

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In these terms, unless the context otherwise requires, the following words shall have the meanings set out below:

Authority means any minister, department of state, government authority, regional council, territorial authority or other statutory or regulatory authority having jurisdiction or authority to perform or exercise functions or powers under or pursuant to any statute.

Berth means the berth described in the Berth Rental Agreement.

Berth Rental Agreement means the berth rental agreement between the Licensor and Licensee (which includes these terms as amendment from time to time).

Boatlift means the Licensor's boatlift located at the Marina.

Boatlift Payment means the monthly amount payable (as notified by the Licensor to the Licensee from time to time) by the Licensee to the Licensor as a prepayment towards costs payable by the Licensee for use of the Boatlift in accordance with clause 3.4.

Bond means the sum referred to in the Berth Rental Agreement.

Business Day means a day other than a Saturday, Sunday or public holiday in Wellington.

Commencement Date means the commencement date specified in the Berth Rental Agreement.

Default Interest Rate means the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45am on the first Business Day of the period in respect of which that rate of interest is to be calculated, and thereafter at intervals of 90 days from that Business Day plus a margin of 8%.

GST means goods and services tax levied under the Goods and Services Tax Act 1985.

Licence means the licence to occupy the Berth granted to the Licensee pursuant to the Berth Rental Agreement.

Licence Fee means the licence fee payable by the Licensee to the Licensor and described in the Berth Rental Agreement (as varied from time to time pursuant to clause 3.2).

Licensee means the licensee described in the Berth Rental Agreement and includes the Licensee's executors, administrators, successors and permitted assigns.

Licensee's Representative means a related company (as defined by the Companies Act 1993), director, employee, advisor, agent, contractor, visitor or other invitee of the Licensee.

Licensor means Chaffers Marina Limited and includes the Licensor's successors and assigns.

Marina means the waterspace contained within the Wellington harbour controlled by the Licensor and known as "Chaffers Marina" including all seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures.

Nominated Vessel means the vessel specified in the Berth Rental Agreement together with any tackle, goods, gear, machinery, fittings and the like used in connection with the operation of such vessel whether the same shall be attached thereto or not.

Term means the term of the Licence described in the Berth Rental Agreement.

Utilities means those utilities available at the Berth, the cost of which is to be borne by the Licensee in addition to the Licence Fee in accordance with clause 3.3.

1.2 **Interpretation:** The following applies for the purposes of interpretation or construction of these terms:

- (a) Unless the context otherwise requires:
 - (i) Words importing one gender include the other genders;
 - (ii) Words importing the singular or plural number include the plural and singular number respectively;
 - (iii) Except where the context does not permit, references to sections, clauses, subclauses and schedules in these terms and references to parties are references to parties to these terms;
 - (iv) Expressions used in the Berth Rental Agreement bear the defined meaning in these terms;
 - (v) References to any statute refer also to any regulation, order, notice or by-law made under or pursuant to the statute or regulations made under the statute;

(vi) References to statutes and regulations refer also to statutes and regulations from time to time amending, consolidating or re-enacting those referred to;

(vii) Any reference to a month shall mean a reference to a calendar month;

(viii) Any reference to a day shall mean a reference to a period of 24 hours or a part thereof;

(ix) A right granted or reserved may be exercised from time to time;

(x) References to dates and time are to New Zealand dates and times;

(xi) References to monetary amounts are to New Zealand currency;

(b) The obligations of each party contained or implied in these terms shall bind each such party and every two or greater number of them jointly and each of them severally together with their respective heirs, administrators, successors and assigns;

(c) Any obligation to be observed or performed by the parties to do or not to do any act or thing shall be construed as including an obligation to do or not to do or omit, suffer, permit, allow, cause or procure such act or thing and any such obligation shall be observed and performed from time to time;

(d) Headings and marginal notes where used in these terms are inserted for the sake of convenience of reference only and do not affect the interpretation of these terms.

2. LICENCE

2.1 **Licence:** The Term of the Licence is for the period specified in the Berth Rental Agreement.

