

BERTH RENTAL AGREEMENT GENERAL TERMS AND CONDITIONS

1. BERTH RENTAL

- 1.1 The Manager grants a licence to the Customer to occupy the Berth during the Term on the terms and conditions of the Agreement, and the Customer agrees to accept the same.
- 1.2 Nothing in the Agreement shall create a lease, a tenancy or any other property rights in the Berth.
- 1.3 It is the Customer's responsibility to read and understand the Agreement. Failure to do so does not exempt the Customer from any liability to the Manager. From the earlier of the date on which the Customer signs the Specific Terms, and the date on which the Customer accesses the Berth, the Customer will be deemed to have accepted and will be bound by the Agreement.
- 1.4 The full agreement and the terms of the Berth rental licence between the Manager and the Customer are contained within:
 - a) the Specific Terms; and
 - b) these General Terms and Conditions.
- 1.5 The Customer must comply with the Marina Rules, the A – Z Guide to Westhaven Marina and any other document published or administered by the Manager or its duly authorised Representatives from time to time for the purpose of managing the Marina.
- 1.6 If there is any inconsistency between the provisions of the documents listed in clauses 1.4 and 1.5, the documents shall have the following order of priority (to the extent of any inconsistency): a) these General Terms and Conditions; b) the Specific Terms; c) the Marina Rules; d) any other document published or administered by the Manager or its duly authorised Representatives for the purpose of managing the Marina.
- 1.7 The Manager may vary the Agreement (or any document comprising the Agreement) by written notice to the Customer, provided such variation is reasonably required to manage the Marina in a safe, effective, and commercially sustainable manner, and the same variation is applied to all customers of the Marina who occupy a Berth. Any variation will take effect twenty (20) Working Days after the date of the notice.

2. TERM

- 2.1 The term of the Agreement (**Term**) shall start on the Start Date and, subject to the terms of the Agreement, shall continue until it is terminated:
 - a) by the Customer giving 20 Working Days' notice to the Manager; or
 - b) by the Manager giving 60 Working Days' notice to the Customer.

3. RENTAL FEE

- 3.1 The Customer agrees to pay the Rental Fee to the Manager in advance in monthly instalments as invoiced by the Manager with the first instalment being payable on the Start Date (time being of the essence). The obligation to pay the Rental Fee is an essential term of the Agreement.
- 3.2 The Manager may, in its sole and absolute discretion propose a new Rental Fee by giving the Customer not less than twenty (20) Working Days' written notice (**Review Notice**) provided that any proposed increase of the Rental Fee shall be reasonable. The Customer shall, within ten (10) Working Days of the date of the Review Notice (**Response Date**) advise whether or not it accepts the proposed new Rental Fee. If the Customer does not agree with the proposed new Rental Fee, then notwithstanding anything contained in the Agreement, the Manager may terminate the Agreement by notice to the Customer, such termination to take effect on the expiry of the Review Notice. The Customer's failure to respond by the Response Date shall be deemed acceptance of the proposed new Rental Fee. The new Rental Fee shall apply from one (1) day after the expiry of the Review Notice.

4. CHARGES, POWER & OTHER SHORE SERVICES

- 4.1 In addition to the Rental Fee, the Customer shall pay the Charges invoiced by the Manager in accordance with clause 13 (time being of the essence). The obligation to pay the Charges is an essential term of the Agreement.

- 4.2 The Customer shall ensure that the use of any power, water, sewage, pump or other shore service (Shore Services), complies with the Agreement and all relevant bylaws, rules, regulations and legislation governing the supply or discharge of such Shore Services.
- 4.3 Where the Customer fails to comply with clause 4.2, the Manager may give notice to the Customer setting out the nature of the non-compliance (**Disconnection Notice**). If the breach detailed in the Disconnection Notice is not remedied to the Manager's reasonable satisfaction within five (5) Working Days of the date of the Disconnection Notice (or such other time period specified in the notice), or is in the Manager's opinion not capable of being remedied, the Manager may immediately suspend the Customer's access to the relevant Shore Services, including by taking any steps required to disconnect the Vessel from the relevant Shore Services without further notice to the Customer. Any such suspension of the Shore Services will continue until the Customer can evidence to the Manager's reasonable satisfaction that the use of such Shore Services will be compliant for the purposes of clause 4.2.

