Trainer or Geoff’ Marine Services (GMS) acting as the Syndicate Facilitator if on completion of the training, the Trainer is satisfied that the person nominated is familiar with and competent to use the Vessel during the Usage Period the Trainer must certify that person as an Accredited Skipper.

**12.POSSESSION**

12.1 Prior to Completion the Seller is entitled to possession of the Vessel.

12.2 Following Completion the Owners of the Vessel are entitled to possession of the Vessel in accordance with the Operating Rules.

**13.SELLERS WARRANTIES**

13.1 The Seller states and assures to the Buyer that except as otherwise disclosed in this Agreement:

(a) at Completion the Seller will be the residual share Owner of the Vessel and it will not be subject to any charges, encumbrances, liens or any other form of consensual or non-consensual security interest;

(b) the Seller will:

(i) apply for and obtain registration of the Vessel with the relevant Government Authorities; and

(ii) ensure that prior to the Training and Accreditation Period all safety equipment on the Vessel complies with the regulatory obligations of all relevant Government Authorities;

(c) the Seller is duly constituted and has full power and lawful authority to own and sell the Share;

(d) no action has been taken by or against the Seller which could lead to the winding up of the Seller;

(e) the Seller is not, nor has never been, bankrupt;

(f) a compromise or arrangement has not been proposed between the Seller and its creditors, nor agreed to by the creditors sanctioned by any Court.

**14.BUYERS WARRANTIES**

The Buyer states and assures to the Seller that:

(a) the Buyer has entered this Agreement after conducting due diligence and enquiry satisfactory to the Buyer and the Buyer has perused such documents relating to the Vessel as the Buyer has desired to inspect;

(b) the Buyer (if a company) is duly incorporated and validly existing under the laws of its jurisdiction of Incorporation and has full corporate power and lawful authority to execute and deliver this Agreement and the means and capacity to complete and perform or cause to be performed its obligations under this Agreement;

(c) this Agreement constitutes a legal, valid and binding obligation of the Buyer enforceable in accordance with its terms by appropriate legal remedy;

(d) this Agreement and its Completion do not conflict with or result in a breach or a default under any provision of its Constitution (if the Buyer is a company), or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound;

(e) if the Buyer is a natural person, the Buyer is not a bankrupt, nor has the Buyer signed any authority under Section 188 of the *Bankruptcy Act1966* (Cth);

(f) if the Buyer is a corporation within the meaning of the *Corporations Act 2001*(Cth) or any similar legislation in the Buyer's place of incorporation:

(i) the Buyer is not in liquidation;

(ii) no action has been taken by or against the Buyer which could lead to the winding up of the Buyer;

(iii) the Buyer is not under official management;

(iv) an administrator, controller or managing controller has not been appointed to the Buyer in respect of the whole or any part of its assets;

(v) a compromise or arrangement has not been proposed between the Buyer and its members or creditors nor agreed to by the members or creditors sanctioned by any Court.

**15.SPECIAL CONDITION**

15.1 The Completion Obligations of the Seller are subject to and conditional upon the Seller effecting the sale of sufficient shares in the Vessel to persons other than the Buyer on or before the Completion Date upon terms and conditions satisfactory to the Seller in its sole discretion.

**16.RESALE OF SHARE**

16.1 If a Share is to be offered for resale:

a) If a Co-owner wishes to sell their share in the Vessel ("the Share"), then the following procedures must be followed:

i) the Co-owner (the "Vendor") must make an offer to sell the Share;

ii) the offer must first be made to all existing Co-owners;

iii) the offer must be in writing

b) Existing Co-owners shall have six weeks from the time of receipt of the offer within which to accept the offer. Acceptance of the offer must be made in writing. If more than one Co-owner wishes to accept the offer then they shall purchase the Share together in equal proportions unless otherwise agreed between them.

c) If the offer is not accepted by any Co-owner within the six week period or if all the Co-owners advise the Vendor prior to that time they do not wish to purchase the Share then on the earlier of these dates the Vendor may attempt to sell their Share of the VESSEL on the open market.

d) To avoid frustration of an individual Co-owner by other Co-owners, if no **buyer satisfactory to all the other Co-owners** has been found within three months of this time (and in this respect the other co-owners shall have full discretion as to whether or not to accept the proposed assignee of the Vendor’s Share) then at the end of that three month period the whole of the VESSEL (and any Associated Equipment) must be immediately advertised for sale at a realistic market price so that a buyer will be reasonably expected to be found within six months. This does not mean that a sale of any individual Co-owners share will cause the sale of the Vessel due to the passage of time taken to sell the share.

e) Settlement of the sale and purchase of the Share or VESSEL and Associated Equipment, as the case may be, shall take place as follows:

i) in respect of the Share, within fifteen weeks from the date when the last Co-owner received notice in accordance with clause 12(a);

ii) in respect of the VESSEL and Associated Equipment, within two months of an offer to purchase being accepted.

f) The Co-owners agree that VESSEL Ownership shall continue until the date of settlement.

g) All new Co-Owners must sign a copy of this agreement or an acceptable variation of the agreement.

16.2 A Share must not be sold until the buyer of the Share signs and agrees to be bound by the Ownership and Usage Rules, the Ship’s Operating Manual and any service and maintenance agreement in respect of the Vessel.

16.3 The Buyer ratifies and confirms all of the Seller’s acts in respect of all rights and obligations under this clause.

**17. RESALE OF VESSEL**

17.1 If the Vessel is to be resold at the expiration of the five (5) year Usage Period or due to an Owners’ impasse frustrating an individual Selling Owner:

17.2 The Selling Owners in consultation with the other Owners, must nominate a resale price (inclusive of GST) for the Vessel.

17.3 In the event that there is no agreement on the resale price then it must be market value of the Vessel as determined by an independent valuer.

17.4 The Vessel must be offered for sale firstly to the current Owners of the Vessel, and then, in the absence of a sale to any of them, to the open market.

**18. GST**

18.1 If GST is imposed on any supply made under or in accordance with this Agreement unless otherwise specified in this Agreement the amount the Buyer must pay for that supply is inclusive of the amount of that GST.

**19. RISK**

19.1 The Share must be at the risk of the Seller until Completion and from Completion is at the risk of the Buyer.

**20. COSTS**

20.1 The parties must pay their own costs of and incidental to this Agreement but all stamp duty (if any) on this Agreement and on any document associated with the sale by the Seller to the Buyer of the Share together with any government impost assessed must be paid by the Buyer and if not paid by the Buyer may be paid by the Seller and recovered from the Buyer as a liquidated debt.

**21. NOTICES**

21.1 Any notice, demand, direction, permission, control, authorisation, or other communication (each a “notice”) required or permitted, whether expressly, or by necessary implication, to be given under this Agreement shall:

(a) be in the English language; and

(b) may, in the case of formal notices related to contractual agreements between parties, by a director, company secretary or solicitor acting on the Parties’ behalf.

21.2 A notice regarding a breach of agreement or dispute resolution must be issued by to the addressee by registered post.

21.3 Any other notice may be issued by the Parties:

(a) by ordinary post (airmail if outside Australia) to the registered street address of the Owner; or

(b) by email to the registered email address of the addressee

21.4 Until the Seller gives notice of a change, its street addresses and email address is:

Street address: **46 Beltana Crescent Buddina Qld 4575.**

Email: **ozgeoff@live.com**

21.5 Until a Buyer gives notice of a change to their registered address, their respective registered street addresses and registered email address will be as set out at the beginning of this Agreement.