2.2 **Holding Over:** In the event that the Term is a month or longer and the Licensor permits the Licensee to continue to use the Berth beyond the last day of the Term, the Licensee shall do so on a monthly basis with the Licence Fee payable monthly in advance with the first payment to be made on the day following expiry of the Term and to be equal to the amount of the Licence Fee (on a monthly basis) payable under these terms immediately prior to the expiry of the Term. The Licence so created shall be determinable at any time by either party upon one month's prior written notice, but otherwise the Licence shall continue on the same provisions as are contained in the Berth Rental Agreement. In the event that the Term is a month, a day or on a casual basis and the Licensor permits the Licensee to continue to use the Berth beyond the last day of the Term, the Licensee shall do so on a daily basis with the Licence Fee payable daily (or for such period nominated by the Licensor) in advance with the first payment to be made on the day following expiry of the Term and to be equal to the amount of the Licence Fee (on a daily basis) payable under these terms immediately prior to the expiry of the Term. The Licence so created shall be determinable at any time by either party forthwith upon written notice, but otherwise the Licence shall continue on the same provisions as are contained in the Berth Rental Agreement.

2.3 **Representatives:** The Licensee shall ensure that the Licensee's Representatives comply with the provisions of these terms as if they were party to the Berth Rental Agreement and the Licensee shall be responsible and fully liable for any act or omission of the Licensee's Representatives that constitutes a breach of these terms (or would constitute a breach if they were a party to the Berth Rental Agreement).

2.4 **Variation:** The Licensor may vary these terms at any time by notice in writing to the Licensee.

3. LICENSEE'S PAYMENTS

3.1 **Licence Fee:** The Licensee shall pay the Licence Fee monthly in advance with the first payment being due prior to the Commencement Date. All Licence Fees shall be paid without deduction or set-off by automatic payment to the Licensor's bank account or by credit card or direct payment as the Licensor may direct. The Licensee will make payment of any pre-payment of the Licence Fee referred to in the Berth Rental Agreement. This sum is non-refundable.

3.2 **Variation of Licence Fee:** The Licensor may vary the Licence Fee from time to time by giving not less than one month's written notice to the Licensee.

