



# Vessel Sale Agreement – 52' Sunseeker Predator Sports Cruiser

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## Table of contents

1.	DEFINITIONS AND INTERPRETATION.....	1
1.1	Definitions .....	1
1.2	Interpretation.....	5
2.	RECEIVER AND MANAGER.....	5
3.	NAB POWER OF SALE.....	6
4.	PURCHASER'S WARRANTY OF AUTHORITY .....	7
5.	PURCHASER TRUSTEE PROVISIONS.....	7
6.	GUARANTEE AND INDEMNITY .....	8
7.	NOMINATIONS – ASSIGNMENTS.....	8
8.	AGREEMENT TO SELL .....	9
9.	RISK .....	9
10.	AS IS WHERE IS.....	9
11.	DUE DILIGENCE MATERIAL .....	9
12.	WARRANTIES NEGATIVED .....	10
13.	REQUIREMENTS OF AUTHORITIES .....	12
14.	BUYER'S PREMIUM .....	13
15.	PAYMENT OF PURCHASE PRICE.....	13
16.	ADJUSTMENTS TO PURCHASE PRICE.....	13
17.	MOORING OF THE VESSEL AND MOORING FEES .....	14
18.	GOODS AND SERVICES TAX .....	14
19.	COMPLETION AND POSSESSION .....	15
20.	RESTRICTIONS ON COMPLETION .....	17
21.	ANCILLARY EQUIPMENT.....	17
22.	VESSEL ENCUMBRANCES.....	18
23.	TRANSFER OF VESSEL REGISTRATION.....	18
24.	RUBBISH.....	18
25.	PURCHASER'S DEFAULT .....	18
25.1	Vendor May Affirm or Terminate .....	18
25.2	If Vendor Affirms .....	19
25.3	If Vendor Terminates.....	19
25.4	Vendor's Resale.....	19
25.5	Vendor's Damages.....	19
25.6	Interest on Late Payments .....	19
26.	PURCHASER'S INDEMNITIES .....	20

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27.	PURCHASER'S RIGHTS.....	20
28.	CONFIDENTIALITY .....	21
28.1	Keep confidential.....	21
28.2	Exceptions to confidentiality.....	21
29.	NOTICES.....	21
30.	GENERAL PROVISIONS.....	22
30.1	Transfer Documents.....	22
30.2	Costs.....	22
30.3	Duty.....	22
30.4	Governing Law .....	22
30.5	Further Acts .....	22
30.6	Entire Agreement .....	22
30.7	Time of Essence .....	22
30.8	Variations and Waivers to be in Writing .....	23
30.9	Counterparts .....	23
30.10	Execution by Electronic Means .....	23
30.11	No Notice of Revocation by Attorney .....	23
30.12	Severance.....	23
30.13	Non-Merger.....	23
30.14	Inconsistency .....	23
	Schedule 1 – Agreement Particulars .....	24
	Schedule 2 – Ancillary Equipment .....	26
	Schedule 3 – GUARANTEE AND INDEMNITY .....	28
	Execution.....	34

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**THIS VESSEL SALE AGREEMENT** is made on

**BETWEEN** Genesis TDH Pty Ltd ACN 137 315 201 in its own capacity and as trustee for the Genesis TDH Trust No. 2 (Receivers and Managers Appointed)

of c/- KordaMentha, Level 14, 12 Creek Street, Brisbane Qld 4000  
(Vendor)

**AND** The Party named in Item 1 of Schedule 1  
(Purchaser)

## RECITALS

- A. The Receiver and Manager has been appointed by the NAB under the Securities to the Vendor company.
- B. The Vendor (by the Receiver and Manager) has agreed to sell and the Purchaser has agreed to buy the Vessel and Ancillary Equipment on the terms of this Agreement.

## IT IS AGREED

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

- (a) **Agreement** means this document and includes the schedules and annexures to the agreement;
- (b) **Agreement Date** means the date of this Agreement;
- (c) **Auction Terms** means the terms current and referenced as applicable to the auction of the Vessel on the Vendor's Agent's online auction website;
- (d) **Authority** means any federal, State or local government or governmental, semi-governmental, administrative, judicial, statutory, municipal or public authority, person, instrumentality, department or body (whether autonomous or not):
- (i) charged with the administration of any Law or other requirement including without limitation any Law or other requirement relating to transport, shipping, use of waterways or watercourses, maritime matters, marine matters, the environment, pollution, health, safety, ships or boats; and/or
- (ii) having jurisdiction over the Vessel and Ancillary Equipment and any use of or activity carried on or in connection with the Vessel and Ancillary Equipment,
- including without limitation Maritime Safety Queensland;
- (e) **Ancillary Equipment** means the items more particularly described in Schedule 2;
- (f) **Bank** means any banking business as defined in the *Banking Act 1959* (Cth);

- (g) **Bank Cheque:**
- (i) includes a cheque drawn by a building society or credit union on itself; and
  - (ii) does not include a cheque drawn by a building society or credit union on a Bank;
- (h) **Bidder** means a bidder on the Vendor's Agent's online auction website.
- (i) **Business Day** means any day on which Banks are open for general banking business in Brisbane in the State of Queensland, excluding Saturdays and Sundays;
- (j) **Buyer's Premium** means the amount specified in item 6 of Schedule 1;
- (k) **Claim** includes any and all actions, claims, notices, proceedings, judgments, demands, losses, damages, costs including without limitation legal costs on a full indemnity solicitor and own client basis, charges, payments and expenses, however arising, whether present or future, direct or indirect, unascertained, immediate, future, consequential or contingent and whether at law, in contract or in equity;
- (l) **Completion** means completion of all of the transactions the subject of this Agreement and **Complete** and **Completing** have corresponding meanings;
- (m) **Completion Date** means the date specified in item 7 of Schedule 1;
- (n) **Default Interest Rate** means the greater of:
- (i) 12% per annum; and
  - (ii) the Contract Rate published by the Queensland Law Society Inc;
- (o) **Delivery Location** means the mooring or other place described in item 8 of Schedule 1;
- (p) **Due Diligence Material** means:
- (i) all information publicly available (by searches at public registers or otherwise);
  - (ii) all other information and data provided or communicated in writing to the Purchaser or the Purchaser's representatives by the Vendor, the Receiver and Manager, their representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor or the Receiver and Manager, before the date of this Agreement; and
  - (iii) all information which the Purchaser or its representatives would be aware of by making or undertaking all reasonable enquires, appraisals and investigations based on the information specified in the above paragraphs;
- (q) **Encumbrance** means:
- (i) a mortgage, pledge, charge, caveat, assignment by way of security or other encumbrance on the title of the Vessel or any of the Ancillary Equipment; but
  - (ii) excludes the Securities;
- (r) **Financial Institution** means a Bank, building society or credit union;

- (s) **Guarantor** means the person/s specified at item 10 of Schedule 1;
- (t) **Insolvency Event** means in respect of the Purchaser:
- (i) the Purchaser becomes insolvent (as that term is defined in the *Corporations Act 2001* (Cth));
  - (ii) if the Purchaser is a corporation:
    - (A) an order is made or a resolution passed for the winding-up of the Purchaser except where the order or resolution is in respect of a reconstruction or amalgamation of the Purchaser previously approved by the Vendor;
    - (B) an order is made in respect of the Purchaser for the appointment of a liquidator or provisional liquidator;
    - (C) a meeting of creditors of the Purchaser is called and at that meeting a resolution is passed to enter into a scheme of arrangement or composition with creditors, or the Purchaser makes an assignment for the benefit of, or enters into any arrangement or composition with, its creditors;
    - (D) an administrator is appointed in respect of the Purchaser pursuant to the provisions of the *Corporations Act 2001* (Cth);
    - (E) a receiver, manager or receiver and manager, controller or managing controller is appointed in respect of the business assets of the Purchaser; or
    - (F) a moratorium of any debts of the person or an official assignment or a composition or an arrangement, formal or informal, with the Purchaser's creditors, or any similar proceedings or arrangement by which the assets of the Purchaser are submitted to the control of its creditors, is ordered or declared;
  - (iii) if the Purchaser is an individual:
    - (A) an order is made to place the assets and affairs of the Purchaser under administration pursuant to any Law relating to mental health or under any other administration;
    - (B) the Purchaser commits an act of bankruptcy or assigns his or her estate for the benefit of creditors;
    - (C) a petition is presented for an order of bankruptcy or sequestration of the Purchaser's estate which is not dismissed or contested in good faith by appropriate proceedings within five Banking Days; or
    - (D) a trustee in bankruptcy is appointed to the Purchaser's assets or estate; or
  - (iv) anything analogous or having a substantially similar effect to any of the above events specified in this definition happens under any Law of any applicable jurisdiction;
- (u) **Law** means all Statutes, Legislation, Regulations, Ordinances, proclamations, by-laws, orders, awards and judgments of the Commonwealth, States and territories of Australia and of the Courts,