21.6 If the street address or email address for the Buyer or the Seller changes, the party concerned must give written notice of the change to the registered street address or email address takes effect at the later of the time of receipt of the notice of change, or the time specified in the notice, whichever is the later. The Parties will confirm receipt of such changes.

21.7 Except if a later time is specified in this Agreement, a notice is to be regarded as given, served, received and as having come to the attention of the addressee:

(a) if it is sent by registered post or ordinary post to the street address of the addressee, on the seventh day after posting; or

(b) if sent by email to the email address of the addressee, forty-eight hours after the delivery time stamp on the email

21.8 Any notice relating to the payment of moneys under this Agreement given by or on behalf of the Seller may direct that payment shall be made in whole or in part to the Seller or a third person (or both). The Buyer must comply with any such notice.

**22. CONFIDENTIALITY**

22.1 This Agreement and all matters and things connected with and related to this Agreement and its performance are confidential and no party shall disclose them to any other person except his, her or its legal and financial advisors and bankers (and then only if the recipient agrees prior to receipt to keep the information disclosed confidential) unless the prior written consent or waiver of the other parties is first had and obtained.

**23. FURTHER ASSURANCES**

23.1 The Seller and the Buyer must execute and do, or cause to be executed and done things reasonably required or requested at any time and from time to time by the either of them to give effect to, and the full benefit of, the covenants contained or implied in this Agreement or to protect the parties’ rights, powers and remedies under this Agreement.

**24. ENTIRE AGREEMENT**

24.1 This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, understandings and agreements, whether oral or written.

24.2 This Agreement shall not be modified, amended or supplemented except by an instrument in writing duly executed by the Parties.

**25. FOREIGN INTERESTS**

25.1 The Buyer warrants that at the date of this Agreement and at the Completion Date:

(a) the Buyer is not a “foreign person” within the meaning of section 21A of the *Foreign Acquisitions andTakeovers Act 1974* as the meaning of that expression is extended by the operation of section 4(6) of that Act; and

(b) the Buyer is not a “person to whom this section applies” within the meaning of that expression in Section 26A of the *ForeignAcquisitions and Takeovers Act1974* as that section is affected by Section 5A of that Act.

**26. MERGER**

26.1 Notwithstanding Completion of this Agreement and notwithstanding the transfer of the Share to the Buyer, any condition to which effect is not given by such Completion and which is capable of taking effect after Completion shall remain in full force and effect.

**27. DISPUTE RESOLUTION**

27.1 Unless a party to this Agreement has complied with clauses 27.1 to 27.6, that party must not commence litigation or arbitration relating to any dispute arising from this Agreement except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause 27 before seeking such relief.

27.2 Where a party to this Agreement fails to comply with clauses 27.1 to 27.6, any other party in dispute with the party so failing to comply, need not comply with this clause 27 before referring the dispute to arbitration, or commencing litigation relating to that dispute.

27.3 Any party to this Agreement, claiming that a dispute has arisen, must give written notice to that effect to the other party, or

parties in dispute, specifying the matter/s in dispute nominating an Authorised Representative with authority to settle the dispute on that party’s behalf (“the designation notice”).

27.4 Each party given a designation notice shall within 3 Business Days of receipt of the designation notice give to the other parties in dispute, a designation notice appointing an Authorised Representative with similar authority.

27.5 The persons designated under clause 27.3 must seek to resolve the dispute within 5 Business Days of the service of the last designation required by clause 27.3.

27.6 If the dispute is not resolved within the period referred to in clause 27.5 (or within such further period as the Authorised Representatives may agree upon) the parties in dispute must within a further 10 day period (or within such further period as the Authorised Representatives may agree) attempt to agree on:

(a)a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or mini-trial (each a “dispute resolution process”); and on

(i) the procedure and timetable for any exchange of documents and other information relating to the dispute;

(ii) procedural rules and a timetable for resolving the dispute;

(iii) the procedure for the selection and remuneration of any neutral person who may be employed by the parties in dispute; and

(b)whether the parties should seek the assistance of a person or an organisation possessing dispute resolution expertise.

27.7 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer under this clause 27 is to attempt to resolve the dispute between the parties.

27.8 After the expiration of the time established by or agreed under clause 27.6 for agreement on a dispute resolution process, any party which has complied with the provisions of clauses 27.1 to 27.6 may by notice in writing terminate the dispute resolution process and may then refer the dispute to arbitration or commence litigation relating to the dispute.

27.9 Nothing in this clause 27 is intended to oust the jurisdiction of any court of competent jurisdiction.

27.10 Where the majority of the syndicate agree that they wish to continue the Usage Period beyond the expiration of the Usage Period then the owners not wishing to continue must individually list their shares for sale.

27.11 Where extraordinary situations arise that may effect the vessel, equipment, repairs, additions, costs, relocation, sale or access by owners to their vessel etc, then resolutions will be determined by a majority of owners. Owners who do not form part of the majority agree to abide by and accept the majority decision.

**28. ERRORS AND MISDESCRIPTIONS**

28.1 If any mistake be made in the description of the Vessel or any other error whatsoever shall appear in the Agreement or any schedule, annexure or appendix to it such mistake or error shall not annul the sale but compensation or equivalent shall be given or taken as the case may require.

**SERVICE AND MAINTENANCE AGREEMENT**

FOR THE SERVICE AND MAINTENANCE OF A VESSEL USED

FOR PRIVATE RECREATIONAL PURPOSES

 **DATED………………………………..**

|  |  |
| --- | --- |
| **COVENANTOR: Name:**  | **ABN**  |
| **Address:**  |
| **Postal:**  | As above  |
| **Email:**  |
| **Phone:**  | **Mobile:**  |

**SCHEDULE 1**

**THE VESSEL**

MANUFACTURER Seawind

MODEL Seawind SW1260

NAME OF VESSEL “Id”

REGISTRATION NUMBER Contract SC696

HULL IDENTIFICATION NUMBER awaiting construction in Vietnam for Delivery to Brisbane September 2024.

INCLUSIONS Inventory as fitted in Commissioning Survey.

**SCHEDULE 2**

**QUARTERLY CHARGES**

**SERVICE PROVIDER:** Geoff’s Marine Services.

 **Geoff’s Marine Services Facilitation Role**

GMS seeks to act as a facilitator of an agreement that allows 5 Co-Owners to fruitfully enjoy the use of a luxury catamaran by sharing time on board the vessel rather than owning it outright (and using it for only a fraction of a year). To that end, GMS offers to provide Boat Secretary, administration, maintenance and social networking services at no extra charge to other Co-owners other than re-imbursement of authorised expenses. GMS is entitled to charge fees at the Usage Owner’s expense when a Usage Owner has not met their agreed responsibilities.

The following Service Agreement is meant to provide clear instruction and direction on the roles and responsibilities of the parties in this Syndicate in order to avoid any misunderstanding:

**1. DEFINITIONS**

1.1 In this Agreement, unless the context specifically requires another meaning:

“Additional Charges” means:

(a)the cost of fuel and fuel additives;

(b)any unknown, unexpected, and unanticipated costs associated with the Vessel (other than those which are part of the Regular Charges relating to the Vessel) including but not limited to specifically approved skipper hire, additional training, additional/upgrades of plant and equipment approved by the Owners, damage to the Vessel and its plant and equipment (not covered by insurance), loss/breakages of/damage to/repair/replacement of plant, equipment, batteries, parts, furnishings, soft furnishings, linen, kitchenware, appliances(not covered by manufacturers warranties),deep cleaning and removal of stains.