5. PURPOSE OF OCCUPATION, RISK AND SECURITY

- 5.1 The Customer shall only use the Berth for pleasure boating purposes and not for any commercial or other use or purpose unless the Manager at its sole and absolute discretion has approved such use in writing.
- 5.2 The Customer shall berth the Vessel in the Berth entirely at its own risk. The Manager and its Representatives shall not, whether directly or indirectly, be liable in negligence or otherwise for any damage to or theft or loss of the Vessel or any tackle, goods, gear, machinery or other property while the Vessel is berthed in the Berth or in or around the Marina no matter how or from what cause such damage, theft or loss may arise or occur.
- 5.3 The Customer acknowledges and agrees that, to the fullest extent permitted by law, the Manager makes no warranty whatsoever as to the condition of the slipways, buildings, piers, walkways, pontoons, gangways, ramps, mooring gear or any other areas or facilities that comprise the Marina and the Berth, and the Customer agrees that it will use those areas and facilities solely at its own risk.
- 5.4 The Customer grants the Manager, with effect from the date on which an Event of Default occurs, a security interest in the Vessel and the proceeds of any sale of the Vessel as security for any amounts owing by the Customer to the Manager under the Agreement and the performance of the Customer's obligations under the Agreement. To avoid doubt, any security interest granted under the Agreement shall not attach unless and until an Event of Default has occurred.
- 5.5 The Customer shall execute such agreements and notices and do and cause to be done such things as may reasonably be required by the Manager to protect or perfect the security interest intended to be created by the Agreement. The Customer acknowledges that the Manager is entitled to take all necessary steps to register its security interest under the PPSA, and consents to the Manager doing so.
- 5.6 The Customer waives its rights under the PPSA to receive a copy of any verification statement in respect of any financing statement or financing change statement registered by the Manager in respect of the Vessel.
- 5.7 If the Vessel is sold during the Term, then the proceeds of sale of the Vessel shall remain subject to the Manager's security interest.

6. NOMINATED VESSEL

- 6.1 The Customer's right to occupy the Berth relates exclusively to the Vessel, and the Customer shall not allow any other vessel to enter or occupy the Berth except where permitted to sublet the Berth in accordance with clause 8. A Customer wishing to moor a different vessel in the Berth must apply for a new Berth Rental Agreement in respect of that vessel.
- 6.2 At all times during the Term, the Customer shall ensure that the dimensions of the Vessel (as specified in the Specific Terms) are true and correct and further undertakes not to allow any part of the Vessel (including spars, bowsprits, anchors, davits and tenders or any other thing affixed to the Vessel) to exceed such dimensions or the Berth Dimensions. For



further guidance regarding dimensions, see the diagrams regarding vessel length in the Specific Terms.