Tribunals, administrative bodies of those jurisdictions and any other law and, where the context requires or permits, includes without limitation:

- (i) the Australian Registration Laws;
  - (ii) the Queensland Registration Laws;
  - (iii) any laws relating to maritime and marine safety;
  - (iv) any laws relating to the use and/or operation of the Vessel;
  - (v) any laws relating to contamination and/or pollution arising as a result of the use and/or operation of the Vessel; and
  - (vi) any laws relating to transport, shipping, use of waterways or watercourses, maritime matters, marine matters, the environment, pollution, health, safety, ships or boats applicable to the Vessel and/or any Ancillary Equipment;
- (v) **NAB** means National Australia Limited ABN 12 004 044 937 of Level 3, 800 Bourke Street, Melbourne Victoria;
  - (w) **Obligation** means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;
  - (x) **Outgoings** means any rate, charge, levy (other than any income tax, capital gains tax, goods or services tax), licence fee or other impost levied by any Authority in any way associated or connected with the Vessel or any of the Ancillary Equipment;
  - (y) **Purchase Price** means the sum set out in item 5 of Schedule 1;
  - (z) **Purchaser's Solicitors** means the solicitors whose details are set out in item 2 of Schedule 1;
  - (aa) **Queensland Registration Certificate** means a certificate of registration issued under the Queensland Registration Laws;
  - (bb) **Queensland Registration Laws** means the *Transport Operations (Marine Safety) Act 1994 (Qld)* and the *Transport Operations (Marine Safety) Regulation 2004 (Qld)*;
  - (cc) **Receiver and Manager** means Simon Michael Vertullo and Robert William Hutson of KordaMentha, Level 14, 12 Creek Street, Brisbane, Queensland and, where the context requires or permits, includes without limitation his firms, officers, partners, directors, servants, agents, consultants and/or employees;
  - (dd) **Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;
  - (ee) **Securities** means:
    - (i) General Security Agreement (PPSR Registered no. 201112210593935 formerly ASIC Registered Charge no 1884555) over all present & after acquired property – no exceptions; and
    - (ii) Goods Mortgage (PPSR Registered No. 201112210652392 formerly ASIC Registered Charge No. 1886327) over the Vessel and Ancillary Equipment;

- (ff) **Stakeholder** means the Vendor's Solicitors (through their trust account);
- (gg) **Vendor's Agent** means the agent specified in item 9 of Schedule 1;
- (hh) **Vendor's Agent's User Agreement** means the User Agreement current and referenced as applicable to the auction of the Vessel on the Vendor's Agent's online auction website;
- (ii) **Vendor's Solicitors** means the solicitors whose details are set out in item 3 of Schedule 1;
- (jj) **Vessel** means the vessel described in item 4 of Schedule 1; and
- (kk) **Winning Bidder** means the Winning Bidder as defined in the Vendor's Agent's User Agreement.

## 1.2 Interpretation

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

- (a) reference to the singular includes the plural and vice versa;
- (b) reference to any gender includes the other gender;
- (c) reference to a person includes a corporation and vice versa; and reference to a person or a corporation includes a firm, a body corporate, an incorporated association or an authority;
- (d) reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (e) any term which is defined in the descriptions of the parties, the definitions or elsewhere in this Agreement will have the meaning there defined;
- (f) where any word or phrase is defined in this Agreement, any other grammatical form of that word or phrase will have a corresponding meaning;
- (g) reference to a part, clause or other subclause is to a part, clause or other subclause of this Agreement;
- (h) reference to a schedule is to a schedule to this Agreement;
- (i) schedules, annexures and appendices (if any) form part of this Agreement;
- (j) reference to "month" is to a calendar month;
- (k) all monetary amounts are in Australian dollars;
- (l) if anything is required to be done or falls on a day that is not a Business Day, it must be done or is deemed to fall instead on the next Business Day; and
- (m) "including" and similar expressions are not words of limitation.

## 2. RECEIVER AND MANAGER

- (a) The Purchaser acknowledges that:
  - (i) the Receiver and Manager has been appointed as receiver and manager of the Vendor company and its assets and undertakings (including without limitation the Vessel) under the Securities;



- (ii) the Receiver and Manager has entered into this Agreement in his capacity as the receiver and manager under the Securities and in no other capacity; and
  - (iii) under no circumstances will the Receiver and Manager be personally liable or be personally obliged to perform any of the obligations of the Vendor company in respect of this Agreement.
- (b) The Purchaser accepts that the Receiver and Manager has given all notices (if any) and done everything necessary to enable him to participate in this transaction and the Purchaser is not entitled to enquire further about those matters or about the capacity of the Receiver and Manager to act in this transaction.
  - (c) The Purchaser accepts that the Receiver and Manager is entitled to exercise the powers conferred on it by this clause 2 and the Securities and agrees to use its best endeavours to facilitate the Receiver and Manager in its exercise of those powers.
  - (d) The Purchaser is not entitled to make any objection, requisition or claim arising out of the appointment of the Receiver and Manager as receiver and manager or any transfer by him and releases the Receiver and Manager from any personal liability whatsoever and must not bring or seek to bring proceedings against the Receiver and Manager in his personal capacity.

### 3. NAB POWER OF SALE

- (a) If the Vendor is unable to Complete this Agreement for any reason whatsoever, the NAB in its capacity as mortgagee/chargee exercising power of sale under the Securities may, at its sole discretion, by notice in writing to the Purchaser, elect to Complete this Agreement as if the NAB were named as the Vendor in this Agreement and the NAB will assume all of the Rights and Obligations of the Vendor under this Agreement as if it were named as the Vendor, in addition to any other Rights it may have under this Agreement.
- (b) If the NAB exercises its discretion pursuant to clause 3(a):
  - (i) the Purchaser must Complete this Agreement in accordance with its terms subject to any amendments that are necessitated by the NAB having exercised its rights under clause 3(a);
  - (ii) the Purchaser releases the Receiver and Manager and their representatives, agents, employees, solicitors or any other person acting on behalf of the Receiver and Manager from all liability in respect of this Agreement;
  - (iii) the Purchaser accepts that the NAB has given all notices and done everything necessary to exercise the power of sale and the Purchaser is not entitled to enquire further about those matters or about the NAB's capacity to sell;
  - (iv) this Agreement will be subject to the delivery of all notices and expiry of any notice periods necessary to enable the NAB to sell as mortgagee/chargee and the NAB is not obliged to effect Completion until expiry of such notices or periods of demand. The Purchaser acknowledges and agrees that, without limitation, the Vendor may exercise the rights under clause 20 if required to

enable delivery of any such notice and/or the expiry of any notice period;

- (v) the NAB does not have to produce a release of any Encumbrance which affects the Vessel or any of the Ancillary Equipment which does not have a priority over the Securities; and
  - (vi) the Purchaser and Vendor accept that the NAB is entitled to exercise the powers conferred on it by this clause 3 and both agree to use their best endeavours to facilitate the NAB in its exercise of those powers.
- (c) The Purchaser and the Vendor acknowledge and agree that the covenants contained in this clause 3 are in favour of the NAB and may be relied upon by the NAB.

#### 4. PURCHASER'S WARRANTY OF AUTHORITY

The Purchaser warrants that it has full right, power and authority to enter into this Agreement and either:

- (a) does not require the consent or approval of any other person to do so; or
- (b) if the consent or approval of another person is required, that consent or approval has been obtained.