“Agreement” means this agreement including the above particulars, all schedules, annexures and attachments to it and any amendments/variations to it in writing signed by the Owner and the Service Provider.

“Agreement Date” means the date above or if not specified, the date of execution of this Agreement by the last party to execute it.

“Authorised Representative” means:

(a)In respect of the Service Provider:

(i) a company secretary or director or any officer of the Service Provider with ostensible authority; or

(ii) a person acting with the title or in the office of manager or director; or

(iii) a duly constituted attorney of the Service Provider; and

(b) in respect of each party, a lawyer of that party or a person nominated by written notice to the other party as an authorised representative.

“Bank” means a bank lawfully carrying on business under the *Banking Act 1959 (Cwth).*

“Bank Cheque” means a cheque drawn by a bank on itself and includes a cheque drawn by a building society or a credit union on itself but does not include a cheque drawn by a building society or a credit union on a Bank.

“Business Day” means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Queensland Australia.

“Charges” means:

(a)Regular Charges; and

(b)Additional Charges.

(c)Surcharges.

“Commencement Date” means the date on which training and accreditation commences.

“CPI Index Number” means the all-groups consumer price index for the capital city of the State in which the berth is located and compiled quarterly by the Australian Bureau of Statistics, for quarters ending March, June, September and December each year.

“Dollars” and “$” means the lawful currency of Australia.

“Default Interest Rate” means 20% per annum.

“Government Authority” means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or regulatory authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them.

“GST” means a tax imposed under the GST law.

“GST Amount” means an amount calculated by multiplying the consideration for a Taxable Supply by the GST rate, but in any event not more than the GST required to be paid in respect of that Taxable Supply.

“GST Invoice” means an invoice for the GST Amount, which must include all particulars required by the GST Law and any other information a party may reasonably require to

GST Law for the GST Amount.

“GST Law” has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cwth)* or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made pursuant to it and includes, where the context permits, any ATO ruling or determination.

“Liquidation” means any receivership, compromise, arrangement, administration, winding up, dissolution, assignment for the benefit of creditors or bankruptcy, or any amalgamation or reconstruction (unless undertaken while solvent).

 “Notice” means a written notice, consent, approval, direction, order or other communication.

“Obligation” means any legal, equitable, contractual, statutory, or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

“Owner” means the person who is named as such in this Agreement.

“Owners” means all persons registered as owners of Shares in the Vessel.

“Ownership and Usage Rules” means the rules agreed between the Service Provider and Owners and the Owners inter se for their benefit regulating the ownership and usage of the Vessel for private recreational purposes.

“Regular Charges” means those amounts payable to the Service Provider by the Owner as set out in Schedule 2 to this Agreement, subject to annual reviews and payable monthly in advance as provided for in this Agreement.

“Right” includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

“Rules” means the Ownership and Usage Rules.

“Share” and “Shares” means an interest or interests as owner of a share or shares as a tenant in common in the Vessel with others.

“Surcharges” means the cost to the Service Provider of:

(a) extraordinary increases in nearby Marina fees/Vessel registration/insurance (other than in circumstances attributable to a breach of the policy conditions by an Owner in which case that Owner must pay the increase);

(b) extraordinary increases in the cost of supply of goods and services to the Service Provider consequent upon amendments to applicable laws imposed by any Government Authority.

“Tax” means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty) including any penalty, interest or similar amounts charged in relation to any of the foregoing at any time:

(a)imposed or levied by any Government Authority; or

(b)required to be remitted to, or collected, withheld or assessed or re-assessed by, any Government Authority.

“Taxable Supply” means any supply made as a consequence of this Agreement in respect of which GST is payable.

“Term” means:

(a)

(i) that period of time between the Commencement Date and the date upon which the Vessel is sold by the Owners following decommissioning; or

(b)such shorter period as notified in writing by the Owners to the Service Provider. “Training and Accreditation Period” means that period of time between Completion and the Usage Period. “Usage Period” means that period of time (not exceeding 5 years) between the commencement of the syndicate and the Review the Vessel’s syndicate agreement. The usage period may be extended or varied by agreement of a majority of owners. “Vessel” means the vessel specified in Schedule 1.

**2. INTERPRETATION**

2.1 In the interpretation of this Agreement, unless the context or subject matter otherwise require:

(a) singular includes plural and vice versa and any gender includes every gender;

(b) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;

(c) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

(d) references to months mean calendar months;

(e) references to statutes include statues amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;

(f) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated orreplacement statutes;

(g) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;

(h) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;

(i) each clause or sub-clause in a list is to be read independently from the others in the list;

(j) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;

(k) a reference to a party includes that party’s executors, administrators, substitutes, successors and permitted assigns; and

(l) where the Owner is more than one person, corporation or entity the Owner’s Obligations under this Agreement are joint and several.

**3. OWNERSHIP**

3.1 The Owner is for all purposes of and incidental to this Agreement the absolute owner of the Share, regardless of any notice of other ownership, trust or any other interest.

3.2 Where the Owner comprises two or more persons the first named is to be the person with whom the Service Provider must at first instance communicate with for the purposes of this Agreement and in that event that person is the duly authorised agent and representative of any other joint Owner.

**4. OWNER’S WARRANTIES**

4.1 The Owner states and assures the Service Provider that:

(a) the Owner has entered this Agreement after conducting due diligence and enquiry satisfactory to the Owner and the Owner has perused such documents relating to the Vessel as the Owner has desired to inspect;

(b) the Owner (if a company) is duly incorporated and validly existing under the laws of its jurisdiction of Incorporation and has full corporate power and lawful authority to execute and deliver this Agreement;

(c) the Owner has means and capacity to complete and perform or cause to be performed its Obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding Obligation of the Owner enforceable in accordance with its terms by appropriate legal remedy;

(e) this Agreement does not conflict with or result in a breach or a default under any provision of its Constitution (if the Owner is a company), or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound;

(f) if the Owner is a natural person, the Owner is not a bankrupt, nor has the Owner signed any authority undersection 188 of the *Bankruptcy Act1966* (Cth);

(g) if the Owner is a corporation within the meaning of the *Corporations Act2001* (Cth) or any similar legislation in the Owner's place of incorporation:

(i) the Owner is not in liquidation;

(ii) no action has been taken by or against the Owner which could lead to the winding up of the Owner;

(iii) the Owner is not under official management;

(iv) an administrator, controller or managing controller has not been appointed to the Owner in respect of the whole or any part of its assets;

(h) a compromise or arrangement has not been proposed between the Owner and its members or creditors nor agreed to by the members or creditors sanctioned by any court.

**5. SERVICE PROVIDER’S WARRANTIES**

5.1 The Service Provider states and assures the Owner that:

(a) the Service Provider is validly constituted under the laws of its jurisdiction and has full power and lawful authority to enter into and perform this Agreement;

(b) the Service Provider is not and has never been bankrupt;

(c) no action has been taken by or against the Service Provider which could lead to winding up its operations;

(d) an administrator, controller or managing controller has not been appointed to the Service Provider or in respect of the whole or any part of its business; and

(e) a compromise or arrangement has not been proposed between the Service Provider and its creditors, nor agreed to by the creditors sanctioned by any court.

**6. SERVICE AND MAINTENANCE**

6.1 The Owner and the Service Provider agree that the Service Provider must service and maintain the Vessel upon the terms and conditions of this Agreement.