- 6.3 The Manager may at its sole and absolute discretion give not less than 30 Working Days' notice to the Customer requiring that the dimensions of the Vessel be measured by or on behalf of the Manager. Where such a notice is given:
- (a) the Customer will, on the date specified in the notice, make the Vessel accessible at the Marina to the Manager and its Representatives, without modification or removal of any part of the Vessel, for measurement by or on behalf of the Manager; and
 - (b) any Representative of the Manager may board and measure the dimensions of the Vessel using such methodology as the Manager reasonably considers appropriate to verify that the Vessel matches the dimensions specified in the Specific Terms and does not exceed the Berth Dimensions. The Customer or its nominee may observe any measurement undertaken under this clause 6.3.
- 6.4 If the Manager's measurement under clause 6.3 identifies that the Vessel exceeds the dimensions specified in the Specific Terms or the Berth Dimensions, the Manager may issue a Default Notice.
- 6.5 To manage the occupancy and allocation of berths across the Marina, the Manager reserves the right to require the relocation of vessels which are not the appropriate size for their berth (including vessels that are undersized and could be moored in a smaller berth) at any time during the Term. Without limiting its other rights and remedies under the Agreement, where the Manager reasonably considers that the Vessel is not the appropriate size for the Berth it may:
- (a) adjust the Rental Fee (in accordance with clause 3.2) or impose an additional Charge to reasonably reflect the disparity between the Vessel's dimensions and the Berth Dimensions; and/or
 - (b) require that the Customer relocate to an appropriately sized berth in the Marina, as and when such a berth becomes available, by issuing the Customer with a notice under this clause 6.5(b) and offering the Customer a new Berth Rental Agreement for that berth. If the Customer does not enter into any such new Berth Rental Agreement within twenty (20) Working Days' of the Manager's notice under this clause, the Manager may terminate this Agreement by a further ten (10) Working Days' notice to the Customer.
7. **INVITEES**
- 7.1 The Customer shall ensure that:
- (a) all of its Invitees comply with the terms of the Agreement and all relevant bylaws, rules, regulations and legislation; and
 - (b) any children under the age of 12 and for whom the Customer or its Invitees are responsible, are accompanied by a person over the age of 18.
- 7.2 Without limiting clause 7.1, the Customer shall not, and shall ensure that its Invitees do not, pollute, permit the pollution of, or discharge into, the Marina any poisonous, noxious, dangerous or offensive substance or thing.
- 7.3 The Customer is responsible for ensuring that any Contractor invited into the Marina by the Customer (or by any of its Invitees) has completed the Westhaven Marina Contractor Registration Process and been approved by the Manager prior to carrying out any work on the Vessel in the Berth.
- 7.4 The Customer must ensure and accepts responsibility to ensure that any Contractor invited into the Marina by the Customer (or by any of its Invitees) for the purpose of carrying out work on the Vessel in the Berth holds sufficient insurance to satisfy the insurance requirements of the Manager.
- 7.5 The Customer acknowledges and agrees that where the Manager reasonably considers that the acts or omissions of the Customer or any Invitee are in breach of the Agreement and pose a material risk to the health and/or safety of any person within the Marina, the Manager may immediately take all steps reasonably necessary to prevent or mitigate such risk.

8. SUBLETTING OF BERTH

- 8.1 Any subletting of the Berth by the Customer must be approved in advance by the Manager, which approval may be granted on terms and conditions as stipulated by the Manager in its sole and absolute discretion. Such conditions may include that the person subletting the berth (**Subletter**) sign a commitment to the Manager to comply with the Customer's obligations under the Agreement.
- 8.2 Without limiting clause 8.1, where the Manager approves subletting of the Berth by the Customer, the Customer is:
- (a) responsible for ensuring that the Manager receives evidence of insurance (of the kind required pursuant to clause 12) in respect of the Subletter and their vessel;
 - (b) responsible for ensuring that the vessel that will occupy the Berth pursuant to the subletting arrangement has a current electrical warrant of fitness;
 - (c) required to provide the Customer's parking permit(s) and Marina pier access cards to the Subletter for the duration of the subletting arrangement; and
 - (d) required to ensure that the terms of the subletting provide that if the Agreement is terminated, the subletting arrangement automatically terminates and the Subletter must immediately vacate the Berth.
- 8.3 Neither approval of any subletting arrangement by the Manager, nor any arrangement entered into between the Manager and Subletter, shall release the Customer from its obligations under the Agreement, and the Customer must ensure that any Subletter complies with the requirements of the Agreement. A breach of the Agreement by a Subletter is deemed to be a default by the Customer for the purposes of clause 14.
- 8.4 In the event that the Subletter breaches the Agreement, the Manager may, on 5 Working Days' notice to the Customer, require the Customer to cease subletting the Berth and procure that the Subletter vacate the Berth.
- 8.5 The Customer must not assign any of its rights or obligations under the Agreement to any person without the prior written consent of the Manager, which consent can be withheld for any reason or may be subject to conditions. For the purposes of this clause 8.5, where the Customer is a limited liability company a change in more than 50% of the shareholding(s) of the Customer from the shareholding(s) in place at the Start Date shall be deemed an assignment requiring the consent of the Manager.
- 8.6 The Manager may assign all or any of its rights or obligations under the Agreement to any person.