#### 5. PURCHASER TRUSTEE PROVISIONS

If the Purchaser enters into this Agreement as the trustee of any trust (**the Trust**), then the Purchaser:

- (a) warrants to the Vendor that:
  - (i) the Trust is created validly and is in existence;
  - (ii) the Purchaser is the sole trustee of the Trust and is appointed validly;
  - (iii) the Purchaser has full and free power to enter into this Agreement and to perform all of the obligations imposed upon it under this Agreement; and
  - (iv) this Agreement has been authorised, signed and delivered by the Purchaser and is a valid, legal and binding instrument and that if any consent or approval is required to the entering into of this Agreement or the performance by the Purchaser of its obligations under this Agreement, it has been obtained;
- (b) accepts and undertakes the personal liabilities under this Agreement and the observance, performance and fulfilment of all obligations on behalf of the Purchaser;
- (c) will not, prior to the satisfaction of all liabilities of the Purchaser under this Agreement, personally and/or by the Trust exercise in its own favour any right of indemnification, lien or charge to which it may be entitled under, or in respect of the assets of, the Trust;
- (d) must hold any of the assets of the Trust (which at any time are in the hands of the Purchaser free of their Trust character by virtue of the exercise or purported exercise of any such right of indemnification, lien or charge) on

trust for the Vendor to the extent to which any liabilities of the Purchaser under this Agreement have not been satisfied;

- (e) agrees that if, at any time prior to the satisfaction of any liability of the Purchaser under this Agreement, the Purchaser ceases for any reason to be the sole trustee of the Trust, the Purchaser will procure any new or additional trustee of the Trust to sign in favour of the Vendor such agreements relating to this Agreement as the Vendor may reasonably require, including without limitation a covenant on the same terms as those contained in this clause 5; and
- (f) agrees that if, at any time prior to the satisfaction of any liability of the Purchaser under this Agreement, the Trust is terminated or for any reason ceases to exist, the Purchaser will immediately give written notice to the Vendor.

## **6. GUARANTEE AND INDEMNITY**

- (a) This clause 6 applies if the Purchaser is a company which is not listed on the Australian Stock Exchange or individuals that are the trustee of a Trust.
- (b) The Purchaser agrees to procure the execution of a guarantee and indemnity in favour of the Vendor and the NAB by all of the directors of the Purchaser or each of the trustees of the Trust in their personal capacity immediately on the execution of this Agreement by the Purchaser. The guarantee and indemnity is to be in the form annexed to the contract as Schedule 3.
- (c) The Purchaser warrants that, on execution of this Agreement, it will be able to have all of the directors of the Purchaser or each of the trustees of the Trust in their personal capacity execute the guarantee and indemnity in favour of the Vendor and the NAB.
- (d) Without limiting or otherwise waiving the Vendor's rights in respect of a breach by the Purchaser of this clause, this Agreement will be voidable at the option of the Vendor, but binding on the Purchaser, until the earlier of Completion or the execution by all of the directors of the Purchaser or each of the trustees of the Trust in their personal capacity and the delivery to the Vendor of the guarantee and indemnity required by clause 6(a).
- (e) Any stamp duty payable on the guarantee and indemnity must be paid by the Purchaser and, if not paid by the Purchaser, may be paid by the Vendor and recovered from the Purchaser on demand.

## **7. NOMINATIONS – ASSIGNMENTS**

- (a) The Purchaser is not entitled to assign the benefit of this Agreement or to require a transfer of the Vessel or any of the Ancillary Equipment in favour of a nominee without the written consent of the Vendor which consent may be granted, granted on conditions or refused in the absolute discretion of the Vendor.
- (b) The Purchaser warrants to the Vendor that it contracts with the Vendor as principal and not on behalf of any other person.

## 8. AGREEMENT TO SELL

- (a) The Vendor agrees to sell and the Purchaser agrees to purchase the Vessel and the Ancillary Equipment for the Purchase Price and on the terms set out in this Agreement.
- (b) The Vendor and the Purchaser agree that:
  - (i) this Agreement is deemed to be formed and enforceable between the Vendor and the Purchaser, on and from the time the Vendor's Agent provides notification to the Purchaser that it is Winning Bidder in accordance with the Vendor's Agent's User Agreement; and
  - (ii) upon satisfaction of clause 8(b)(i), this Agreement will be valid and enforceable between the Vendor and the Purchaser, regardless of whether it has been, or ultimately is at all, signed by the Vendor and/or the Purchaser and exchanged.

## 9. RISK

The Vessel and the Ancillary Equipment, together with everything belonging or attached to the Vessel and the Ancillary Equipment, is at the Purchaser's risk and expense from the Agreement Date.

## 10. AS IS WHERE IS

- (a) Notwithstanding anything else contained in this Agreement, the Vessel and the Ancillary Equipment are sold and will be accepted by the Purchaser in their "as is where is" condition (with all faults and/or defects, latent or patent) as at Completion and on the Completion Date. No warranty is given as to the condition of the Vessel or any of the Ancillary Equipment as at Completion or on the Completion Date.
- (b) Without limiting clause 10(a) the Purchaser specifically acknowledges the provisions of clauses 9, 12, 13, 20, 22, 23 and 24 and confirms that it has made its own inspection, investigation and assessment and taken its own independent advice about the matters set out in those clauses.

## 11. DUE DILIGENCE MATERIAL

Without limiting anything else contained in this Agreement, the Purchaser acknowledges the following matters in relation to the Due Diligence Material:

- (a) the Due Diligence Material was intended only as a guide and an aid to further investigation by the Purchaser. The Purchaser accepted the Due Diligence Material on the condition that it would not rely on that material and would make its own enquiries and obtain its own independent legal, taxation, financial, commercial, technical and other advice in order to verify the accuracy or completeness of the Due Diligence Material. Without limitation, the content of some of the information in the Due Diligence Material was derived from sources other than the Vendor and may have been based on assumptions. None of the Vendor, the Receiver and Manager, the NAB, or their respective representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor, the Receiver and Manager or the NAB warrant that the Due Diligence Material or such assumptions were or are accurate or correct;

- (b) the information contained in the Due Diligence Material is not, and is not intended to be, a complete or accurate statement of the information which the Purchaser would need or expect to find in order to assess whether or not to proceed with the transactions contemplated under this Agreement. None of the Vendor, the Receiver and Manager, the NAB or their respective representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor, the Receiver and Manager or the NAB accept any responsibility to inform the Purchaser if they become aware of any inaccuracy in the Due Diligence Material;
- (c) to the extent that the Due Diligence Material includes any statements in relation to any economic or other interpretations, forecasts, future matters or evaluations of any thing to do with the Vessel or any of the Ancillary Equipment, that statement was provided as an estimate or opinion based upon the information known to the Vendor at the date of preparing the Due Diligence Material, which may have been incorrect. Without limitation, none of the Vendor, the Receiver and Manager, the NAB or their respective representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor, the Receiver and Manager or the NAB warrant that such statements were, or will be, accurate or correct;
- (d) to the extent permitted by Law, the Vendor, the Receiver and Manager, the NAB, their respective representatives, agents, employees, solicitors and any other person acting on behalf of the Vendor, the Receiver and Manager and/or the NAB disclaim all liability in relation to any cause of action whatsoever, including negligence, for any loss arising from reliance on the Due Diligence Material; and
- (e) none of the Vendor, the Receiver and Manager, the NAB or their respective representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor, the Receiver and Manager or the NAB are liable to the Purchaser or any other person for any Claims (whether or not arising out of or connected with negligence, default or lack of care of any of them, respectively nor arising in contract, statute or otherwise) suffered or likely to be suffered by the Purchaser or any other person for any act, matter or thing contained in or arising out of or in connection with the information contained in the Due Diligence Material or any statement or representation expressed or implied in it or any omission, inadequacy or inaccuracy in it.

## 12. WARRANTIES NEGATIVED

- (a) The Purchaser acknowledges that it:
  - (i) has inspected, or has had the opportunity to inspect, the Vessel and the Ancillary Equipment prior to entry into this Agreement and is deemed to buy with full knowledge of the matters set out in clause 12(b) and the state and condition of the Vessel and the Ancillary Equipment as at Completion and on the Completion Date;
  - (ii) has entered into this Agreement only in reliance upon, and after:
    - (A) making its own satisfactory inspection, investigation and assessment of the Vessel and the Ancillary Equipment; and
    - (B) taking its own independent advice; and
  - (iii) has not relied upon any representations or warranties of the Vendor, the Receiver and Manager, the NAB or their respective

representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor, the Receiver and Manager, the NAB or any other person enticing it to enter into this Agreement.