**7. TERM OF AGREEMENT**

7.1 The Service Provider agrees to service and maintain the Vessel during the Term.

**8. SERVICE PROVIDER’S OBLIGATIONS**

8.1 The Service Provider must provide/maintain in respect of the Vessel the following:

(a) a berth for the Vessel at GMS’ location at 46 Beltana Crescent Buddina Qld 4575;

(b) registration of the Vessel with any relevant Government Authority;

(c) insurance of the Vessel;

(d) cleaning of the interior and exterior of the Vessel after each use if the Usage Period Owner has not cleaned the Vessel completely as required by the Operating and Usage Rules;

(e) inspect and re-supply consumables after each use;

(f) co-ordination of all repairs, maintenance and warranty work on the Vessel;

(g) refuelling the Vessel if requested by any Owner;

(h) refilling the freshwater tanks after each use;

(i) detailing of the interior and exterior of the Vessel as required if a Usage Owner has not done so;

(j) scheduled servicing of engine/s to manufacturer’s recommendations;

(k) weekly general engine room checks including top-ups of oil and batteries;

(l) careening and antifouling as required by the underwater hull condition from time to time;

(m) the online reservation system and roster for the use and benefit of the Owners; and

(n) tax invoices in respect of Regular Charges (including details of any Additional Charges or Surcharges payable by the Owner).

**9. OWNER’S OBLIGATIONS**

9.1 The Owner must during the Term

(a) use the Vessel strictly in accordance with the Operating Rules; and

(b) provide the Service Provider with access to the Vessel at all reasonable times; and

(c) pay the Charges to the Service Provider in the manner and at the times provided for in this Agreement.

**10. PAYMENT OF CHARGES**

10.1 The Owner must pay the Regular Charges to the Service Provider as follows:

(a) during the Term by quarterly instalments as specified in Schedule 2;

10.2 The Owner must pay Regular Charges to the Service Provider quarterly in advance.

10.3 The Owner must pay Additional Charges to the Service Provider forthwith upon provision of the relevant tax invoice as provided for in clause 8.1 of this Agreement.

10.4 The Owner must pay Surcharges to the Service Provider forthwith upon provision of the relevant tax invoice as provided for in clause 8.1 of this Agreement.

10.5 Method of Payment of Charges:

Regular Charges, Additional Charges and Surcharges must be paid by direct deposit (of cleared funds) to the nominated bank account of the Service Provider.

**11. OWNER’S DEFAULT**

11.1 An Owner will be in material breach of this Agreement if:

(a) the Owner fails to make a payment of any Charges (or any part of them) or any other debt payable by the Owner to the Service Provider under this Agreement; and/or

(b) the Owner fails to discharge any other Obligation on the Owner’s part under this Agreement.

11.2 If the Owner is in material breach of this Agreement:

(a) the Owner must pay interest at the default interest rate in respect of any unpaid Charges or other monies owing to the Service Provider under this Agreement;

(b) the Service Provider is entitled to suspend performance of its obligations to the Owner while the Owner remains in material breach;

(c) the Owner must not use the Vessel when in default;

(d) the Owner’s access to the online reservation system and roster may be denied;

(e) the Service Provider is entitled to sue for Charges not paid and interest;

(f) the Service Provider may at its discretion terminate the Agreement;

(g) at the expiration of one calendar month from the breach the Service Provider is entitled to invoke the power of attorney provisions of this Agreement and sell the Owner’s Share and apply the proceeds of sale to unpaid Charges, interest, and any other debt and remit the balance to the Owner as provided for in this Agreement.

**12.INTEREST**

12.1 The Owner must pay to the Service Provider interest on any unpaid Charges or any other unpaid debt payable by the Owner to the Service Provider under this Agreement.

12.2 Interest must be calculated and charged at the Default Interest Rate calculated and compounding on calendar monthly rests on the total amount of any Charges or any other debt payable by the Owner to the Service Provider under this Agreement from the date on which payments are due until the date on which they are paid.

12.3 Interest must be paid by the Owner to the Service Provider forthwith upon provision of the relevant tax invoice as provided for in clause 6.1 of this Agreement or upon written notice from the Service Provider.

**13.GST**

13.1 If GST is imposed on any supply made under or in accordance with this Agreement the amount the Owner must pay for that supply is inclusive of GST.

**14.SECURITY**

14.1 The Owner grants the Service Provider a continuing first ranking security interest in all of the Owner’s right, title and interest in and to the Owner’s Share in the Vessel and charges that Share in the Vessel as security for the performance and discharge of all the Owner’s Obligations under this Agreement.

**15.POWER OF SALE**

15.1 In the event that the Owner is in material breach of this Agreement and that breach is not remedied within one calendar month from the date of that breach the Service Provider may exercise all of its rights under this Agreement including but not limited to the sale of the Owner’s Share in the Vessel.

15.2 The Service Provider has the power to sell the Share by offering it to other Owners, public auction or by private contract and for a sum payable either in one sum or by instalments subject to such conditions respecting title or evidence of title or other matters as the Service Provider reasonably thinks appropriate with power to vary any contract for sale or to rescind any contract for sale and to resell without being answerable for any loss occasioned by the exercise of the power of sale.

15.3 Within fourteen (14) days from completion of the sale, the Service Provider must give details of the sale price and the manner in which the sale price has been applied.

15.4 The money arising from the sale and which is in fact received by the Service Provider shall be held by the Service Provider to be applied by the Service Provider:

(a) firstly, in payment of all costs, charges and expenses properly incurred by the Service Provider of and incidental to the sale or any attempted sale or otherwise; and

(b) secondly, in discharge of the moneys owed to the Service Provider by the defaulting owner under the terms of this Agreement; and

(c) the residue of the money received, must be paid to the defaulting Owner.

15.5 The Service Provider is not responsible for any involuntary loss happening in or about the exercise of the power of sale conferred by this Agreement.

15.6 At any time after the power of sale conferred by this Agreement has become exercisable the Service Provider may demand and recover from any person all documents relating to the defaulting Owner’s Share which a purchaser under the power of sale would be entitled to demand and recover from the person.

15.7 The receipt in writing of the Service Provider shall be a sufficient discharge of any money arising under the power of sale conferred by this Agreement and a person paying the same to the Service Provider shall not be concerned to see the application of the moneys so paid.

**16.DISPUTE RESOLUTION**

16.1 Unless a party to this Agreement has complied with this clause, that party may not commence litigation or arbitration relating to any dispute arising from this Agreement except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking such relief.

16.2 Where a party to this Agreement fails to comply with this clause, any other party in dispute with the party so failing to comply, need not comply with this clause before referring the dispute to arbitration, or commencing litigation relating to that dispute.

16.3 Any party to this Agreement, claiming that a dispute has arisen, must give written notice to the other party or parties in dispute, designating a representative with authority to settle the dispute on that party’s behalf (“the designation notice”).

16.4 Each other party given a designation notice must within three Business Days of receipt of the designation notice give to the other parties in dispute, a designation notice appointing a representative with similar authority.

16.5 The persons designated under this clause must seek to resolve the dispute within five Business Days of the service of the last designation notice.

16.6 If the dispute is not resolved within the period referred to in the preceding clause (or within such further period as the representatives may agree upon) the parties in dispute must within a further ten day period (or within such further period as the representatives may agree) seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or mini-trial (each a “dispute resolution process”) and on:

(a) the procedure and timetable for any exchange of documents and other information relating to the dispute;

(b) procedural rules and a timetable for resolving the dispute;

(c) the procedure for the selection and remuneration of any neutral person who may be employed by the parties in dispute; and

(d) whether the parties should seek the assistance of a person or an organisation possessing dispute resolution expertise.