9. WATER SPACE, ACCESS RIGHTS AND CAR PARKS

- 9.1 The Customer's right of occupation relates exclusively to the allocated water space of the Berth. In common with others, the Customer shall have the right to tie up to the allocated berth structures and should have the right of access in, and the use of, the common waterways and pathways of the Marina subject to the applicable provisions of the Marina Rules, A – Z Guide to Westhaven Marina, and such other rules as to access and access hours as the Manager may specify for safety, security and the preservation of good order (each as updated from time to time).
- 9.2 Car parking conditions for the Marina car parks are set out at the A Z Guide to Westhaven Marina, and the Customer agrees to comply with such conditions (as updated from time to time).

10. RESTRICTED ACTIVITIES

- 10.1 Neither the Customer nor any of its Invitees may live anywhere in the Marina other than on the Vessel and then only with the prior written approval of the Manager (which approval may be withheld at the Manager's sole and absolute discretion, or may be granted subject to any conditions that the Manager considers appropriate in relation to living on board arrangements). For clarification, staying overnight for more than one (1) night a week shall constitute living on-board.
- 10.2 While the Vessel is within the Marina, the Customer must not hire out or sublet the Vessel to others to use or permit third parties to stay on board for reward.
- 10.3 A breach of this clause 10 may constitute a default that is not capable of remedy for the purposes of clause 14.

11. LIABILITY

- 11.1 The Customer shall indemnify and keep indemnified the Manager against all losses, expenses, legal liability including any legal claims, damages, expenses, collection costs and other liabilities (whether direct, indirect or consequential) arising out of the Agreement or out of any act or omission of the Customer or its Invitees. Additionally, the Customer agrees to compensate, recompense, pay, indemnify and hold indemnified third parties for any loss or damage suffered by any third party which is caused by or results from the acts or omissions of the Customer or its Invitees.
- 11.2 The Manager is not responsible for the care or protection of any property belonging to the Customer in the Marina. The Vessel and any other property of the Customer and its Invitees are entirely at the risk of the Customer while at the Marina and shall remain at the Customer's risk at all times.
- 11.3 Neither the Manager, nor any of its Representatives, shall be liable (in negligence or otherwise) for any:
- (a) damage to, or theft or loss from, the Vessel, or for any damage to, or theft or loss of, any contents situated on or around the Vessel, while the Vessel is in the Marina howsoever occurring and including, without limiting the generality of the foregoing, loss or damage caused by:
 - (i) the removal of the Vessel by any person not authorised by the Customer to remove it, whether such removal was permitted by the Manager or not;
 - (ii) the use of any Shore Service, including any interruption to that service; or
 - (iii) the Manager exercising its rights under the Agreement to move the Vessel or to take action under clauses 4.3 (disconnection of Shore Services) or 7.5 (risks to health or safety);
 - (b) damage to, or theft or loss of any other property belonging to the Customer or any Invitee of the Customer, which property is within the Marina premises (including any vehicle within the Marina car park); or
 - (c) injury, loss or damage sustained or suffered by the Customer, or any Invitee of the Customer or any other person in the Marina howsoever such loss, damage or injury may occur.
- 11.4 Without limiting clause 11.1, the Customer will be responsible for all damage to the Marina including docks, structures, pilings or property in the Marina and or vessels and persons using the Marina arising from any act or omission, neglect or default by the Customer or its Invitees relating to the use and/or storage of the Vessel.
12. **INSURANCE**
- 12.1 Throughout the Term the Customer must effect and maintain insurance to cover the risks of its presence and activities within the Marina. Such insurance must include both marine hull insurance to cover any loss or damage to the Vessel, and public liability insurance to cover any third party loss caused by the Customer, its Invitees or its Vessel, for at least NZD \$10,000,000 per event or claim or a higher level of such insurance as may be reasonably required by the Manager.
- 12.2 The Customer shall provide the Manager with detailed certificates of currency for the insurance policies effected pursuant to clause 12.1, such certificates to be provided on signing the Specific Terms, each time that the relevant policy is renewed or amended in any way, and at the request of the Manager. Any certificate of currency provided by the Customer pursuant to this clause must contain, at a minimum, details of the insured person, period of insurance, type of insurance, name of the insurer, a policy number, and confirmation of the amount of insurance.
13. **PAYMENTS & DEFAULT INTEREST**
- 13.1 All monies due under the Agreement are to be paid by the Customer by direct debit unless otherwise agreed by the Manager. To this end, the Customer agrees to complete and return an authority for payment in the form required by the Manager within three (3) Working Days of being requested by the Manager to do so.