- 3.3 **Utilities:** The Licensee shall pay for all Utilities and services supplied to the Berth. If any of such Utilities or services is not individually metered on a per berth basis, then the Licensee shall pay a fair proportion (determined at the Licensor's sole discretion) of the amount due for such Utilities or services whether or not such Utilities or services are actually used by the Licensee. Payment for Utilities and services are due immediately upon receipt of an invoice issued by the Licensor to the Licensee. The Licensee's liability to pay for Utilities and services during the Term shall subsist notwithstanding the end or earlier termination of the Term. The Licensor may vary any charge for Utilities or services if the cost of such Utilities or services increases so that the Licensee shall at all times pay a fair proportion of the charges incurred.
- 3.4 **Boatlift Payment:** If the Term is greater than six months, the Licensee shall pay to the Licensor the Boatlift Payment monthly on the same date and in the same manner as each monthly Licence Fee payment payable pursuant to clause 3.1. The Boatlift Payment shall be treated as a prepayment towards costs payable for the Licensee's use of the Boatlift from time to time. Each time the Licensee uses the Boatlift during the Term, the Licensee's credit balance of the Boatlift Payments (if any) shall be applied towards the applicable cost for the use of the Boatlift (by reference to the Licensor's then-current rates for using the Boatlift). To the extent the applicable cost to use the Boatlift exceeds the Licensee's available credit balance, the excess must be paid by the Licensee in accordance with the Licensor's usual payment terms relating to the use of the Boatlift. Any Boatlift Payments not used within 24 months of payment will expire and may no longer be applied towards the cost for the use of the Boatlift. The Licensee's credit balance of the Boatlift Payments (if any) is non-transferrable and cannot be applied for any other use except for Boatlift-related costs. Any unexpired portion of the Licensee's credit balance of the Boatlift Payments (if any) shall be refundable at the end of the Term.
- 3.5 **Bond:** The Licensee shall pay to the Licensor the Bond on the Commencement Date. Such Bond will be refunded to the Licensee on termination or expiration of the Berth Rental Agreement subject to any payments outstanding (whether for Licence Fees, Utility or service fees or other costs or liability incurred under the Berth Rental Agreement or otherwise in connection with the Licensee's occupation of the Berth) as soon as practicable after the Licensee has vacated the Berth upon termination of the Licence (whether by time or otherwise). The Licensee irrevocably authorises the Licensor to apply the Bond (or part thereof) against moneys owed by the Licensee to the Licensor, whether under the Berth Rental Agreement or otherwise (a copy of a current credit card is acceptable).
- 3.6 **GST:** The Licensee shall pay to the Licensor or as the Licensor shall direct GST payable by the Licensor in respect of the Licence Fee and other payments payable by the Licensee. GST in respect of the Licence Fee shall be payable on each occasion when any Licence Fee falls due for payment and in respect of any other payment shall be payable upon demand. If the Licensee defaults in payment of the Licence Fee or other moneys payable hereunder and the Licensor becomes liable to pay additional GST then the Licensee shall upon demand pay to the Licensor the additional tax.
- 3.7 **Default Interest:** Without prejudice to the other rights, powers and remedies of the Licensor under the Berth Rental Agreement, if the Licence Fee or any part of it is in arrears and unpaid 7 days after the due date for payment (whether or not any formal demand for payment has been made) such money shall be payable upon demand and shall bear interest at the Default Interest Rate computed on a daily basis from the date payment was due until date of payment in full.
- 3.8 **Costs of Variation or Renewal:** The Licensee shall pay the Licensor's costs of and incidental to any variation or renewal of the Licence including legal costs (as between solicitor and client).
- 3.9 **Enforcement Costs:** The Licensee shall pay the Licensor's costs including legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Licensor's rights, remedies and powers under the Berth Rental Agreement.
4. **USE OF BERTH**
- 4.1 **Nominated Vessel:** The Licensee shall use the Berth only for the purposes of berthing the Nominated Vessel.