16.7 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement under this clause is to attempt to settle the dispute between the parties.

16.8 After the expiration of the time established by or agreed under this clause for agreement on a dispute resolution process, any party which has complied with the provisions of this clause may by notice in writing terminate the dispute resolution process and may then refer the dispute to arbitration or commence litigation relating to the dispute.

16.9 Nothing in this clause is intended to oust the jurisdiction of any court of competent jurisdiction.

**17.ATTORNMENT**

17.1 The Owner irrevocably appoints the Service Provider to be its lawful attorney to act in the name of the Owner for the purposes of:

(a) making and settling insurance claims on behalf of the Owner in respect of the Vessel; and

(b) taking reasonable steps to protect the Vessel for the benefit of the Owners.

17.2 The Owner irrevocably appoints the Service Provider to be its lawful attorney to act at any time after the Owner is in default and the power of sale has become exercisable or has been exercised (sufficient proof shall be the statutory declaration by a director of the Service Provider) to:

(a) execute and sign a transfer or a surrender of the defaulting Owner’s interest in the Vessel;

(b) procure the same to be registered with any appropriate Government Authority;

(c) sign seal, execute, make all applications, notices, returns, declarations, forms, acts, deeds, matters and things as may be necessary or as the Service Provider shall or may deem necessary from time to time for the obtaining, preservation, renewal or transfer of the defaulting Owner’s Share in the Vessel or for the due performance of the Obligations expressed or implied in this Agreement and for these purposes to use the name of the defaulting Owner, and in the name of the Service Provider, such attorney of the defaulting Owner under this Agreement and generally to execute and do anything relative to the defaulting Owner’s Share in the Vessel as fully and effectually as the defaulting Owner could do.

17.3 The Owner ratifies and confirms all that the attorney lawfully does in and about the Owner’s respective Share in the Vessel and to pay to the Service Provider on demand the amount of any costs, expenses or other liabilities incurred by or behalf of the Service Provider in the exercise of the powers referred to in this Agreement.

17.4 The Owner declares that the powers of attorney contained in this clause are expressed to be irrevocable and to be given by way of security.

**18.MISCELLANEOUS**

18.1 Any variation or amendment to this Agreement must be in writing and signed by the parties.

18.2 Except as provided in this Agreement, no failure to exercise and no delay in exercising on the part of any party of any right, power or privilege under this Agreement shall operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of that or any other right, power or privilege.

18.3 The indemnities contained in this Agreement are:

(a) continuing, separate and independent obligations of the parties from their other obligations, and survive the termination of this Agreement; and

(b) absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of the party giving the indemnity.

18.4 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

(a) it is read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and

(b) it does not affect the validity or enforceability of:

(i) that provision in another jurisdiction; or

(ii) the remaining provisions.

**19.CONFIDENTIALITY**

19.1 The parties must keep the terms and conditions of this Agreement confidential unless otherwise agreed.

**20.NOTICES**

20.1 A notice:

(a) must be in the English language; and

(b) may, in the case of formal notices related to contractual agreements between parties, be issued on by a director, company secretary or solicitor acting on the Parties’ behalf.

20.2 A notice regarding a breach of agreement or dispute resolution must be issued by to the addressee by registered post.

(a) Any other notice may be issued by any authorised agent of the Parties:

(b) by ordinary post (airmail if outside Australia) to the registered street address of the Owner; or

(c) by email to the registered email address of the Owner

20.3 Until the Service Provider gives notice of a change, its street addresses and email address is:

Street address: **46 Beltana Crescent Buddina Qld 4575**

Email: **ozgeoff@live.com**

20.4 Until an Owner gives notice of a change to their registered address, their respective registered street addresses and registered email address will be as set out at the beginning of this Agreement.

20.5 If the street address or email address for the Service Provider or the Owner changes, the party concerned must give written notice of the change to each other party. Notification of the change to the registered street address or email address takes effect at the later of the time of receipt of the notice of change, or the time specified in the notice, whichever is the later. The Parties will confirm receipt of such changes.

20.6 Except if a later time is specified in this Agreement, a notice is to be regarded as given, served, received and as having come to the attention of the addressee:

(a) if it is sent by registered post or ordinary post to the street address of the addressee, on the seventh day after posting; or

(b) if sent by email to the email address of the addressee, forty-eight hours after the delivery time stamp on the email

20.7 Proof of the sending of a notice by email and the time of completion of transmission may be established by production of a transmission report by the server or system from which the email was sent which indicates that the email was sent in its entirety to the email address of the addressee.

**OWNERSHIP AND USAGE RULES**

FOR A VESSEL USED FOR PRIVATE RECREATIONAL PURPOSES

**DEED DATED………………………………..**

|  |  |
| --- | --- |
| **COVENANTOR: Name:**  | **ABN**  |
| **Address:**  |
| **Postal:**  | As above  |
| **Email:**  |
| **Phone:**  | **Mobile:**  |

**SCHEDULE 1**

**THE VESSEL**

MANUFACTURER Seawind

MODEL Seawind SW1260

NAME OF VESSEL “Id”

REGISTRATION NUMBER Contract SC696

HULL IDENTIFICATION NUMBER awaiting construction in Vietnam for September 2024 Delivery to Brisbane.

INCLUSIONS Inventory as fitted in Commissioning Survey.

**RECITALS:**

1. The Covenantor is the prospective/owner of a/share/s as a tenant in common with others in the Vessel “Id” under Contract SC696 to be built.
2. The Vessel is to be used for private recreational sailing purposes.
3. The Owners of the Vessel agree/have agreed to these Rules relating to the ownership and usage of the Vessel for private recreational purposes and the resale of the Vessel and their shares in it.
4. The Covenantor has agreed to enter into and execute this Deed as an Owner to give effect to that agreement.

**OPERATIVE:**

**1. GENERAL**

1.1 These Rules:

(a) regulate the ownership and Usage of the Vessel for private and recreational purposes; and

(b) are an agreement between and are binding upon:

(i) the Owners and ‘Geoff’s Marine Services’ (GMS) and

(ii) the Owners make this agreement for their benefit for the purposes of regulating their mutual and individual ownership and Usage of the Vessel.

1.2 Failure to comply with any one or more of the Rules may:

(a) result in:

(i) the forfeiture of Usage of the Vessel; and/or

(ii) the resale of ownership of a Share in the Vessel;

(b) invalidate the insurance policy for the Vessel ; and/or

(c) result in damage or liabilities arising that are not covered by the insurance policy for the Vessel.

**2. DEFINITIONS**

“Accredited Skipper” means a person who is assessed by GMS or an accredited RYA Trainer as being familiar with and competent to use the Vessel and all its plant, equipment and systems in accordance with the ‘Id’ Rules and Ships Operating Manual.

“Compliance Plate” means the manufacturer (Seawind's) marine safety compliance plate affixed to the Vessel.

“Deed” means this deed.

“Government Authority” means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or regulatory authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them.

“Notice” means a written notice, consent, approval, direction, order or other communication.

“Obligation” means any legal, equitable, contractual, statutory, or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

“Owner” means the certified owner of a Share in the Vessel and includes any guest or invitee of an owner and where relevant any Accredited Skipper.

“Ownership and Usage Rules” means these rules as amended by Owners collectively from time to time.

“Purchase Agreement” means the Agreement for the Purchase of a Share in a Vessel for Private Recreational Purposes.