13.2 Where any part of the Rental Fee, Charges or other monies due under the Agreement remains outstanding for more than three (3) Working Days from the due date noted in the relevant invoice, the Manager may charge default interest. Default interest will accrue at the Default Rate (calculated on a daily basis) on the outstanding amount from the due date until the date of payment (inclusive).

14. TERMINATION ON DEFAULT

14.1 If the Customer fails to pay any part of the Rental Fee, Charges or other monies due under the Agreement or otherwise defaults on any of the terms and conditions of the Agreement, the Manager may at its sole and absolute discretion issue the Customer a notice of default setting out the nature of the default and, if in the Manager's opinion the default can be remedied, how it can be remedied (**Default Notice**). Where relevant, the Default Notice shall note the total outstanding monies owed by the Customer including any interest at the Default Rate.

14.2 If the default detailed in the Default Notice is not remedied within five (5) Working Days of the Customer's receipt of the Default Notice (or such other time period specified in the notice), or is not capable of being remedied, then the Manager may terminate the Agreement immediately, provided that the Customer shall remain liable for payment of all Rental Fees, Charges (if applicable) and other monies owing to the Manager under the Agreement, and any costs incurred by the Manager from the date of termination of the Agreement until the Vessel is removed from the Marina.

14.3 On the termination of the Agreement for any reason, the Customer shall remove the Vessel and all of the Customer's goods and effects from the Marina within seven (7) Working Days of the relevant date of termination.

14.4 Termination of the Agreement shall not affect:

- (a) the continued existence and validity of the rights and obligations of the parties under the following clauses which shall survive termination: the Customer Representative and Guarantee provisions set out in the Specific Terms, and clauses 5.2 to 5.7, 7.5, 11, 13.2, 14.2 to 14.5, 15, 17.2, 17.5, 18.1, 20, 21.1 and 24 of these General Terms and Conditions, and any other provisions that are intended by their nature to survive termination; and
- (b) the accrued rights and obligations of the parties at the date of termination.

14.5 Any failure by the Manager to enforce a provision of the Agreement shall not limit the Manager's future right to enforce any provision of the Agreement.

15. ENFORCEMENT OF SECURITY INTEREST

15.1 In addition to, but without limiting, any other right or remedy the Manager has under the Agreement, any statute, regulation, by-law or the common law, where:

- (a) any amount owing under the Agreement by the Customer has not been paid in full within twenty (20) Working Days of the due date, or twenty (20) Working Days of demand being made by the Manager to the Customer, as applicable;
- (b) the Customer has not complied with a Default Notice issued under clause 14.1 within the timeframe stipulated in the Default Notice; or
- (c) the Customer has not complied with its obligations under clause 14.3 within the seven (7) Working Days timeframe stipulated in clause 14.3,

(each an **Event of Default** for the purposes of clause 5.4)

then the Manager shall be entitled in its sole and absolute discretion to:

- (d) take the Vessel into its possession and lock and/or impound the Vessel until all Rental Fees, Charges and other amounts outstanding under the Agreement are paid in full; and/or
- (e) take the Vessel into its possession and lock and/or impound the Vessel, and upon twenty (20) Working Days' written notice to the Customer, sell the Vessel together with any chattels situated on or in the Vessel in such manner (whether by public auction or private sale), for such consideration and on such terms and conditions as the Manager thinks fit, without being responsible for any loss.

