

LICENCE AGREEMENT

This Agreement is made on the _____ day of _____ 2015

BETWEEN Queensland Trochus & Diving Operations Pty Ltd ACN 068 339 266
of 25 Palm Street, Mackay, Queensland

“Owner”

AND _____ of _____

“Licensee”

THE OWNER AND THE LICENSEE AGREE

DEFINITIONS

In this agreement, unless the context or subject matter otherwise require:

“**Access Hours**” means 24hrs, seven days a week (subject to change by notice given or posted at the Boat Yard by Owner).

“**Boat Yard**” means the boat yard, dry dock and land known as “Palm Street Boat Yard” at 25 Palm Street, Mackay in the State of Queensland, including its driveways car parking areas, berths, ramps, waterways, facilities and equipment.

“**Commencement Date**” means the date of this agreement.

“**Contamination**” has the same meaning as defined in the *Environmental Protection Act 1994 (Qld)*.

“**Customer**” means the person, firm, body corporate, association or company who, or on whose behalf, requests the Repairer to perform the Works, and includes the Licensee.

“**Environmental Law**” includes the *Environmental Protection Act 1994 (Qld)* and any other law or regulation that has as its object the protection of the environment from harm or degradation including the regulation of discharges to the environment and the control of pollution.

“**Fees**” means the fees calculated in accordance with the schedule of prices attached hereto or as altered by notice given by the Owner.

“**Licensee**” includes the Licensee’s employees, agents, subcontractors, customers and invitees.

“**Repairer**” means the Owner and any of its employees, agents or subcontractors.

“**Storage Area**” means the boat storage berth or space designated by the Owner.

“**Term**” starts on the Commencement Date and continues on a (month to month) basis unless terminated earlier in accordance with this agreement.

“**Vessel**” means the boat(s) or watercraft requested by the Licensee, whether expressly or by implication, to be the subject of this Agreement and it includes the hull, motors, controls, equipment, accessories, dinghies, tenders and their motors.

“Works” means all works carried out by the Repairer at the request of the Licensee, its employees or agents, including without limitation:

all repairs, maintenance, improvements or shipwright work;

the supply of all machinery, parts, materials, equipment, accessories, labour or specialised tools and/or the removal from the Vessel of any machinery, parts, materials, equipment or accessories; and/or

any operation, movement or storage of the Vessel.

SCOPE OF ANY WORKS AND AUTHORISATION

The Repairer warrants that it is the owner of the Vessel or the Vessel owner’s agent and that it has the authority to request that the Repairer perform the Works. The Licensee authorises the Repairer to move and store the Vessel by whatever means and in whatever circumstances the Repairer considers necessary and appropriate for the performance of the Works. The Licensee acknowledges that quotes for Works are valid for the period stated in the quote.

STORAGE

The Licensee may use the Storage Area for the storage and repair of the Licensee’s boat in accordance with the terms of this agreement.

This agreement creates no tenancy or lease over the Storage Area. The right granted to the Licensee is personal, non-assignable and is non-exclusive.

ACCESS AND CONDITIONS

The Licensee will only have access to the Storage Area during the Access Hours

The Licensee must:

pay to the Owner all Fees payable under this agreement;

not store any goods that are noxious, flammable, explosive, perishable or that are likely to encourage vermin or that in the opinion of the Owner are a risk to the property of any person. If such goods are reasonably required for repairs being carried out, then only the minimum amount required to effect such repairs will be stored. Any such goods must be stored under conditions approved by the Owner;

refrain from any activity in or about the Storage Area or Boat Yard which may become a nuisance or cause damage to the Owner or other occupiers or prejudicially effect the Owner’s insurance policy;

keep the Storage Area, and any other area of the Boat Yard used by the Licensee, clean and tidy;

comply with the Owner’s instructions for the good conduct and management of the Storage Area or Boat Yard;

not keep any pets at the Boat Yard without the express consent of the Owner;

give written notice to the Owner of any change in the address or telephone number of the Licensee;

only perform water blasting below the water line of the Licensee’s boat in the space designated immediately after the haul-out of the boat;

only perform sandblasting in the space designated;

only perform spray painting in the space designated;

pay to the Owner all expenses, including legal fees (calculated on an indemnity basis) incurred by the Owner as a result of any breach by the Licensee of the terms of this agreement;

comply with all Environmental Laws in relation to the use and occupation of the Storage Area;

accept appointment under the *Workplace Health and Safety Act 1995* as principal contractor for any works to be carried out by or on behalf of the Licensee in or about the Storage Area or alternatively will procure the Licensee's contractor to accept such appointment. Any fees payable in relation to such appointment or duty are payable by the Licensee;