“Right” includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

“Rules” means these Ownership and Usage Rules.

“Share” means an Owner’s share in the Vessel.

“Ships Operating Manual” means the manual relating to the operation and use of the Vessel, and its plant, equipment and operating systems (copies of which are in the possession of Owners and located on the Vessel) as may be varied by GMS or the Owners from time to time.

“Standby Day” means a day during the Usage Period that is not otherwise reserved on the online roster.

“Trainer” means a person appointed by GMS or Owners to undertake training in accordance with clause 6 of this Deed.

“Training and Accreditation Period” means that period of time following Completion and prior to the Usage Period.

“Usage” means any:

(a) use of the Vessel in any manner by, or at the direction or with the actual or ostensible authority of an Owner; and,

(b) includes any arrangement between the Owners for the use of the Vessel by the Owners for private and recreational purposes.

“Usage Period” means that period of time (not exceeding 5 years) between the commencement of the Syndicate and the review of this deed. The usage period may be extended in intervals by agreement of a majority of owners. “Vessel” means the vessel particularised in Schedule 1 to this Deed.

**3. INTERPRETATION**

3.1 In the interpretation of this Agreement, unless the context or subject matter otherwise require:

(a) singular includes plural and vice versa and any gender includes every gender;

(b) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, includes successor bodies;

(c) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

(d) references to months mean calendar months;

(e) references to statutes include statues amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;

(f) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

(g) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;

(h) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;

(i) each clause or sub-clause in a list is to be read independently from the others in the list;

(j) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;

(k) a reference to a party includes that party’s executors, administrators, substitutes, successors and permitted assigns; and

3.2 Where the Owner is more than one person, corporation or entity the Owner’s Obligations under this Agreement are joint and several.

**4. OWNERSHIP**

4.1 The Owner is for all purposes of and incidental to these Rules the absolute owner of the Share, regardless of any notice of other joint or competing ownership, trust or any other interest.

**5. COVENANT**

5.1 The Covenantor covenants at all times to be bound by and comply with:

(a) these Rules and must discharge all the Obligations of an Owner under them; and

(b) the Ships Operating Manual; and

(c)any service and maintenance agreement in force in respect of the Vessel.

**6. TRAINING AND ACCREDITATION**

6.1 Each person nominated as an Accredited Skipper must undertake a minimum of two days training regardless of their previous boating experience.

6.2 Training is carried out following the launch of the Vessel and prior to the first use of the boat via the online reservation system and roster.

6.3 The first and second days must be with a Trainer for familiarisation with the Vessel, its plant and equipment, and operating systems and with the local Marina and waterways.

6.4 Inexperienced Owners may be required to take the Trainer on a third day or additional days at their cost until competent to use the yacht.

6.5 All training is competency based with additional training available at the trained Owner’s expense if the Trainer believes it is necessary or if requested by GMS.

**7. USAGE ALLOCATION**

7.1 Each Owner is entitled to Usage of the Vessel only for private recreational activities for a total of 20% of 365 – 5 maintenance days per annum (equals 360 / 5 = 72 days) plus Standby Days unable to be used by other Owners. The notional Calendar will be populated 18 months in advance by GMS and upcoming Events of Interest refreshed in real time as they are announced.

7.2 Each Owner must use the online reservation system and roster for the allocation and claiming of their Usage days.

7.3 The system and roster have been designed to give all Owners equal use of their boat and equal use of popular times while allowing for regular maintenance.

7.4 To make reservations for Usage or to communicate with other Owners about reservations, Owners must access the internet website www.zzzzzzzz.com.au and enter via the Owners Login menu.

7.5 Owners’ access to the online reservation roster is protected by a secure user-name and password within the website.

7.6 The annual roster for Usage of the Vessel provides for 4 consecutive weeks per year per owner to allow for annual leave for working families.

7.7 Maintenance days will be forecast where possible but urgent repairs may need to use some Owners’ chosen days if Stand-By Days are not suitable.

7.8 Weekend and week-day Usage Periods will be balanced across all Owners where possible. Owners can show their Preferences in the Booking Application.

7.9 Weekend and Public Holiday allocations are unlikely to exceed 10 weekends per year per Owner unless traded.

7.10 Use of the Vessel can be reserved in blocks of one to seven days consecutively.

7.11 Reservations need to be confirmed each quarter even though an 18 month rolling Calendar is in operation.

7.12 A reserved day commences at 9am and finishes at 6pm on the same day, unless otherwise arranged with GMS or the incoming next booking owner.

7.13 A reservation can be cancelled without incurring any loss of day penalty by giving a minimum of 7 days prior notice of the cancellation.

7.14 If a reservation is cancelled within 7 days, those day/s previously reserved are forfeited unless they are taken up / traded by another Owner.

7.15 Easters will be shared between two Owners (Good Friday and Saturday / Easter Sunday and Monday) with each Owner permitted one Easter usage during the Usage Period unless otherwise agreed.

7.16 During the Christmas and New Year periods, each Owner will have access to blocks of three consecutive days from 27 December through to 25 January. The 3 day blocks must be either (27, 28, 29 December) (30, 31 December, 01January) (02, 03, 04 January), (05, 06, 07 January) (08, 09, 10 January), (11,12,13 January), (14,15,16 January), (17,18,19 January), (20,21,22 January) or (23,24,25 January). 1 January is a public holiday and that 3 day block can only be taken by an Owner who has a public holiday entitlement. Each Owner is only permitted one Christmas Day and one New Year’s Eve usage in the 5 year Term (which may be traded).

7.17 Allow a minimum of 5 days to be allocated each year for periodic major servicing, detailing, antifouling and maintenance as required. Additional or occasional days are allocated as required. GMS will always try to use Stand-By days.

7.18 Service periods will be displayed on the Roster published in the Calendar and will be scheduled where possible so as not to coincide with popular times or events or Owners’ requests.

7.19 Standby Days are days not reserved on the Calendar. An owner may reserve a Standby Day only after 9am on the preceding day via the Calendar App.

7.20 Standby Days will not be debited from Owners’ usage allocation.

7.21 Owners may board the Vessel on the day of their first Usage Day from 9am and must return the vessel by 6pm on the same day or 6pm on their last day of usage, unless otherwise arranged with GMS or incoming booking owners. Overnight stays on the 46 Beltana Pontoon are permitted to facilitate early morning departures, or during rainy or windy weather provided a courtesy call is made to GMS.

**8. VESSEL USAGE**

8.1 Each Owner must adopt and demonstrate a responsible attitude towards the Vessel and other Owners.

8.2 Owners must use the Vessel responsibly, without negligence and fully discharge their legal duty of care to other Owners and relevant third parties.

8.3 Owners must at all times comply with the laws, statutes and regulations of all relevant Government Authorities.

8.4 Owners must use the Vessel in strict compliance with the Ships Operating Manual.

8.5 The Vessel must only be operated by an Accredited Skipper.

8.6 Owners must nominate in writing to GMS acting as the Owners‘ Marine Services Provider one (or two) persons for accreditation as the Owner’s Accredited Skipper and provide comprehensive particulars of each person’s qualifications and sailing experience including copies of relevant licences, certificates, and other documents evidencing them.

8.7 Owners must ensure that the person/s nominated as the Owner’s Accredited Skipper undertakes the prescribed Training.

8.8 During the Training and Accreditation Period, GMS will provide the person nominated for accreditation as an Accredited Skipper with training in the use and operation of the Vessel and all its plant, equipment and systems to ensure they are familiar with and competent to use the Vessel during the Usage Period.