15.2 On the enforcement of the security interest created by the Agreement, sections 114(1)(a), 133 and 134 of the PPSA shall not apply and the Customer waives all rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA on such enforcement.

15.3 The Manager can, at its sole and absolute discretion, either secure the Vessel in its Berth or alternatively remove the Vessel to another berth or hardstand. Without limiting clause 5.4, any other right or remedy the Manager has under the Agreement, or any statute, regulation, by-law or the common law, where the Manager issues a Default Notice under the Agreement it shall be entitled to a lien on the Vessel to the extent of the costs of removal and storage of that Vessel.

15.4 In the event that the Manager sells the Vessel and/or any chattels situated on or in the Vessel in accordance with clause 15.1(e), the proceeds of any such sale shall be applied first in satisfaction of the Manager's expenses incurred pursuant to clauses 15.1 and 15.3, including in the removal and or storage of the Vessel, administrative expenses, the cost of providing custodians and solicitor and own client costs, secondly in or towards satisfaction of any debts or liabilities owed by the Customer to the Manager and lastly the payment of the balance (if any) to the Customer.

15.5 The Customer indemnifies and holds harmless the Manager against all liability for fees and expenses incurred, and from all claims, suits and demands made by any person, in respect of storing, selling or otherwise disposing of the Vessel or any chattels pursuant to clause 15.1(e).

15.6 The Customer hereby irrevocably appoints the Manager to be the attorney of the Customer to execute all documents and to do all things as are necessary to give effect to the Manager's rights under the Agreement, including this clause 15.

16. ABANDONED, UNSEAWORTHY OR ILL-REPAIRED VESSELS

16.1 The Customer shall keep any vessel occupying the Berth in good serviceable condition and repair, and shall ensure that it is seaworthy, while berthed, attended or unattended, in the Marina. Whether or not a vessel complies with the requirements of this clause will be determined by the Manager in its sole and absolute discretion.

16.2 Should the Customer fail to comply with clause 16.1, the Manager may serve a notice on the Customer (which shall be deemed to be a Default Notice for the purposes of clause 14) requiring the Customer to remedy specified deficiencies in the Vessel within the time period specified in the Default Notice (such period to be reasonable).

16.3 If the Customer fails to comply with a Default Notice issued under clause 16.2 within the time specified, the Manager may at its sole and absolute discretion invoke the termination procedure as outlined in clause 14 and/or may enforce its security interest pursuant to clause 15.

17. EMERGENCY MANAGEMENT AND OTHER VESSEL RELOCATION

17.1 The Manager reserves the right to use the Berth and to require the Customer to vacate the Berth in the case of an emergency or where necessary to allow urgent repairs to be carried out. In such circumstances the Manager will use reasonable endeavours, but shall not be obliged, to provide an alternative berth or mooring.

17.2 If the Manager reasonably considers that there is an imminent risk to the Marina or to the health and safety of any person within the Marina, the Manager reserves the right to take whatever steps it considers are required, in its sole and absolute discretion, to promote the integrity and safety of the Marina.

17.3 The Manager reserves the right to require the Customer to vacate the Berth, on a temporary or permanent basis, in order to facilitate construction, development, alterations or maintenance within the Marina or the reconfiguration of the Marina. The Manager shall give the Customer no less than 20 Working Days' notice of the requirement to vacate under this clause 17.3, shall provide an alternative berth for the Customer to use which will be deemed to be the Berth for the purposes of the Agreement, and may amend the Specific Terms to reflect the change in Berth.

17.4 The Manager will use reasonable endeavours to contact the Customer regarding a requirement to vacate the Berth pursuant to clause 17.1 or 17.3. Where the Manager is unable to make contact with the Customer, the Customer is unable to move the Vessel within the time required, or where clause 17.2 applies, the Manager is entitled to remove the Vessel from the Berth and the Customer consents to the Manager doing all things necessary to effect such removal. The Manager may, at its sole and

absolute discretion, charge the Customer for any costs that the Manager incurs in removing a Vessel pursuant to this clause 17.4, and the Customer agrees to pay such costs.