- 4.2 **Maximum Dimensions:** The Licensee shall at no time allow any part of the Nominated vessel, including any dinghy, tender or the like whether fixed on board the Nominated Vessel or moored in the water adjacent to the Nominated Vessel, to extend beyond the maximum physical dimensions of the Berth.
- 4.3 **Lay up Berthage:** In the event that the Berth will be used for lay up purposes the Licensee shall use the Berth for lay up purposes only on the basis that provisioning, servicing, loading, unloading, fuelling and maintaining of the Nominated Vessel in the Berth is strictly prohibited and that no Utilities or services are to be connected or provided to the Nominated Vessel or any other vessel in the Berth from any adjoining seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and other structures connected to adjoining land.
- 4.4 **No Alterations:** The Licensee shall not make any alterations or modifications to the Berth or the Marina or affix any object or signage thereto without the prior approval in writing from the Licensor which may be given or withheld at the entire discretion of the Licensor.
- 4.5 **Electrical Connections:** The Licensee warrants that the Nominated Vessel (when connecting to the shore supply or when applicable) shall at all times hold all appropriate warrants of fitness as may be required pursuant to the Electricity (Safety) Regulations 2010, or any other applicable Act or Regulation. In the event that the Licensor wishes to see evidence of any applicable warrant of fitness or otherwise the Licensee agrees to immediately provide all evidence of such documents requested by the Licensor. All vessels connecting to shore power must display a current Electrical Warrant of Fitness. Shore power leads must be tested and display a current test tag.
- 4.6 **No Rafting:** The Licensee shall not at any time allow or permit the rafting of the Nominated Vessel or any other vessel in the Berth or the Marina.
- 4.7 **Maintenance of Vessel:** The Licensee shall at all times keep the Nominated Vessel on the Berth properly maintained and in such order, condition and state of repair so as to prevent the Nominated Vessel from becoming a nuisance or causing annoyance or damage to any other person or property. The Licensee shall not carry out any maintenance works on the Nominated Vessel within the Marina without the prior written consent of the Licensor and, if such consent is so given, the Licensee will ensure that any maintenance work does not create a danger, impediment, obstacle, nuisance or inconvenience to the other licensees or other users of the Marina. The Licensee is responsible for any maintenance workers it employs.
- 4.8 **Mooring Lines:** The Licensee shall ensure that mooring lines are of a high quality and of such standard appropriate for the size of the Nominated Vessel and sea conditions and are maintained to the Licensor's satisfaction. If the mooring lines prove to be inadequate by design or lack of maintenance, no liability shall attach to the Licensor and the Licensee shall keep the Licensor indemnified against all claims arising therefrom.
- 4.9 **No Pollution:** The Licensee shall not pollute or permit the pollution of the Marina or its waters or discharge into the Marina or its waters any poisonous, noxious, dangerous or offensive substance or thing and in particular shall comply with the provisions of the Resource Management Act 1991. Without prejudice to the generality of the foregoing, the Licensee will not allow the discharge of any sewage or the emptying of any latrines into the Marina or its waters or otherwise dispose of any garbage, oil, fuel, bilge water or other material whatsoever on or in the Marina or its waters.
- 4.10 **Holding Tank:** If the Licensee has the Licensor's approval to live on board the Nominated Vessel then the Licensee shall ensure that the Nominated Vessel is equipped with either a sewage holding tank that can be discharged into a land-based pump out facility or a suitable portable sewage holding tank that can be carried to and emptied at a place outside the Marina which is designated for such purpose.
- 4.11 **Animals:** The Licensee will not permit any pet or animal of whatever nature to be kept on the Nominated Vessel or at the Marina, unless agreed by the Licensor (at its sole discretion).
- 4.12 **No Swimming:** The Licensee shall not engage in any swimming or diving within the Marina other than for carrying out underwater maintenance of any vessel in the Berth and in so doing the Licensee will comply with all reasonable directions of the Licensor.