8.9 Training must be provided by a Trainer appointed by GMS and the Owners (such as [www.learn2sail.com.au](http://www.learn2sail.com.au) on Mooloolaba Spit).

8.10 Training must be completed over a minimum of two consecutive days prior to the commencement of the Usage Period.

8.11 The Owner must pay for the Trainer for both days. The Owner must pay for the Trainer if the Trainer or GMS recommend additional training.

8.12 If on completion of the training, the Trainer is satisfied that the person nominated is familiar with and competent to use the Vessel during the Usage Period the Trainer must certify that person as an Accredited ‘Id’ Skipper.

8.13 During Usage the Vessel must be under the direct control of an Accredited Skipper.

8.14 Notwithstanding the operation of the Vessel by an accredited Skipper the Owner is solely responsible for the Vessel.

8.15 Owners/Accredited Skippers must ensure that the Vessel is being lawfully used and operated at all times (including not exceeding maximum load, obtaining a radio licence for the VHF radio, being aware of and observing all Notices to Mariners, observing all navigational markers correctly, observing speed limits and relevant alcohol consumption rules, no wake zones, and also including observation of and compliance with all regulations, rules, ordinances, stipulations relating to the vessel, its operation, maintenance, and the safety of all passengers on board).

8.16 Owners/Accredited Skippers must ensure and be responsible for the safety of all persons on-board and in the vicinity of the Vessel.

8.17 The Vessel must be used and operated only in all areas that are safe and legal and are within the geographic limits specified in the Vessel Insurance Policy. It is a requirement that the vessel must not be taken through any coastal bar unless the Owner/Accredited Skipper is accredited by an approved trainer specifically for coastal bar crossing and specific conditions applicable to specific East Coast Australia crossings.

8.18 Owners/Accredited Skippers must obtain a current weather report from the Bureau of Meteorology before departure. It is the Owner’s/Accredited Skipper’s responsibility to obtain updated reports throughout the Usage period.

8.19 Regarding inclement weather, the Owner/Accredited Skipper must only use the Vessel with regard to weather warnings and forecasts and with high regard to the safety and comfort of the crew and the vessel.

8.20 In regard to Australian Standards life vests, the Owner/Accredited Skipper must exercise reasonable care and skill when determining if the weather conditions warrant that life vests be worn, particularly when children 12 years and under are onboard. In inclement circumstances all persons on board the Vessel must wear life vests or personal flotation devices (PFDs).

8.21 The Owner/Accredited Skipper must prior to departure ensure that the correct safety gear is present on board the Vessel in accordance with the number of people that the Owner intends to take out on the Vessel.

8.22 Life vests must be worn at all times by all infants and children under the age of 12 (twelve) years whilst in the Tender and by any person who is not a strong swimmer.

8.23 The Owner/Accredited Skipper must ensure that at least one working mobile phone is onboard at all times and the number given to GMS and other Owners.

8.24 If anchoring overnight, the Owner/Accredited Skipper must:

(a) be aware of the tidal flow and tide heights in the moored area, and

(b) ensure the Vessel is safely moored within sheltered waters free from underwater hazards.

8.25 Upon returning to the Berth, the Owner/Accredited Skipper must ensure that:

(a) the toilet holding tank has been pumped out;

(b) the Vessel is moored and properly tied with fenders and secured to the dock, and connected to shore electricity;

(c) all electrical switches are in the correct position as specified in the Ship’s Operating Manual;

(c) all food, personal items and rubbish is removed from the Vessel;

(d) all hatches are closed and secured;

(e) the ignition keys are returned to their storage location; and

(f) any loss, damage, faults or concerns are reported in the Vessel’s Log Book for action by GMS or if critical or urgent, advised to GSM or a designated marine service / maintenance co-ordinator by phone.

8.26 Each Owner/Accredited Skipper must complete the Vessel’s Log Book after each use of the Vessel.

8.27 Each Owner must do everything reasonably necessary over and above the routine service and maintenance of the Vessel by GMS to protect its value in the second hand market so as to enable the Owners to obtain the best possible price for the Vessel when any Shares are resold (e.g. replace worn carpet, polish fibreglass hull, detail minor blemishes etc.). Any costs incurred in this regard will be paid for by the Owners through the Admin and (Non) Sinking Funds, in proportion to the number of Shares they hold in the Vessel.

8.28 Each Owner must pay for any cleaning required in excess of the routine cleaning if that Owner leaves the Vessel after Usage in an unreasonable condition (eg. Unremoved rubbish, stains, unwashed dishes, drain and toilet blockages etc.)

8.29 If required, Owners and Accredited Skippers must be a full and financial members of any boat club or other organisation where the vessel is berthed.

8.30 The vessel is to be permanently berthed and maintained from GMS jetty and pontoon at 46 Beltana Crescent, Buddina, QLD 4575. The vessel may only be permanently relocated to another port or berth by unanimous agreement of Owners. The nearby Public Jetty and Boat Ramp on the Mooloolah River at the corner of Adaluma Ave and Harbour Pde is available to be used for large numbers of guests or substantial vessel loads.

8.31 Owners may choose to relocate the vessel temporarily to an alternative port by agreement of Owners and GMS for a specified duration (e.g. Whitsunday Islands in winter).

**9. PROHIBITED ACTIVITIES**

9.1 The following are prohibited and Owners must not (nor allow) at any time:

(a) use the Vessel for any Commercial purposes (it is not in Survey nor Registered for Charter);

(b) charter the Vessel;

(c) use the Vessel for any illegal or criminal activity;

(d) use the Vessel negligently;

(e) use the Vessel while under the illegal influence of alcohol or drugs;

(f) use the Vessel for racing other than as specifically approved by all Owners;

(g) use the Vessel for water skiing, wakeboarding or other similar watersports;

(h) operate the Vessel by anyone other than an Accredited Skipper;

(i) cross coastal bars (other than specifically approved crossings)

(j) smoke anywhere on the Vessel;

(k) fish, other than from the swimming platform of the Vessel or from the tender. Bait must be stowed in a separate cooler and never in any of the Vessel’s refrigerators. Fish caught must be cleaned on the swimming platform then stowed in buckets or appropriately wrapped and stored in the fridge/freezer in vapour sealed bags. Fish caught must not be taken inside the cabin.

(l) at any time allow more than the maximum number of people onboard as displayed on the Compliance Plate;

(m) take animals on board the Vessel (unless specifically otherwise approved by all Owners);

(n) anchor the Vessel on coral reefs or rock formations of any kind.

**10. INDEMNITY**

10.1 Each Owner indemnifies other Owners in respect of all loss, damage and liability (both actual and contingent) however incurred by any of them in direct or indirect consequence of that Owner’s breach of or failure to comply with these Rules.

10.2 If during Usage by an Owner, the Vessel is damaged or destroyed or there is injury, loss or damage to another Owner or third parties or their property, and the insurance for the Vessel does not cover (in whole or in part) such damage, destruction, liability or injury (which may include a failure to comply with these Usage Rules), that Owner having Usage of the Vessel at the relevant time will be fully liable for the repair or replacement of the Vessel and will indemnify and hold harmless each of the other Owners in respect of any loss, damage, liability, injury or claim.

**11. DAMAGE, DESTRUCTION, LOSS OR INJURY**

11.1 Where the Vessel is damaged with fault attributable to an Owner, then any time lost in the Usage of the Vessel by other Owners attributable to that damage must be made good by that Owner as soon as possible.