- (b) Without limiting clause 12(a), the Purchaser hereby expressly acknowledges that no warranty or representation has been made nor given by the Vendor, the Receiver and Manager, the NAB or their respective representatives, agents, employees, solicitors, any other person acting on behalf of the Vendor, the Receiver and Manager or the NAB or any other person as to:
- (i) the status, condition or state of repair of the Vessel or any of the Ancillary Equipment including without limitation the seaworthiness of the Vessel;
  - (ii) the fitness or suitability of the Vessel or any of the Ancillary Equipment for any use or purpose;
  - (iii) the compliance of the Vessel or the Ancillary Equipment with any Law, any requirements of any Authority or of any shipping registry;
  - (iv) whether the Vessel is currently, was or is required to be registered with any Authority;
  - (v) whether the Vendor holds and/or has complied with all or any permits, licences, consents or requirements for the use of the Vessel or any of the Ancillary Equipment;
  - (vi) the existence of any notice from an Authority requiring any works to be done or monies to be expended in relation to the Vessel or any of the Ancillary Equipment;
  - (vii) whether any use of the Vessel or any of the Ancillary Equipment breaches any Law, any requirements of any Authority or any conditions of registration of the Vessel or whether any such breaches have occurred;
  - (viii) the value of the Vessel or any of the Ancillary Equipment;
  - (ix) the use or potential use of the Vessel or any of the Ancillary Equipment;
  - (x) any financial or economic considerations relating to the Vessel or any of the Ancillary Equipment including without limitation any return or potential return on investment connected with the use or potential use of the Vessel or any of the Ancillary Equipment;
  - (xi) any permits, licences, rights and/or privileges pertaining or attaching to the Vessel or any of the Ancillary Equipment including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xii) any certificates of survey in relation to the Vessel including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xiii) any certificates of compliance in relation to the Vessel or the Ancillary Equipment including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;

- (xiv) any certificate relating to the tonnage of the Vessel including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xv) the presence, use or adequacy of any safety equipment on the Vessel;
  - (xvi) any log books, records or any other documents relating to the use of the Vessel or any of the Ancillary Equipment including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xvii) any maintenance, repair or purchase records for the Vessel or any of the Ancillary Equipment including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xviii) any manuals, drawings, plans, specifications, certificates or other records relating to the use or construction of, or otherwise in relation to, the Vessel or any of the Ancillary Equipment or any works done to the Vessel including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xix) any information or documents relating to any accidents or incidents involving the Vessel including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xx) historical information or documents in relation to the Vessel including without limitation:
    - (A) any information or documents identifying any previous owner of the Vessel, any uses of the Vessel, any prior registration of the Vessel and any ports visited and waters travelled by the Vessel; and
    - (B) as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xxi) information or documents relating to the current call sign for the Vessel including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xxii) any agreements with any parties in relation to the Vessel including without limitation as to their existence, location, adequacy, currency, accuracy or otherwise;
  - (xxiii) any service connected or provided to the Vessel including without limitation as to their existence, adequacy or otherwise; or
  - (xxiv) as to any other matter or thing in connection with the Vessel or any of the Ancillary Equipment.
- (c) Without limiting anything else in this Agreement, the Purchaser acquires the Property subject to the existence or occurrence of any of the matters set out in clauses 9, 2, 3, 10, 11, 12(b), 13, 19, 20, 22, 23, 20 and 24.

### 13. REQUIREMENTS OF AUTHORITIES

- (a) The Vessel and the Ancillary Equipment are purchased by the Purchaser subject to, and the Purchaser:
  - (i) must comply with, at its own expense; and

- (ii) accepts liability for all Claims arising out of or in any way connected with,
  - all notices, requisitions, orders and requirements issued at any time, including without limitation before the Completion Date, pursuant to any Law or by any Authority necessitating the doing of work or the expenditure of money in any way associated or connected with:
  - (iii) the Vessel;
  - (iv) any of the Ancillary Equipment; or
  - (v) use and/or operation of the Vessel or any of the Ancillary Equipment.
- (b) It is the Purchaser's responsibility to obtain and comply with, at its own expense, all permissions, consents, approvals, certificates or licences required at any time, including without limitation before the Completion Date, pursuant to any Law or by any Authority having jurisdiction over the Vessel or any of the Ancillary Equipment.
- (c) The Vendor will not be liable for any notices, requisitions, orders or requirements referred to in clause 13(a) nor for any permissions, consents, approvals, certificates or licences referred to in clause 13(b) not being available or not being complied with in all respects at Completion.
- (d) If the Purchaser breaches the provisions of clause 13(a), the Vendor and/or the Receiver and Manager may comply with all notices, requisitions and orders referred to in clause 13(a). If the Purchaser breaches the provisions of clause 13(b), the Vendor and/or the Receiver and Manager may obtain and comply with all permissions, consents, approvals, certificates or licences referred to in clause 13(b).
- (e) The Purchaser must pay on demand the Vendor's and/or the Receiver and Manager's costs incurred in the exercise by the Vendor and/or the Receiver and Manager of their Rights under clause 13(d).

#### **14. BUYER'S PREMIUM**

In addition to the Purchase Price, the Purchaser agrees to pay to the Vendor's Agent on or before Completion the Buyer's Premium. The Buyer's Premium does not form part of the Purchase Price payable to the Vendor.

#### **15. PAYMENT OF PURCHASE PRICE**

- (a) On the Completion Date, the Purchaser must pay the Purchase Price, the Buyer's Premium and any other fees and charges provided for in this Agreement or the Vendor's Agent's User Agreement by Bank Cheque(s) or direct deposit of immediately cleared funds or otherwise as the Vendor directs.
- (b) The cost of any Bank Cheque(s) is the responsibility of the Purchaser.

#### **16. ADJUSTMENTS TO PURCHASE PRICE**

- (a) The Vendor is liable for Outgoings up to and including the Completion Date. The Purchaser is liable for Outgoings after the Completion Date.
- (b) Outgoings for periods spanning the Completion Date must be adjusted:



- (i) for those paid, on the amount paid;
- (ii) for those assessed but unpaid, on the amount payable (excluding any discount); and
- (iii) for those not assessed:
  - (A) on the amount the relevant Authority advises will be assessed (excluding any discount); or
  - (B) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (c) If any Outgoings are assessed but unpaid at the Completion Date, then the Purchaser may deduct the amount payable from the Purchase Price at Completion and pay it promptly to the relevant Authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Completion Date for the purposes of clause 16(b).

## 17. MOORING OF THE VESSEL AND MOORING FEES

- (a) As at the Agreement Date, the Vessel will be moored at the Delivery Location pursuant to an agreement between the Vendor and Hope Harbour Marina.
- (b) The Purchaser acknowledges and agrees that it will reimburse the Vendor for the mooring fees and power consumption and any other fees charged by Hope Harbour Marina in respect of the berthing of the Vessel (**Mooring Fees**) from and including the Agreement Date to the Completion Date and for any period after completion that has been paid in advance by the Vendor.
- (c) The Purchaser agrees to pay the Mooring Fees in addition to the Purchase Price on Completion.
- (d) The Purchaser acknowledges that the Vendor's arrangement with Hope Harbour Marina will expire on the Completion Date and that the Purchaser must make its own arrangements in respect of mooring of the Vessel after that time.
- (e) The Purchaser hereby indemnifies and releases the Vendor, the Receiver and Manager and NAB against any and all Claims made or incurred, arising directly or indirectly from, out of or by reason of the Purchaser's use and occupation of the berth at the Delivery Location after Completion or its failure to make alternative arrangements to moor the Vessel either at the Delivery Location or elsewhere.