- 4.13 **Refuelling:** The Licensee shall not carry out any refuelling of the Nominated Vessel within the Berth or the Marina other than at designated refuelling stations designated by the Licensor.
- 4.14 **No Noise Nuisance:** The Licensee shall ensure that all halyards, lines, ropes, rigging and sheets on the Nominated Vessel in the Berth are secured so that they shall not create any noise. The Licensee shall not create a nuisance through parties or the use of television, radio, musical apparatus or any other form of sound reproduction.
- 4.15 **No Living on Board:** The Licensee shall not live on board the Nominated Vessel or vessel at the Berth or permit anyone else to do so, unless authorised by the Licensor (at its sole discretion).
- 4.16 **Unlawful or Unsafe Activities:** The Licensee shall ensure that no unlawful or unsafe activities of any nature are conducted from or in the Nominated Vessel or the Marina.
- 4.17 **Control of Visitors:** The Licensee shall ensure that the loading and unloading of passengers, goods and other supplies to and from the Nominated Vessel are undertaken in a safe and orderly manner and without damage, annoyance, nuisance or disturbance to any person or property. Nothing in this clause shall derogate from the restrictions contained in clause 4.3. The Licensee must ensure that all the Licensee's Representatives comply with all the Licensee's obligations under these terms (where the context permits) and all other rules and bylaws issued by the Licensor from time to time.
- 4.18 **Control of Boats in the Marina:** The Licensee shall not sail or anchor within the Marina and will manoeuvre any vessel in accordance with the applicable maritime rules so as to avoid creating a danger, impediment, obstacle or inconvenience to any other users of the Marina or obstructing the public right of navigation through the Marina.
- 4.19 **Use of Fire Hoses:** The Licensee shall not use firefighting equipment supplied by the Licensor for any purpose other than the fighting of fires.
- 4.20 **No Storage:** The Licensee shall not permit or allow any property, gear or equipment under the control or direction of the Licensee to be stored on or in the Marina including the walkways, fingers or foreshore thereof without the written permission of the Licensor. Nothing in this subclause shall derogate from the provisions of clause 4.3.
- 4.21 **Children:** The Licensee shall not permit or allow any child under the age of 12 years that the Licensee is responsible for to enter into the Marina unless accompanied by an adult.
5. **ASSIGNMENT OR SUBLETTING**
- 5.1 **No Sublicence:** The Licensee shall not sublicense or part with possession of the Berth to any person.
- 5.2 **No Assignment:** The Licensee shall not assign or transfer the Licence without the prior written consent of the Licensor (which may be withheld at the Licensor's sole discretion).
- 5.3 **Change in ownership:** Where any Licensee is an unlisted company then any change in the legal or beneficial ownership of any part of its shares or issue of new capital whereby in either case there is a change in the effective management or control of the company is deemed to be an assignment of the Licence requiring the Licensor's approval under clause 5.2.
6. **TEMPORARY VACATION OF BERTH**
- 6.1 **Alternative Mooring:** The Licensor reserves the right to:
- require the Licensee to vacate the Berth for such period or periods as may be necessary to allow repairs or maintenance to be carried out;
 - require the Licensee to vacate the Berth for such period or periods as may be necessary to facilitate the staging of events within the Marina;
 - use the Berth in cases of emergency; but in those events will use all reasonable endeavours to provide an alternative mooring or berthage within the Marina for the use of the Licensee and the Nominated Vessel during the period involved.
- 6.2 **Modified Licence:** Should the Licensee occupy another Berth as a result of clause 6.1, these terms shall be deemed to apply for the duration of that occupation with only such modifications as are absolutely necessary.
- 6.3 **No Compensation:** The Licensor will not be liable to pay any compensation to the Licensee in respect of any vacation of the Berth and temporary relocation pursuant to the provisions of this clause.
7. **RELOCATION OF BERTH**