11.2 Where the Vessel is accidentally damaged without fault attributable to an Owner and it is unusable for an extended period of time:

(a) Usage of the Vessel will be suspended until such time as the vessel is repaired and will then recommence; and

(b) the Usage Period will then be extended by the Usage time lost; and

(c) service and maintenance of the Vessel and the attendant costs will be adjusted appropriately.

11.3 In the event that the Vessel is destroyed, the proceeds of any insurance policy must be applied by the Owners to the purchase of a similar replacement vessel or dissolution of the Syndicate as agreed by Owners.

**12.EMERGENCIES**

12.1 The current Usage Owner must notify GSM or another Owner or the service / maintenance co-ordinator immediately by phone in the event of an accident, injury, or emergency at sea.

12.2 The current Usage Owner must use the ships VHF radio (VHF channel 16) or a mobile phone to contact the relevant rescue authorities.

12.3 In the event of an emergency, the current Usage Owner must take all actions necessary to ensure the safety of all passengers on the Vessel and the Vessel.

12.4 For routine fault finding and general information Owners may contact GSM or the service / maintenance co-ordinator.

12.5 Details of contacts are provided in the Ship’s Operating Manual.

**13.INSURANCE**

13.1 Insurance for the Vessel will, on behalf of the Owners, be maintained by GMS with an Insurer / Underwriter / Broker as is agreed between all the Owners and GMS.

13.2 If an event giving rise to a potential insurance claim occurs, the Owner responsible for that event must contact GMS or the service / maintenance co-coordinator immediately. Any applicable insurance policy excess must be paid by the Owner responsible for the event.

13.3 The required insurance policy must extend to provide coverage to Owners for claims which would normally be excluded due to deliberate, intentional, malicious, criminal or otherwise unlawful acts of another Owner. The policy insurers have the right to recover any amounts payable by them due to any deliberate, intentional, malicious, criminal or otherwise unlawful acts of from the Owner who caused such claim.

13.4 A copy of the insurance Policy document and Certificate of Currency must be kept onboard the Vessel.

**14.DURATION OF VESSEL SYNDICATE**

14.1 This Vessel Syndicate is intended to operate in perpetuity with defined review periods. The initial Review of the Syndicate must occur within five (5) years of the Vessel’s commissioning (so that alternatives can be considered).

**15. RESALE OF SHARE**

15.1 If an Owner’s Share is to be offered for resale:

(a) at the election of the Owner then:

(i) the Owner must offer the Share to other Owners first.

(ii) the Owner must nominate the resale price (inclusive of GST) for the Share.

 (b) for any other reason:

(i) the Owner appoints GMS as its agent and attorney for that purpose; and

(ii) the resale price (inclusive of GST) for the Share must be market value; and

(iii) GMS must use its best endeavours to resell the Share for the benefit of other Owners; and

(v) in the event that GMS facilitates a resale it must account to the Owner for the net proceeds of resale comprising the resale price (to be adjusted for charges/expenses relating to the Share) less GST, costs of resale, and brokers’ commission.

15.2 A Share must not be sold until the buyer of the Share signs a Deed agreeing to be bound by these Ownership and Usage Rules, the Ship’s Operating Manual and any service and maintenance agreements in respect of the Vessel in force at the date of the sale of such Share.

15.3 The Owner ratifies and confirms all of GMS’s acts in respect of all rights and obligations under this clause.

**16. RESALE OF VESSEL**

16.1 If the Vessel is to be resold at the expiration of the initial five (5) year Usage Period the Owners appoint GMS its agent and attorney for that purpose.

16.2 In consultation with GMS, Owners must collectively nominate the resale price (inclusive of GST) for the Vessel.

16.3 In the event that there is no agreement on the resale price then it must be market value of the Vessel as determined by an independent valuer.

16.4 The Vessel must be offered for sale firstly to the Owners of the Vessel, and then in the absence of a sale to any of them to the open market.

16.5 The Owners will continue to use the Vessel via the online reservation system and roster while the Vessel is being offered for sale and will continue to comply with clause 5.1.

16.6 GMS must use its best endeavours to resell the Vessel.

16.7 In the event that GMS facilitates a resale it must account to the Owner (commensurate with the Owner’s Share) for the net proceeds of resale comprising the resale price (to be adjusted for charges/expenses relating to the Vessel) less GST and commission.

16.8 The Owner ratifies and confirms all of GMS’ acts in respect of all rights and obligations under this clause.

**17.NOTICES**

17.1 Any notice, demand, direction, permission, control, authorisation, or other communication (each a “notice”) required or permitted, whether expressly, or by necessary implication, to be given under this Deed shall:

(a) be in the English language; and

(b) may, in the case of formal notices related to contractual agreements between parties, be issued only by a director, company secretary or solicitor acting on the Parties’ behalf.

17.2 A notice regarding a breach of agreement or dispute resolution must be issued by to the addressee by registered post as well as by email.

17.3 Any other notice may be issued by any authorised agent of the Parties:

(a) by ordinary post (airmail if outside Australia) to the registered street address of the Owner; or

(b) by email to the registered email address of the Owner.

17.4 Until Geoff’s Marine Services (GMS) gives notice of a change, its street addresses and email address is:

Street address: **46 Beltana Crescent Buddina Qld 4575.**

Email: **ogeoff@live.com**

17.5 Until an Owner gives notice of a change to their registered address, their respective registered street addresses and registered email address will be as set out at the beginning of this Agreement.

17.6 If the street address or email address for GMS or an Owner changes, the party concerned must give written notice of the change to each other party. Notification of the change to the registered street address or email address takes effect at the later of the time of receipt of the notice of change, or the time specified in the notice, whichever is the later. The Parties must confirm receipt of such changes.

17.7 Except if a later time is specified in this Agreement, a notice is to be regarded as given, served, received and as having come to the attention of the addressee:

(a) if it is sent by registered post or ordinary post to the street address of the addressee, on the seventh day after posting; or

(b) if sent by email to the email address of the addressee, forty-eight hours after the delivery time stamp on the email

17.8 Proof of the sending of a notice by email and the time of completion of transmission may be established by production of a transmission report by the server or system from which the email was sent which indicates that the email was sent in its entirety to the email address of the addressee.

17.9 Any notice relating to the payment of moneys under this Deed given by or on behalf of GMS may direct that payment shall be made in whole or in part to GMS or a third person (or both). The Owner must comply with any such notice.

**18. CAREENING CREDIT**

As an aid to ensuring that the Vessel always a safe, clean bottom, each Owner who careens and gently cleans the underwater section of the hulls, records the activity time and place in the Ship’s Log and notifies the Boat Secretary by email will be given a Careening Credit of $200. A suitable careening location is in the shallow sandy bay at the mouth of the Mooloolah River in front of the high-rise apartments at Point Cartwright. Each owner always has a responsibility to report the need for hull cleaning or to undertake it themselves in any suitable location.

**19. CHANGES TO OWNERSHIP AND USAGE RULES**

This Deed must not be modified, amended or supplemented except by an instrument in writing duly executed by all the Owners of the Vessel and GMS

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| **EXECUTED AS A DEED** **EXECUTED** by the Syndicate Share Seller **GEOFFREY EDWARD PETER JOHNSON**  Date |  |  .............................................................................. Signature of Share Seller |

|  |  |  |
| --- | --- | --- |
| **If the Covenantor/s is/are/person/s: SIGNED SEALED AND DELIVERED** by the Covenantor/s  | ) )  | .............................................................................. Signature/s of Covenantor/s  |

Date