The Owner may at any time require the Licensee to remove all items belonging to the Licensee from the Storage Area and/or the Boat Yard if there is an emergency, damage to the Boat Yard or part of the Boat Yard, or for maintenance requirements. If the Licensee fails to comply with such a request then the Licensee authorises the Owner to move such items on the Licensee's behalf. The Licensee indemnifies the Owner, its directors and employees against all claims arising from the exercise or purported exercise of the rights given to the Owner by this clause. The Owner will not be liable for any damage sustained to the Licensee's boat or other property whilst being moved by the Owner or an employee or agent of the Owner.

This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

No failure or delay by the Owner to exercise its rights under this agreement will operate as a waiver to those rights.

FEES

The fees are payable in advance by the Licensee to the Owner. In the case of hard stand and storage fees, the first **month** is payable in advance and thereafter the fees are payable **fortnightly** in advance.

Without prejudice to any other rights at law or in equity which the Owner may have against the Licensee, if the Licensee fails to pay any moneys owed to the Owner pursuant to this Agreement the Owner may:

remove the Licensee's boat and/or trailer to alternative storage space;

allow the Storage Space to be occupied by another boat or trailer;

detain the Licensee's boat and trailer pursuant to a lien on such items in favour of the Owner until all outstanding moneys have been paid by the Licensee to the Owner;

sell the Licensee's boat, trailer and such items by public sale, retaining the proceeds of that sale against expenses of that sale and the outstanding moneys owed to the Owner by the Licensee and returning any surplus to the Licensee

Any moneys outstanding after crediting the sale proceeds remain payable by the Licensee to the Owner and the Licensee will have no right or claim against the Owner to take possession of or disposal of the boat save for any surplus.

CHARGE

The Licensee charges in favour of the Owner all of its estate and interest in any real property that the Licensee owns at present and in the future with the amount of its indebtedness hereunder until discharged.

The Licensee charges in favour of the Owner all its estate and interest in any personal property that the Licensee owns at present and in the future with the amount of its indebtedness hereunder until discharged.

RISK

The facilities and services of the Boat Yard and the Owner are utilised, all items are stored and the Storage Area is used, at the sole risk and responsibility of the Licensee who is to be responsible for any and all theft, damage to and deterioration of goods or chattels, and is to bear the risk of any and all damage suffered, including damage resulting from acts or omissions of the Owner or persons under its control, and damages in the nature of a personal injury.

INDEMNITY

The licensee indemnifies the Owner, its directors and employees from and against all actions, damages, losses, costs, claims and demands by third parties for any liability caused by or arising from:

the use by the Licensee of the Storage Area or boat Yard;

a breach by the Licensee of this Agreement; or

the Contamination of the Boat Yard or the issue of a notice under any Environmental Law arising out of the use or occupation of the Storage Area or Boat Yard by the Licensee

The Licensee must pay to the Owner on demand the amount of all costs or loss incurred incidentally to or as a result of the Owner's compliance with the terms of any order, warrant or process. The liability of the Licensee under this agreement in relation to Contamination will include without limitation the cost of any environmental investigation, inspection, audit or review, the cost of proper professional advice including engineering, technical, scientific, legal or other advice, the cost of any work to remediate, abate, mitigate, prevent or control any actual or potential environmental problems, including but not limited to any Contamination, the cost of all licence fees, securities or bond, the cost of any penalties, fines or sanctions and the cost of any orders for remediation costs, compensation or damages and such indemnity is given on an ongoing basis in accordance with any claim made by a party from time to time, even though this agreement may have expired or be otherwise determined.

TERMINATION

The Owner may withdraw the Licensee's rights granted under this agreement at any time by requiring the Licensee to leave the Storage Area or by refusing the Licensee access to the Storage Area if the Licensee breaches the requirements of this agreement and persists in the breach for 48 hours after the Owner gives notice to the Licensee to remedy the breach.