- 7.1 **Permanent Vacation:** The Licensor reserves the right to require the Licensee to permanently vacate the Berth so as to permit construction works and/or alterations to the Marina or one or more berths in the Marina, in which case the Licence shall immediately terminate.
- 7.2 **Relocation:** At any time during the Term, the Licensor is entitled to temporarily or permanently relocate the Licensee from the Berth at the Marina to another comparable berth without compensation, and in such event these terms will continue to apply with respect to the relocated berth.
8. **WATERSPACE AND ACCESS RIGHTS**
- 8.1 **Waterspace:** The Licence relates only to the allocated waterspace of the Berth. In common with others, the Licensee shall have the right to tie up to the allocated Berth structures including all seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures and shall have the right of access in, and the use of, the common waterways and pathways of the Marina subject to such rules as to access and during such hours as the Licensor may from time to time specify for the safety, security and preservation of good order in the Marina.
9. **HEALTH AND SAFETY**
- 9.1 **Legislation and guidelines:** The Licensee must at all times comply with its obligations under any health and safety legislation, regulations, codes and guidelines (including any manufacturer's guidelines for the use of any vessel, tool, machinery, product or other personal property).
- 9.2 **Licensor policies:** The Licensor as a responsible marina operator maintains health and safety policies and guidelines, including procedures for identifying and mitigating any risks and hazards in the Marina. The Licensee must ensure it is familiar with the Licensor's health and safety guidelines including any notices displayed in the Marina. The Licensee must at all times comply with any instructions or directions of the Licensor, its employees, agents or any health and safety official or inspector.
- 9.3 **Health and safety:** The Licensee must at all times ensure so far as is reasonably practicable, that the health and safety of all persons is not put at risk from any activity by the Licensee carried out within the Marina or any property brought onto the Marina by the Licensee.
- 9.4 **Workers:** The Licensee must ensure that any CML approved contractor working on the Nominated Vessel is competent and suitably qualified to conduct the work and has received the appropriate training in the safe use of any equipment, tools or machinery including within a marina environment.
- 9.5 **Notification:** The Licensee must as soon as reasonably practicable notify the Licensor in writing of any:
- health and safety incident, event, injury or illness that occurs at the Marina or its waters; or
 - any potential hazard or risk at the Marina or its waters.
- 9.6 **Report:** The Licensor may require the Licensee to file a health and safety report including providing a written statement to the Licensor to assist it to meet any health and safety obligations. Where the Licensor requires the Licensee to provide a health and safety report and/or written statement the Licensee must provide such a statement as soon as reasonably practicable.
- 9.7 **Unsafe activities:** If the Licensor observes any activity or property which the Licensor considers is unsafe, illegal or in breach of any health and safety obligation the Licensor may require the activity to cease or the property to be removed immediately. The Licensor reserves the right in its absolute discretion to take any of the following actions for any breach of any health and safety obligation set out in these terms:
- Issue warning notices.
 - Remove any person from the Marina.
 - Refuse any person entry to the Marina.
 - Suspend a person's right of access for a specified period.
 - Terminate the Licence.
 - Take such other action as it considers appropriate.
- 9.8 **Indemnity:** The Licensee agrees to indemnify the Licensor (including as to solicitor and client costs) for any breach of a health and safety obligation by the Licensee.
10. **INDEMNITY**
- 10.1 **Indemnity:** The Licensee indemnifies the Licensor against all costs, losses, damages, expenses, liability and claims incurred by the Licensor that result from, or are caused or contributed to by, the Licensee's use of the Berth, the Nominated Vessel and/or the