## 18. GOODS AND SERVICES TAX

- (a) For the purposes of this clause 18, unless the context otherwise requires:
  - (i) "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act and includes any modification, re-enactment or substituted legislation of that Act;
  - (ii) "**GST**" means any tax imposed by or through the GST Act on a supply (without regard to any input tax credit);
  - (iii) "**Recipient**" means the Purchaser;

- (iv) **“Representative”** of a supplier means a representative member of a GST group to which the Vendor belongs;
  - (v) **“Supplier”** means the Vendor;
  - (vi) **“Supply”** means any supply (within the meaning set out in the GST Act) by the Vendor under this Agreement; and
  - (vii) where any other term is used in this clause which is defined in the GST Act, it will have the meaning which is set out in the GST Act.
- (b) The Purchase Price or other consideration payable or otherwise provided to the Vendor or the Vendor’s Agent under this Agreement is calculated and payable on a GST inclusive basis.
  - (c) If the Supplier makes a Supply under this Agreement to the Recipient other than the payment of the Purchase Price or other consideration referred to in clause 18(b), then the amount payable by the Recipient to the Supplier in respect of that Supply will be increased by the amount of the GST payable on that Supply (taking account of any savings that may be available to the Supplier), which amount will be added to, and form part of, the consideration payable for that Supply and be payable on demand.
  - (d) Where GST is payable under this clause on a Supply, the Supplier must give to the Recipient a tax invoice.
  - (e) The Recipient indemnifies and will keep indemnified the Vendor against any and all Claims made or incurred, arising directly or indirectly from, out of or by reason of, the imposition of GST on any Supply made by the Supplier under this Agreement in relation to which GST is payable under this clause. The Recipient acknowledges that any amount of GST imposed on any such Supply made by the Supplier to the Recipient under this Agreement will constitute a loss for the purposes of this clause 18 and such loss will be payable on demand.
  - (f) This clause 18 will not merge upon Completion, termination or other determination of this Agreement and will continue for the benefit of the Vendor.
  - (g) If the liability for payment of GST in respect of a Supply under this clause is imposed upon a Representative of the Vendor, this clause will nonetheless apply and will be calculated in all respects as if the Vendor was liable for the GST imposed on such Supply and entitled to input tax credits properly allocated to the making of that Supply.

## 19. COMPLETION AND POSSESSION

- (a) Completion is to occur at the offices of the Vendor’s Solicitors at a time between 8:30am and 3:00pm on the Completion Date.
- (b) At Completion the Purchaser shall deliver to the Vendor an original counterpart copy of this Agreement signed by the Purchaser.
- (c) In exchange for the Purchase Price, the Vendor:
  - (i) must give to the Purchaser:
    - (A) an original counterpart copy of this Agreement signed by the Vendor;
    - (B) subject to clause 22, title to the Vessel;

- (C) subject to clause 21, title to the Ancillary Equipment;
  - (D) possession of the Vessel at the Delivery Location, including giving to the Purchaser all keys (including security codes) in the Vendor's possession for gaining access to, operating or securing the Vessel;
  - (E) subject to clause 21, possession of the Ancillary Equipment;
  - (F) if on the Agreement Date the Vessel is registered under the Queensland Registration Laws:
    - (1) the then current Queensland Registration Certificate for the Vessel or such other permitted substitute document; and
    - (2) a Recreational Ship Registration Transfer Application (which, as at the Agreement Date, is in the form of Form F3521) compliant with the Queensland Registration Laws and properly completed and signed by the Vendor;
    - (3) if on the Completion Date the Vessel is fitted with liquefied petroleum gas or gas appliances, a certificate from an authorised gas installer dated not more than 30 days prior to the Completion Date;
  - (G) the documents necessary for the withdrawal, discharge or release (as the case may be) of the Securities to the extent that they apply to the Vessel and/or any of the Ancillary Equipment. If required to be registered, the Purchaser must, at its own cost including without limitation any registration or lodgement fees, have any such documents registered; and
  - (H) any documents required to be provided by the Vendor under clause 22(b).
- (ii) may, but is not obliged to, give to the Purchaser, to the extent that they are in the possession of the Vendor, any:
- (A) certificates of survey or certificates of compliance for the Vessel or any of the Ancillary Equipment;
  - (B) log books, records and other documents that are in the possession of the Vendor relating to the use of the Vessel any of the Ancillary Equipment;
  - (C) maintenance, repair or purchase records for the Vessel or any of the Ancillary Equipment;
  - (D) manuals, drawings, plans, specifications, certificates or other records relating to the use or construction of, or otherwise in relation to, the Vessel or any of the Ancillary Equipment or any works done to the Vessel;
  - (E) any information or documents relating to any accidents or incidents involving the Vessel;

- (F) certificates relating to the tonnage of the Vessel;
- (G) historical information or documents in relation to the Vessel including without limitation any information or documents identifying any previous owner of the Vessel, any uses of the Vessel, any prior registration of the Vessel and any ports visited and waters travelled by the Vessel;
- (H) information or documents relating to the current call sign for the Vessel; and
- (I) any other information or documents relating to the Vessel or the Ancillary Equipment.

## 20. RESTRICTIONS ON COMPLETION

- (a) If the Vendor is restricted, prevented or prohibited by any means, thing or event whatsoever and howsoever arising from Completing this Agreement or from giving title and possession of the Vessel and the Ancillary Equipment in accordance with the terms of this Agreement then, the Vendor may, at any time up to and including the Completion Date and notwithstanding anything else contained in this Agreement:
  - (i) terminate this Agreement by notice in writing to the Purchaser; or
  - (ii) extend the Completion Date by notice in writing to the Purchaser by such period or periods of time, as the Vendor may require to complete this Agreement and give title and possession to the Purchaser, the total of which not being more than 90 days from the Agreement Date.
- (b) If the Vendor does give notice(s) of any extension(s) under clause 20(a)(ii), then:
  - (i) the Vendor will be entitled to call on the Purchaser to Complete on seven days written notice at any time during the extended period(s); and
  - (ii) if the Seller is unable to settle this Agreement and give title to, and possession of, the Vessel and the Ancillary Equipment within the extended period(s) of time referred to in clause 20(a)(ii), then either party may terminate this Agreement by notice in writing to the other party. This will be the terminating party's only remedy.

## 21. ANCILLARY EQUIPMENT

Notwithstanding anything else contained in this Agreement:

- (a) the Vendor has no duty of care and gives no representation or warranty:
  - (i) as to any Encumbrance affecting any of the Ancillary Equipment;
  - (ii) as to ownership of, or any interest held in, any of the Ancillary Equipment;
  - (iii) that all or any of the Ancillary Equipment will be in working order and condition and/or located on the Vessel at Completion;
  - (iv) that any of the Ancillary Equipment will be free from any Encumbrance;

- (v) that the Purchaser will be able to take possession of any of the Ancillary Equipment wherever it may be located; or
  - (vi) that the Purchaser will be able to take title to any of the Ancillary Equipment wherever it may be located; and
- (b) the Purchaser accepts all responsibility and deals with any of the Ancillary Equipment at its own risk, cost and expense in all respects.

## 22. VESSEL ENCUMBRANCES

If, at the Completion Date, the Vessel is affected by an Encumbrance which:

- (a) would not prevent a transfer of registration of the Vessel to the Purchaser, the Purchaser must complete this Agreement in any event; and
- (b) would prevent a transfer of registration of the Vessel to the Purchaser, then:
  - (i) if able to be produced by the Vendor at Completion, the Purchaser must accept at Completion the documents necessary for the withdrawal, discharge or release (as the case may be) of any such Encumbrance. If required to be registered, the Purchaser must, at its own cost including without limitation any registration or lodgement fees, have any such documents registered; and
  - (ii) if the Vendor is not able to produce at Completion the documents necessary for the withdrawal, discharge or release (as the case may be) of any such Encumbrance, then clause 20 will apply.

## 23. TRANSFER OF VESSEL REGISTRATION

The Purchaser acknowledges that, in the circumstances identified in clause 19(c)(i)(G) and clause 22, the Purchaser will not obtain on Completion a transfer or transfers of the Vessel and/or Ancillary Equipment capable of immediate registration. If the Vessel and/or any Ancillary Equipment required to be registered are not registered, nothing in this Agreement shall require the Vendor to procure their registration prior to Completion. If the registration of any Vessel and/or any Ancillary Equipment required to be registered is not current at the Agreement Date, the Vendor may cancel the registration prior to Completion.

## 24. RUBBISH

Any rubbish located on the Vessel as at the Completion Date will be the responsibility of the Purchaser to remove and dispose of, at its own cost and expense in all respects.