The Owner reserves the right to withdraw the Licensee's rights granted by this agreement by requiring the Licensee to leave the Storage Area or by refusing the Licensee access to the Storage Area if the Owner determines that the site or any part of it should be closed for public access for any reason whatsoever.

This Agreement may be terminated by the Licensee by giving 7 days notice of termination to the Owner and paying all money owing under this Agreement

The Owner may terminate this Agreement by giving 7 days notice to the Licensee.

Following termination the Licensee must remove their boat and any other items and leave the Storage Area, and any other area of the Boat Yard used by the Licensee, clean and free of rubbish.

NOTICE

The owner may give notice to the Licensee by posting it by ordinary mail as a letter addressed to the Licensee at the address appearing on the front page of this agreement, the last known place of residence of the Licensee or by posting a copy of the notice at the Boat Yard.

If this agreement is signed by the Licensee's representative, the Licensee's representative warrants having the authority of the Licensee to enter into this agreement and will be personally liable if this is not the case. If the Licensee is more than one person then the liability of each Licensee under this agreement is joint and several.

GST

An amount payable by a party under this agreement in respect of a supply by the other party which is a taxable supply under *A New Tax System (Goods and Services Tax) Act 1999* (Cth), unless expressly provided otherwise, represents the GST exclusive value and price of the supply.

JURISDICTION

This agreement is governed by and interpreted in accordance with the laws of Queensland in accordance with the laws of Queensland and both parties submit to the Jurisdiction of the courts of Queensland. **(cfs Brisbane)**

LIABILITY AND INDEMNITY

To the extent the *Competition & Consumer Act 2010* ("the CCA") or any similar state law applies to this Agreement, then certain conditions and warranties will be implied into this Agreement to the benefit of the Licensee, and those conditions and warranties cannot be excluded, restricted or modified by any provision of this Agreement.

If the Repairer is liable for a breach of a condition or warranty implied by the CCA, then to the extent permitted by section 64A of the CCA, the Repairer's liability to the Licensee will be limited to, at the discretion of the Repairer, either:

the re-supply of the goods or services; or

the cost of having the goods or services re-supplied.

Except as provided for in this Agreement, the Repairer will not in any circumstances be liable for any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of the Repairer, its employees, agents or sub-contractors.

The Licensee will indemnify the Repairer against all claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury of any kind arising out of or in any way connected with the performance of the Works howsoever caused, including by way of negligence, breach of contract, breach of duty of bailment or wilful act of the Repairer, its employees, agents or sub-contractors.

SUB-CONTRACTING AND INDEMNITY

The Repairer is entitled to subcontract on any terms the whole or part of the Works.

LIABILITY OF EMPLOYEES, AGENTS AND SUBCONTRACTORS

It is expressly agreed that every exemption from liability, defence, immunity and right under this Agreement will extend to and protect every employee, agent and subcontractor

defined as the Repairer in this Agreement and in this regard the Repairer who is a party to this Agreement will be deemed to be acting as agent or trustee on behalf of all Repairers.

FORCE MAJEURE

If the Repairer by reason of any matter beyond its control, including without limitation:

any act of God;

strike, lock-out or labour disturbance;

war or warlike condition;

act of terrorism;

civil rior;

sabotage;

explosion;

lightning;

fire;

earthquake, landslide or tidal wave;

storm, flood or other extraordinary weather conditions;

quarantine;

requirements of government authorities;

unavailability or delay in supplies (including electricity, oil or gas), equipment or transport;

refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences;

or otherwise is unable to perform any part of its obligations under this Agreement, to the extent and for the period that it is not reasonably able to perform, the Repairer will not be liable to the Licensee.

TIME BAR

The Repairer will not in any circumstances be liable for any claim for loss, damage or injury (including any economic or consequential loss) arising out of or in any way connected with the performance of the Works, whether involving negligence of the Repairer or otherwise, unless such claim is made in writing within six (6) months of the earliest of the following occurring:

the Works being completed; or

the Vessel leaving the care, custody or control of the Repairer.

EXECUTED by the parties as an Agreement

EXECUTED by Queensland Trochus & Diving Operations Pty Ltd ACN 068 339 266 in accordance with section 127 of the *Corporations Act 2001* with the authority of the *Directors/**Sole Director and Secretary:

*Director/Secretary

*Director/**Sole Director and Secretary

SIGNED by _____

in the presence of:

Licensee

Witness (signature)

Witness name (please print)