- Marina, and/or any of the Licensee or the Licensee's Representatives acts or omissions (in each case including breaches of these terms and any other rules or bylaws issued by the Licensor from time to time).
- 10.2 **Third Party:** The Licensor shall not be liable and accepts no responsibility for loss or damage to the Nominated Vessel, boats, craft, third party property or persons using the same within the confines of, or near to the Marina, nor for the adequacy or otherwise of the Marina or of the Berth or any other part of the facilities of the Marina and the Licensor shall not be liable to the Licensee or any person for any loss or damage to property, or death or personal injury incurred or suffered within the Marina however the same occurs and whether or not such happening is attributable to the acts or defaults of the Licensor, or its servants or agents or contractors or otherwise howsoever.
- 10.3 **Warranty/representation:** The Licensee warrants and represents to the Licensor that the Nominated Vessel is, and will continue to be, seaworthy and in sound working order, that the Licensee is fit to operate the Nominated Vessel safely at all times, and that the Nominated Vessel will at all relevant times be secured properly and safely moored to the Berth.
11. **INSURANCE AND OWNERSHIP**
- 11.1 **Marine:** The Licensee shall at all times keep the Nominated Vessel and any other property owned or brought into the Marina by the Licensee and/or the Licensee's Representatives, fully insured whilst in the confines of, or near to, the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, act of God and all other usual maritime risks. Without limiting the foregoing the Licensee warrants that the insurance policy referred to in the Berth Rental Agreement satisfies the aforesaid obligation and that such policy is current.
- 11.2 **Public Liability:** The Licensee shall also effect public liability insurance in the sum set out in the Berth Rental Agreement against death and/or bodily injury to persons and loss or damage to property of others (including the Licensee) arising out of the use of water craft and/or use or occupation of the Marina.
- 11.3 **Currency:** The Licensee shall provide the Licensor with a certificate of currency for such policies required pursuant to clauses 11.1 and 11.2 and if requested by the Licensor, provide the Licensor with copies of the policies effected pursuant to this clause.
- 11.4 **Ownership:** The Licensee shall provide proof of ownership of the Nominated Vessel when requested by the Licensor.
12. **RISK**
- 12.1 **No Representation by Licensor:** The Licensee agrees that the Licensee has examined the Berth and relies on its own judgment in accepting the use of it and does not rely on statements or representations made by the Licensor or anyone on its behalf.
- 12.2 **Suitability:** The Licensee acknowledges that the Licensor gives no warranty that the Berth will be suitable for the Licensee's intended use and/or for the mooring of the Nominated Vessel due to the wave and swell action and disturbance resulting from the exposed nature of the Berth or created by passing vessels. Any vessel moored at the Berth at any time is moored entirely at the risk of the Licensee.
- 12.3 **No Liability of Licensor:** The Licensor will not whether directly or vicariously nor will any servant, agent or employee of the Licensor be liable in negligence or otherwise for any damage to or theft or loss of the Nominated Vessel or any vessel or any tackle, goods, gear, machinery or other property thereon whilst at the Berth or in or around the Marina no matter how or from what cause such loss or damage may arise or occur including (but without limiting the generality of the foregoing) loss or damage caused or contributed to by the use or removal of the vessel by any person not authorised by the Licensee to so use or remove it whether such use or removal is permitted by the Licensor or not.
- 12.4 **Damage to Structures:** The Licensee is responsible for all injury to persons using the Marina and for all damage to all seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures or property of the Licensor arising from any act or omission, neglect or default by the Licensee or the Licensee's Representatives.
- 12.5 **Occupancy at Licensee's Risk:** Without limiting the generality of the foregoing the Licensee acknowledges and agrees that:
- (a) the Licensor gives no warranty whatsoever to the Licensee as to the condition of the Berth and any seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures and any cranes, hoists, mooring gear and other facilities and the Licensee agrees that the Licensee uses the facilities provided for berthing, storage, mooring solely at the Licensee's own risk;
- (b) the Licensor is not liable for the care or protection of the Nominated Vessel, its fittings or contents or any other vessel, its fittings or contents;
- (c) the Licensor is not responsible for injuries to persons or property occurring upon or in the vicinity of the Marina and will not be responsible for the condition of any seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and any other structures within the Marina; and
- (d) the Licensee will occupy and use the Berth at the Licensee's risk and shall release the Licensor (to full extent permitted by law) from all claims and demands of any kind, and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Marina.
13. **DEFAULT**
- 13.1 **Termination:** If at any time during the Term:
- (a) the Licence Fee or any other money payable by the Licensee under these terms is in arrears for the space of 7 days after it becomes due, whether or not a formal demand for payment has been made;
- (b) the Licensee fails to comply with any covenant, obligation or rule on the Licensee's part herein expressed or implied under these terms and the Licensee continues to be in breach of any such obligation for 7 days after the date written notice has been given by the Licensor to the Licensee of the breach requiring the breach to be remedied;
- (c) execution is levied against any of the assets of the Licensee; or
- (d) the Licensee either:
- (i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation first approved in writing by the Licensor);
- (ii) is wound up or dissolved;
- (iii) becomes bankrupt;
- (iv) makes or attempts to make any composition, assignment or other arrangement with, or for the benefit of the Licensee's creditors or any class thereof;
- (v) assigns, transfers, sublicences, mortgages, charges or otherwise disposes of the Licensee's interest in the Licence;
- (vi) a receiver or manager of any of its assets is appointed; or
- (e) the Licensee is subject to any action for distress or execution against any of the Licensee's property, then notwithstanding any prior waiver or failure to take action by the Licensor or indulgence granted by the Licensor to the Licensee in respect of any such matter or default whether past or continuing, the Licensor may forthwith terminate the Berth Rental Agreement.
- 13.2 **Termination for noise or unsociable behaviour:** If the Licensee has the Licensor's approval to tenant or live on board the Nominated Vessel and the Licensor receives one or more complaints about the Licensee's noise or unsociable behaviour at the Marina, then the Licensor may terminate the Berth Rental Agreement by 7 days' written notice to the Licensee.
- 13.3 **Termination by Notice:** Either party may terminate the Berth Rental Agreement by 30 days' written notice to the other party.
- 13.4 **Removal on Termination:** The Licensee irrevocably appoints the Licensor to be its agent to remove, store and dispose of any vessel (including the Nominated Vessel), boat, craft or other property left by the Licensee in the Berth or otherwise at the Marina for more than 7 days after the termination of the Berth Rental Agreement (whether by effluxion of time or otherwise) on any terms that the Licensor thinks fit and without the Licensor being liable to the Licensee save to account for the net proceeds of sale less:
- (a) the costs of any custodian employed to take possession, remove, store or dispose of the vessel, boat, craft or other property;