## 25. PURCHASER'S DEFAULT

### 25.1 Vendor May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this Agreement or any right at common law, if the Purchaser:

- (a) fails to comply with an essential term of this Agreement;
- (b) makes a fundamental breach of an intermediate term; or
- (c) suffers an Insolvency Event,

the Vendor may affirm or terminate this Agreement.

## **25.2 If Vendor Affirms**

If the Vendor affirms this Agreement under clause 25.1, the Vendor may sue the Purchaser for:

- (a) damages;
- (b) specific performance; or
- (c) damages and specific performance.

## **25.3 If Vendor Terminates**

If the Vendor terminates this Agreement under clause 25.1, it may do all or any of the following:

- (a) If the Purchaser is in possession of the Vessel and/or any of the Ancillary Equipment, retake possession of the Vessel and/or any such Ancillary Equipment;
- (b) sue the Purchaser for damages;
- (c) resell the Vessel and/or the Ancillary Agreement.

## **25.4 Vendor's Resale**

If the Vendor terminates this Agreement and resells the Vessel and/or any of the Ancillary Equipment:

- (a) the Vendor may recover from the Purchaser as liquidated damages:
  - (i) any deficiency in price on a resale; and
  - (ii) its expenses connected with any repossession, any failed attempt to resell, and the resale.
- (b) any profit on a resale belongs to the Vendor.

## **25.5 Vendor's Damages**

Without affecting the Vendor's or Receiver and Manager's other rights, the Vendor and the Receiver and Manager may claim damages for any loss it suffers as a result of the Purchaser's default, including its legal costs on a full indemnity basis.

## **25.6 Interest on Late Payments**

- (a) Without affecting the Vendor's other rights, if any money payable by the Purchaser under this Agreement is not paid when due, the Purchaser must pay the Vendor at Completion interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (b) The Vendor may recover that interest from the Purchaser as liquidated damages.
- (c) Any judgment for money payable under this Agreement will bear interest from the date of judgment to the date of payment and the provisions of this clause 25.6 apply to calculation of that interest.

## 26. PURCHASER'S INDEMNITIES

- (a) Without limiting or affecting, and in addition to, any other indemnity given by the Purchaser under this Agreement, the Purchaser indemnifies and will keep indemnified the Vendor, the Receiver and Manager and the NAB against any and all Claims made or incurred, arising directly or indirectly from, out of or by reason of:
  - (i) the failure of the Purchaser to observe and/or fulfil any of its Obligations; or
  - (ii) the breach by the Purchaser, whether intentionally or unintentionally, of any warranty.
- (b) The Purchaser confirms that any indemnity given by the Purchaser under this Agreement:
  - (i) extends to and for the benefit of the Vendor's, the Receiver and Manager's and the NAB's officers, directors, employees, servants, agents, contractors and consultants; and
  - (ii) survives, and will not merge on, Completion or termination or other determination of this Agreement.

## 27. PURCHASER'S RIGHTS

The Purchaser acknowledges and agrees that:

- (a) if:
  - (i) the Vendor fails to perform any or all of its Obligations under this Agreement;
  - (ii) the Obligations are essential terms; and
  - (iii) the Vendor's failure to comply is due to the Vendor's wilful default,

then the Purchaser may terminate this Agreement. This will be the Purchaser's only remedy; and
- (b) except for any statutory remedies which cannot be excluded
  - (i) the Purchaser will not have any Claims against the Vendor under this Agreement, under statute, at law or in equity;
  - (ii) without limiting clause 27(b), the Vendor will not be liable to:
    - (A) pay any monies for, including without limitation any damages or compensation; or
    - (B) do anything in satisfaction of,

any Claims made or incurred by the Purchaser;
  - (iii) the Purchaser is not entitled to withhold any part of the Purchase Price;
  - (iv) except as specified in clause 27(a) or otherwise expressly permitted under this Agreement, the Purchaser is not entitled to terminate this Agreement, refuse to Complete, or delay Completion; and
  - (v) the Purchaser is not entitled to raise any requisition or objection,

for any reason, including without limitation any thing arising directly or indirectly from, out of or by reason of:

- (vi) any of the matters set out in clauses 9, 2, 3, 10, 11, 12(b), 13, 19, 20, 22, 23, 20 and 24; and
- (vii) the failure of the Vendor to perform any or all of its Obligations under this Agreement,

and, in any of those circumstances, the Purchaser is bound to Complete this Agreement in accordance with its terms and conditions.

- (c) Where the context permits or requires, a reference to the Vendor in clause 27(b) is taken to be a reference to the Vendor, the Receiver and Manager, any of their representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor or the Receiver and Manager.

## **28. CONFIDENTIALITY**

### **28.1 Keep confidential**

Subject to clause 28.2, each party must keep the contents of this Agreement (and all documents and information made available to that party for the purposes of entering this Agreement or in the course or the performance of this Agreement) confidential, and must not disclose that information to any other person without the written consent of the other party.

### **28.2 Exceptions to confidentiality**

Clause 28.1 does not apply to:

- (a) any disclosure required by Law;
- (b) any disclosure required by any applicable stock exchange listing rules;
- (c) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality; or
- (d) disclosure to a banker or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution first gives a binding covenant to the other parties to maintain confidentiality, in form and substance satisfactory to the other parties.

## **29. NOTICES**

- (a) Notices under this Agreement must be in writing and may be given by a party's solicitors.
- (b) Notices are effectively given if:
  - (i) delivered or posted to the other party or its solicitors; or
  - (ii) sent to the facsimile number of the other party or its solicitors.
- (c) Posted notices will be treated as given two Business Days after posting.
- (d) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.



- (e) Notices given after 5:00pm will be treated as given on the next Business Day.
- (f) Notices or other written communications by a party's solicitor will be treated as being given with that party's authority.

## **30. GENERAL PROVISIONS**

### **30.1 Transfer Documents**

Any transfer documents to be executed by the parties under this Agreement must be prepared by the Purchaser or Purchaser's solicitors, at the Purchaser's cost and expense, and delivered to the Vendor's solicitors at least seven days before the Completion Date.

### **30.2 Costs**

Each party must bear its own costs of and incidental to the sale and purchase the subject of this Agreement and otherwise arising out of the preparation, negotiation and execution of this Agreement.

### **30.3 Duty**

The Purchaser must pay all duty (including fines and penalties) on this Agreement and under any transaction contemplated by it. The Purchaser indemnifies the Vendor and the Receiver and Manager against any liability for duty (including fines and penalties).

### **30.4 Governing Law**

This Agreement is governed and construed in accordance with the laws of Queensland and the Courts of Queensland will have competent jurisdiction with respect to it.

### **30.5 Further Acts**

- (a) If the Purchaser has done all that it is required to do under this Agreement, the Vendor will do, sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the Purchaser to effectively carry out and give effect to the terms and intentions of this Agreement.
- (b) The Purchaser must, if requested by the Vendor, at its own expense, do, sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the Vendor to effectively carry out and give effect to the terms and intentions of this Agreement.

### **30.6 Entire Agreement**

The terms and conditions set out in this Agreement, the Auction Terms and the Vendor's Agent's User Agreement comprise the entire agreement concluded between the parties notwithstanding any negotiations or discussions prior to it being entered into and notwithstanding anything contained in any brochure, report or other document prepared by the Vendor, the Receiver and Manager, their representatives, agents, employees, solicitors or any other person acting on behalf of the Vendor or the Receiver and Manager, for submission to potential purchasers or others.

### **30.7 Time of Essence**

Time is of the essence of this Agreement.

**30.8 Variations and Waivers to be in Writing**

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by a party from a provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any variation, modification, waiver or consent will be effective only to the extent to, or for which, it may be made or given.

**30.9 Counterparts**

This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

**30.10 Execution by Electronic Means**

This Agreement may be entered into by and become as binding on the parties named in the Agreement by one party signing this Agreement that has been signed by the other party (or a photocopy, electronically imaged or facsimile copy of the same) and transmitting a copy by facsimile, email or other electronic means to the other party or to the other party's agent or solicitors.

**30.11 No Notice of Revocation by Attorney**

Each person signing this Agreement as attorney for a party, by so doing, warrants to the other parties that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

**30.12 Severance**

If any term or part of a term of this Agreement is or becomes legally ineffective, invalid or unenforceable in any jurisdiction:

- (a) but is capable of being read down by a Court so that it becomes legally effective, valid and/or unenforceable (as the case may be), then that term will be read down accordingly; or
- (b) and is not capable of being read down by a Court so that it becomes legally effective, valid and/or unenforceable (as the case may be), then that term will be severed,

and the effectiveness, validity or enforceability of the remainder of this Agreement will not be affected.