17.5 The Manager shall not be liable to pay any compensation to the Customer in respect of any relocation pursuant to this clause 17.

18. BAILMENT

18.1 The terms and conditions of the Agreement are not in any way intended by either party to create a bailment and the Customer understands that the Manager accepts no responsibility for the care of the Vessel or its contents.

18.2 Without limiting the foregoing, the Vessel and any chattels in or fixed to the Vessel shall not be deemed to be in the possession, custody or control of the Manager in any manner whatsoever, unless and until the Manager enforces its security interest under clause 15.

19. FORCE MAJEURE

19.1 The Manager shall not be deemed to be in breach of the Agreement or otherwise be liable to the Customer by reason of any delay in performance, or non-performance, of any of its obligations under the Agreement to the extent that any such delay or non-performance is due to any event outside the reasonable control of the Manager.

20. COSTS

20.1 The Customer acknowledges and agrees that the Customer is personally liable to the Manager for paying any costs incurred by the Manager (including all debt collection and legal costs and expenses on a solicitor and own client basis) in relation any breach by the Customer of its obligations under the Agreement (including the enforcement, or attempted enforcement, of the Manager's rights and remedies under the Agreement).

21. PRIVACY

21.1 The Customer hereby authorises the Manager to, upon default under the Agreement by the Customer or termination of the Agreement, disclose to the membership of the Marina Operators Association of NZ Inc any personal information held by the Manager about the Customer.

21.2 The Customer authorises the Manager to obtain and collect any relevant information about the Customer from any person (including credit reference agencies) and to use this information and any information about the Customer already held by the Manager for purposes associated with the Agreement. The Customer has the right to access personal information (within the meaning of the Privacy Act 2020) held by the Manager and to request correction of any errors in that information.

22. NOTICES

22.1 The Customer warrants that its contact details in the Specific Terms are correct for the purposes of service, and that it shall promptly update the Manager if any of its contact details change at any time during the Term.

22.2 Any notice issued by the Manager to the Customer under the Agreement shall be in writing and delivered personally, affixed upon the Vessel, or posted or emailed to the Customer (using the contact details specified in the Specific Terms or as otherwise updated by the Customer to the Manager in accordance with clause 22.1). A notice is deemed to be received: a) if delivered personally, when delivered; b) if affixed upon the Vessel, three (3) Working Days after it is so affixed; c) if posted, five (5) Working Days after it is posted; or d) if emailed, when recorded as being sent.