- (b) payment of any arrears of the Licence Fee and/or any other amounts owing by the Licensee to the Licensor whether under the Berth Rental Agreement, these Terms or otherwise;
- (c) the costs of making good any breach of any covenant, obligation or rule under these terms, the Berth Rental Agreement or other rules or bylaws issued by the Licensor; and
- (d) any other costs and expenses reasonably incurred by the Licensor (including legal costs (as between solicitor and client)) in connection with such removal, storage and disposal.

The Licensee shall indemnify the Licensor against any liability incurred by the Licensor to any third party whose property shall have been sold or otherwise disposed of by the Licensor in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to the Licensee.

14. ACKNOWLEDGMENT BY LICENSEE

14.1 **Acknowledgement:** The Licensee acknowledges that:

- (a) Wellington Waterfront Limited has granted a licence to the Licensor to operate the Marina (**Head Licence**). Should the Head Licence be surrendered, revoked or terminated for any reason, the Licence shall immediately terminate and the Licensee shall have no right or claim against the Licensor or its successors, whatsoever; and
- (b) nothing in, or arising from, these terms or the Berth Rental Agreement, or the fact of the Licensee's hire of the Berth, shall constitute the Licensor as a bailor of the Nominated Vessel and the Licensor has no responsibility for the care of the Nominated Vessel or any of its contents.

15. COMPLIANCE WITH ACTS, REGULATIONS, BY-LAWS AND INSTRUCTIONS

- 15.1 The Licensee shall, in the use of the Berth and the Nominated Vessel, comply with all statutes, ordinances, regulations, by-laws, planning decisions and associated conditions, or other lawful requirements affecting or relating to the Berth and the Nominated Vessel or the use or occupation of the Berth and the Nominated Vessel and shall also comply with the provisions of all licences, requisitions, notices or orders made or given by any Authority and shall keep the Licensor indemnified in respect of any non-compliance by the Licensee with the Licensee's obligations under this subclause.
- 15.2 The Licensee shall also comply with any special instructions, bylaws or rules from time to time issued by the Licensor or any of its agents for the efficient, safe and harmonious use of the Marina and any of its facilities.
- 15.3 The Licensee shall, in its use of the common waterways within the Marina comply with the provisions of the Ministry of Transport, General Harbour (Nautical and Miscellaneous) Regulations 1968, the International Collision Regulations, by-laws issued by any Authority and any other provisions passed in substitution for, or in succession to, the above or Acts and Regulations passed after the Commencement Date relating to the use of the common waterways.

16. NOTICES

- 16.1 **Change of Address:** The Licensee shall at all times advise the Licensor in writing of any change to the Licensee's current address and contact phone numbers from that stated in the Berth Rental Agreement or alternatively the name, contact, phone number and address of any agent to whom the Licensee grants unlimited authority to act for the Licensee in all matters concerned with, or arising out of, the Licence and in the event of the appointment of an agent the Licensor shall be entitled to deal with that agent in all respects as if the agent were the Licensee and the Licensee shall be bound accordingly. In the event that there is more than one Licensee or the Licensee is a company or trust, then all Licensees shall appoint either one of their number or some other person to be their agent and in default of any such appointment the first named Licensee shall be deemed to be the agent of all the Licensees.
- 16.2 **Service:** Wherever in these terms:
 - (a) the Licensor is required to give notice to or communicate in any way with, the Licensee, such notice or communication shall for all purposes be deemed

sufficiently made, given, served or communicated if given in writing by the Licensor and either:

- (i) delivered to and affixed upon the Nominated Vessel;
- (ii) posted to the Licensee or the Licensee's agent at the last address recorded with the Licensor; or
- (iii) emailed to the Licensee at the Licensee's last email address recorded with the Licensor;
- (b) any notice or request or other communication with the Licensor is called for, the same shall be made in writing and delivered to the Licensor's address and if not so made shall be deemed of no effect whatever.

17. REGULATIONS AND BYLAWS

- 17.1 The Licensor is entitled to make any regulations or bylaws or issue any directions which it considers are desirable for the better management, navigation, safety, cleanliness or harmonious use of the Marina
- 17.2 Any regulations made under these provisions will be:
 - (a) notified to the Licensee in writing in the manner set out in clause 16.
 - (b) binding upon the Licensee (once notice has been validly given) in the same way as they would have been if fully set out in these terms.
- 17.3 The Licensor will not be liable for failing to enforce any of the regulations.

18. PRIVACY

- 18.1 The Licensee authorises the Licensor to seek and obtain any relevant information about the Licensee from any person (including debt collection agencies) and to use and disclose any information about the Licensee held by the Licensor for purposes associated with the Licensee's use of the Berth or the Marina.
- 18.2 The Licensee authorises the Licensor to disclose to the Marina Operations Associate of NZ Inc. any personal information held about the Licensee and/or the Licensee's Representatives.
- 18.3 The Licensee authorises the Licensor to send the Licensee the Marina newsletters and other promotional and marketing material from time to time.
- 18.4 If the Licensee is an individual, he/she has the right to access and to request the correction of any of his/her personal information provided to the Licensor.