**30.13 Non-Merger**

Notwithstanding Completion of this Agreement and notwithstanding the registration of any transfer or assignment in favour of the Purchaser, any term of this Agreement:

- (a) to which effect is not given by such Completion or registration; and
  - (b) which is capable of taking effect after Completion or registration,
- will remain in full force and effect.

**30.14 Inconsistency**

If there is any inconsistency between the provisions of this Agreement and the Vendor's Agent User Agreement and the Auction Terms, the provisions of this Agreement prevail.

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## Schedule 1 – Agreement Particulars

### 1. Purchaser

Name:

ABN:

Contact Person:

Address:

Phone Number:

Facsimile Number:

Email:

### 2. Purchaser's Solicitors

Name of Firm:

Contact Person:

Address:

Phone Number:

Facsimile Number:

Email:

### 3. Vendor's Solicitors

Name of Firm: DibbsBarker

Contact Person: Matthew Rollason

Address: Level 23 Central Plaza Two  
66 Eagle Street  
Brisbane Qld 4000

Phone Number: 07 3100 5000

Facsimile Number: 07 3100 5001

Email: matthew.rollason@dibbsbarker.com

### 4. Vessel

#### 52' Sunseeker Predator Sports Cruiser

Length: 15.85m

Beam: 4.62m

Draft: 1.27m

Year of construction: 2010

Builder: Sunseeker Yachts UK

Flybridge: Sports Cruiser

Hin: GBXSK0515h10

Qld registration no: TT058Q (noted on the Queensland Register but not currently registered)

**5. Purchase Price**

\$ (inclusive of GST)

**6. Buyer's Premium**

5.5% (inclusive of GST) of the Purchase Price

**7. Completion Date**

Two Business Days after the Purchaser receives notification that it is the Winning Bidder.

**8. Delivery Location**

Hope Harbour Marina, Hope Island Qld 4212

**9. Vendor's Agent**

GraysOnline

**10. Guarantor/s**

Name:

Address:

Phone Number:

Facsimile Number:

Email:

Name:

Address:

Phone Number:

Facsimile Number:

Email:

## Schedule 2 – Ancillary Equipment

### Machinery

Engine make:	Dual Caterpillar C12's, approximately HP 700
Engine numbers:	NFL00752, NFL00717
Fuel type:	Diesel
Engine hours:	Approximately 200 +
Max knots:	Approximately 32
Cruise knots:	Approximately 25
Gearbox:	ZF
Gen Set 11 KVA Kohler	

### Tanks

Fuel tank:	1 x approximately 2100 L
Cater tank:	1 x approximately 625 L
Holding tank	
Watermaker	

### Electrical

Sounder:	Raymarine ST 60 & speed
Radar:	Raymarine E 120
Auto Pilot:	Raymarine ST 6002
GPS:	Raymarine E 120
Radios:	No radio
VHF:	Raymarine Ray 240 E
SSB:	Nil
Stereo:	Bose Lifestyle 38
Lighting:	24 volt
Batteries:	Various with charger
Other:	Shore power, LCD TV, internet, satellite TV, windscreen wiper, horn

### Accommodation

2 x Doubles
2 x Singles

**Saloon Lounges**

2 x Techma toilets

2 x hot &amp; cold showers

Hot &amp; cold cockpit shower

Reverse cycle, air conditioning, cockpit seats &amp; table

**Accessories**

Electric sunroof, aft awning, bow & stern thrusters, yacht controller, underwater lights, teak flooring, blinds,

American Walnut interior, forward sun pad, custom black hull, hydraulic swim platform

**Gallery**

Stove:	Miele
Oven:	within microwave
Microwave:	Convection
Fridge:	Miele 24 volt / 240 volt
Freezer:	Miele 24 volt / 240 volt
Other:	BBQ, washer / dryer, icemaker, cockpit sink

**General equipment**

Anchor Winch:	Lewmar
Anchor:	Ultra 35 kg
Chain:	Approximately 80m
Rope:	mooring line
Fenders:	2
Compasses:	Yes
Other:	Chain counter

**Safety equipment**

Life Raft:	Nil
Life Jackets:	Various
Bilge Pumps:	2 x Automatic
Other:	3.4m RIB with 30hp outboard

### Schedule 3 – GUARANTEE AND INDEMNITY

- TO: Genesis TDH Pty Ltd ACN 137 315 201 in its own capacity and as trustee for the Genesis TDH Trust No. 2 (Receivers and Managers Appointed) (**Vendor**)
- AND TO: Simon Michael Vertullo and Robert William Hutson (**Receiver and Manager**)
- AND TO: National Australia Bank Limited ABN 12 004 044 937 (**NAB**)

In consideration of the Vendor, at the request of the directors and/or principal shareholder/s (**Guarantor**) of the Purchaser under the Agreement (**Purchaser**), accepting the registration of the Purchaser as a Bidder, and subsequently accepting the Purchaser as the Winning Bidder, the Guarantor agrees to provide this Guarantee and Indemnity on the terms below.

#### 1. Guarantee

The Guarantor guarantees the performance by the Purchaser of all the terms of the Agreement, and agrees that it will on demand pay to the Vendor, the Receiver and Manager or the NAB all monies which are due to the Vendor, the Receiver and Manager or the NAB under the Agreement and will be responsible for compliance by the Purchaser with all of the terms of the Agreement, in the same manner and to the same extent as if the Guarantor were party to the Agreement.

#### 2. Notice

This Guarantee and Indemnity may be enforced against a Guarantor without the Vendor giving any prior notice to it or requiring the Purchaser to pay any monies or remedy any default.

#### 3. Continuing Security

The Guarantor agrees that this is a continuing guarantee, the Guarantee and Indemnity and the obligation of the Guarantor under the Agreement will be absolute and unconditional and the Guarantee and Indemnity is irrevocable and will remain in full force and effect until the Purchaser's obligations under the Agreement are fully satisfied.

#### 4. No Partial Discharge

This Guarantee and Indemnity will not be wholly or partially discharged by:

- (a) the payment of any monies on account;
- (b) any time, credit or other concession extended by the Vendor to the Purchaser, the Guarantor or any other person;
- (c) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any rights of the Vendor, the Receiver and Manager or the NAB against the Purchaser, the Guarantor or any other person;
- (d) the neglect or omission of the Vendor, the Receiver and Manager or the NAB to enforce any such rights;
- (e) any other dealing, matter or thing which could or might operate to abrogate, prejudice or affect this Guarantee and Indemnity; or

(f) any alteration, modification, variation or addition to the Agreement.

**5. No Effect on Vendor's Rights Under Agreement**

This Guarantee and Indemnity does not substitute any other rights which the Vendor, the Receiver and Manager or the NAB may have under the Agreement and may be enforced against the Guarantor without the Vendor, the Receiver and Manager or the NAB first having recourse to any such right.

**6. Payment Before Settlement**

The Guarantor must pay the Vendor the Purchase Price on the due dates if required by the Vendor irrespective of whether the Agreement has been completed. Upon such payment, the Vendor will transfer the Vessel and the Ancillary Equipment to the Purchaser in accordance with the Agreement.

**7. Principal Obligation**

Between the Guarantor and the Vendor, the Receiver and Manager or the NAB, the Guarantor is a primary debtor and contracts jointly and severally with the Purchaser.

**8. Waiver**

The Guarantor waives any of its rights as surety or indemnifier which may at any time be inconsistent with this Guarantee and Indemnity.

**9. Enforceability**

The agreements made by the Guarantor are not conditional on the validity or enforceability of the agreement of any other person and will remain binding if any other person has not signed the Agreement or the Guarantee and Indemnity.

**10. Multiple Guarantors**

Where there is more than one guarantor, the obligations and liabilities of the guarantors are joint and several.

**11. Indemnity**

(a) Without limiting or affecting, and in addition to, any indemnity given by the Purchaser under this contract, the Guarantor indemnifies and will keep indemnified the Vendor, the Receiver and Manager or the NAB against any and all actions, claims, notices, proceedings, judgments, demands, losses, damages, costs including without limitation legal costs on a full indemnity solicitor and own client basis, charges, payments and expenses, whether present or future, direct or indirect, unascertained, immediate, future, consequential or contingent and whether at law, in contract or in equity, made or incurred, arising directly or indirectly from, out of or by reason of:

(i) the failure of the Purchaser to observe and/or fulfil any of its obligations; or

(ii) the breach by the Purchaser, whether intentionally or unintentionally, of any warranty,

under the Agreement.



- (b) The Guarantor confirms that the indemnity given by the Guarantor under this Guarantee and Indemnity:
  - (i) extends to and for the benefit of the Vendor's, the Receiver and Manager's and the NAB's officers, directors, employees, servants, agents, contractors and consultants; and
  - (ii) survives, and will not merge on, settlement or termination or other determination of the Agreement.
- (c) The Guarantor agrees that it will remain liable to the Vendor, the Receiver and Manager or the NAB under this indemnity even if the Vendor, the Receiver and Manager or the NAB has exercised any of their rights under the Agreement, the Purchaser is wound up or dissolved or any guarantee or indemnity given by the Guarantor is unenforceable in whole or in part.

## 12. No Competition With Vendor

In the event of the Purchaser suffering an Insolvency Event, the Guarantor agrees with the Vendor, the Receiver and Manager and the NAB that it will not prove or claim in competition with the Vendor, the Receiver and Manager and the NAB so as to diminish any distribution, dividend or payment which the Vendor, the Receiver and Manager or the NAB would be entitled to receive. If required by the Vendor, the Receiver and Manager or the NAB, the Guarantor must prove or claim in any of the above events and any amount received by the Guarantor will be held in trust for the Vendor, the Receiver and Manager or the NAB (as the case may be) and paid on demand to the Vendor, the Receiver and Manager or the NAB (as the case may be) in reduction of the amount owing by the Purchaser or by the Guarantor.

## 13. Service of Guarantor

Any document served or delivered in accordance with clause 29 of the Agreement to the Purchaser but addressed to the Guarantor will be presumed to have been served on the Guarantor.

## 14. Governing Law

This Guarantee and Indemnity is governed and construed in accordance with the laws of Queensland and the Courts of Queensland will have competent jurisdiction with respect to it.

## 15. GST

- (a) For the purposes of this clause 15, unless the context otherwise requires:
  - (i) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act and includes any modification, re-enactment or substituted legislation of that Act;
  - (ii) **GST** means any tax imposed by or through the GST Act on a supply (without regard to any input tax credit);
  - (iii) **Recipient** means the each and any Guarantor;
  - (iv) **Representative** of a supplier means a representative member of a GST group to which the Vendor belongs;
  - (v) **Supplier** means the Vendor, the Receiver and Manager and/or the NAB;

- (vi) **Supply** means any supply (within the meaning set out in the GST Act) by the Supplier under this Guarantee and Indemnity; and
  - (vii) where any other term is used in this clause which is defined in the GST Act, it will have the meaning which is set out in the GST Act.
- (b) Any consideration payable or otherwise provided to the Supplier under this Guarantee and Indemnity is exclusive of GST.
  - (c) If the Supplier makes a Supply under this Guarantee and Indemnity to the Recipient then the consideration payable by the Recipient to the Supplier for that Supply will be increased by the amount of the GST payable on that Supply (taking account of any cost savings that may be available to the Supplier), which amount will be added to, and form part of, the consideration payable for that Supply and be payable on demand.
  - (d) Where GST is payable under this clause on a Supply, the Supplier must give to the Recipient a tax invoice.
  - (e) The Recipient indemnifies and will keep indemnified the Supplier in respect of any loss which the Supplier may suffer directly or indirectly from, out of or by reason of, the imposition of GST on any Supply made by the Supplier under this Guarantee and Indemnity. The Recipient acknowledges that any amount of GST imposed on any Supply made by the Supplier to the Recipient under this Guarantee and Indemnity will constitute a loss for the purposes of this clause 15 and such loss will be payable on demand.
  - (f) This clause 15 will not merge upon termination or other determination of this Guarantee and Indemnity or the completion of the Agreement and will continue for the benefit of the Supplier.
  - (g) If the liability for payment of GST in respect of a Supply under this Guarantee and Indemnity is imposed upon a Representative of the Supplier, this clause will nonetheless apply and will be calculated in all respects as if the Supplier was liable for the GST imposed on such Supply and entitled to input tax credits properly allocated to the making of that Supply.

## 16. Continuing Guarantee and Indemnity

This Guarantee and Indemnity will continue for the benefit of the Vendor, the Receiver and Manager, the NAB and their successors and assigns and will be binding on the Guarantor and their personal representatives, successors and assigns. The benefit of this Guarantee and Indemnity will not merge upon termination or other determination of this Guarantee and Indemnity or Completion of the Agreement and will continue until each and every of the Purchaser's and Guarantor's covenants and agreements have been observed, performed and fulfilled.

## 17. Costs and Stamp Duty

The Guarantor must pay to the Vendor, the Receiver and Manager and/or the NAB upon demand, their costs (including legal costs on a full indemnity basis) of and incidental to the enforcement or attempted enforcement by each of them of any of their rights under this Guarantee and Indemnity. The Guarantor must pay any stamp duty that may be assessed on this Guarantee and Indemnity.

## 18. Interpretation

In this Guarantee and Indemnity:

- (a) references to a statute or legislation or to any provision of any statute or legislation will include any modification or re-enactment of it or any statute or legislation passed in substitution for it and all regulations, by-laws and statutory instruments issued under it;
- (b) words importing the singular will include the plural and vice versa;
- (c) words importing one gender will include the other gender and vice versa;
- (d) a reference to a person will be deemed to include a corporate body and vice versa;
- (e) headings are for convenience only and will not affect the construction or interpretation of the provisions of this Guarantee and Indemnity;
- (f) if any term or part of a term of this Guarantee and Indemnity is or becomes legally ineffective, invalid or unenforceable in any jurisdiction:
  - (i) but is capable of being read down by a Court so that it becomes legally effective, valid and/or unenforceable (as the case may be), then that term will be read down accordingly; or
  - (ii) and is not capable of being read down by a Court so that it becomes legally effective, valid and/or unenforceable (as the case may be), then that term will be severed,and the effectiveness, validity or enforceability of the remainder of this Guarantee and Indemnity will not be affected;
- (g) unless otherwise specified, a reference to a clause is a reference to a clause of this Guarantee and Indemnity;
- (h) a reference to any document or agreement is a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (i) any term which is used in this Guarantee and Indemnity which is a defined term used in the Agreement, will, unless the context otherwise requires, have the same meaning in this Guarantee and Indemnity.

Signed as an Agreement

**SIGNED** by the Guarantor in the )  
presence of: )

.....  
Witness  
Name (printed):

.....  
Guarantor  
Name (printed):  
Date:

**SIGNED** by the Guarantor in the )  
presence of: )

.....  
Witness  
Name (printed):

.....  
Guarantor  
Name (printed):  
Date:

**SIGNED** by the Guarantor in the )  
presence of: )

.....  
Witness  
Name (printed):

.....  
Guarantor  
Name (printed):  
Date:

**SIGNED** by the Guarantor in the )  
presence of: )

.....  
Witness  
Name (printed):

.....  
Guarantor  
Name (printed):  
Date:

**Execution**

Signed as an Agreement:

**VENDOR:**

**SIGNED** by **Robert William Hutson/** )  
**Simon Michael Vertullo** the joint and )  
several Receiver and Manager of **Genesis** )  
**TDH Pty Ltd ACN 137 315 201** in its )  
**own capacity and as trustee for the** )  
**Genesis TDH Trust No. 2 (Receivers** )  
**and Managers Appointed)** in the )  
presence of: )

.....  
Witness

.....  
Robert William Hutson/  
Simon Michael Vertullo  
Date:

.....  
Name (printed)

**PURCHASER (if a company or corporate trustee):**

**EXECUTED** by )  
 )  
Company Name: )  
 )  
ACN: )  
 )  
in accordance with Section 127 of the )  
*Corporations Act 2001* (Cth) )

.....  
Sole Director/Director  
Name (printed):  
Date:

.....  
Director/Secretary  
Name (printed):