23. **AUTHORITY OF THE CUSTOMER AND CUSTOMER REPRESENTATIVES**

- 23.1 The Customer warrants and undertakes to the Manager, from the date on which the Agreement is signed and continuously throughout the Term, that the Customer:
- (a) has full power and legal capacity, and has obtained all authorisations and done all things necessary, in order to enter into the Agreement and to perform its obligations under the Agreement;
 - (b) either:
 - (i) has full legal title as the owner of the Vessel, or
 - (ii) where the Vessel is jointly owned, represents the joint owners and has the authority of all other joint owners to bind them jointly and severally to the Agreement, and will provide evidence of such ownership or authority that is satisfactory to the Manager promptly upon request; and
 - (c) is not aware of anything which will, or is reasonably likely to, prohibit the Customer from performing all of its obligations under the Agreement.
- 23.2 A Customer that is an entity or is otherwise comprised of more than one person acting jointly must appoint a Customer Representative, named in the Specific Terms, who signs the Agreement on the Customer's behalf. The Customer may change its Customer Representative by 10 Working Days' notice to the Manager at any time during the Term, and will promptly notify the Manager and appoint a new Customer Representative if at any point the Customer Representative ceases to have authority to act for the Customer.
- 23.3 Where clause 23.2 applies, the Customer warrants and undertakes to the Manager, from the date on which the Agreement is signed and continuously throughout the Term, that:
- (a) the Customer Representative has been expressly authorised in writing to act on behalf of the Customer in relation to the Agreement;
 - (b) the Customer has agreed to grant unlimited authority to the Customer Representative to act for the Customer in all matters concerned with, or arising out of, the Agreement and the Manager will be entitled to deal with that Customer Representative in all respects as if the Customer Representative were the Customer (without further enquiry) and the Customer shall be bound accordingly; and
 - (c) without prejudice to clause 23.3(b), the Customer will, upon request by the Manager from time to time, promptly provide documents or evidence satisfactory to the Manager as to the identity of the Customer Representative and/or that the Customer Representative is duly and fully authorised in accordance with this clause 23.3.
- 23.4 To avoid doubt, the Agreement remains between the Manager and the Customer, and the Customer remains responsible for its obligations and liabilities under the Agreement, notwithstanding the appointment of or any change to the Customer Representative.
- 23.5 Where the Customer is comprised of more than one person, acting jointly (in whatever capacity):
- (a) the persons comprising the Customer are jointly and severally liable for the obligations of the Customer under the Agreement; and
 - (b) the Customer must immediately notify the Manager of any change to the persons who jointly own the Vessel, and the Manager may amend the description of the Customer in the Specific Terms to reflect that change.
24. **GUARANTEE (IF APPLICABLE)**
- 24.1 In consideration of the Manager entering into the Agreement at the Guarantor's request the Guarantor guarantees the payment of the Rental Fee, Charges and the performance by the Customer of the covenants in the Agreement, and indemnifies the Manager against any monies owed and/or loss the Manager might suffer should the Agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person.
- 24.2 The Guarantor covenants with the Manager that:
- (a) As between the Guarantor and the Manager the Guarantor may for all purposes be treated as the Customer and the Manager shall be under no

obligation to take proceedings against the Customer before taking proceedings against the Guarantor.

- (b) This guarantee and indemnity shall extend to any holding over by the Customer.
- (c) This guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the Rental Fee and Charges.
- (d) The Guarantor's obligations are not released, reduced, or affected by any change to the terms of the Agreement, whether or not such change is notified to the Guarantor.

25. **MISCELLANEOUS**

- 25.1 The Agreement is subject to New Zealand law and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.
- 25.2 The Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the Parties, relating to the matters dealt with in the Agreement.
- 25.3 No waiver of a right or remedy under the Agreement or at law will be effective unless the waiver is expressly recorded in writing and signed by that Party. No failure or delay on the part of either Party in exercising any right or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of such right or remedy preclude any other or future exercise of the same, or any other, right or remedy.
- 25.4 The Agreement may be executed in counterparts, including facsimile or PDF counterparts which, when executed, will constitute and be read as one document. The Parties consent to the use of electronic signatures as a means of legally effective execution provided, in the case of execution by the Customer, that the Customer's electronic signature is inserted via Adobe Acrobat Sign and accompanied by a valid verification statement.

26. **INTERPRETATION**

- 26.1 In these General Terms and Conditions, unless the context requires otherwise:

Agreement means the full agreement between the Manager and the Customer, as described at clause 1.4.

A – Z Guide to Westhaven Marina means the document with that name published on the Westhaven Marina website, as updated by the Manager from time to time.

Berth means the berth in the Marina described in the Specific Terms.

Berth Dimensions means the maximum vessel dimensions permitted in the Berth as published by the Manager (which may differ from the physical dimensions of the Berth).

Charges means the charges associated with all services supplied to, or used by the Customer in the Marina (including for power, water, rubbish collection and any pump out services) and any other charges incurred by the Customer (including for permitted liveaboard or sub-letting arrangements) during the Term at the rate(s) specified by the Manager from time to time (inclusive of any goods and services tax levied under the Goods and Services Tax Act 1985).

Contractor means any person invited or engaged by or on behalf of the Customer to perform works or services in respect of the Vessel at the Marina.

Customer means the person or persons (acting jointly) named in the Specific Terms.

Customer Representative means the agent named in the Specific Terms or appointed in accordance with the Agreement (if any).

Default Notice has the meaning set out in clause 14.1.

Default Rate means the Manager's bank overdraft interest rate plus a further 5% per annum.

Event of Default has the meaning set out in clause 15.1.

Guarantor means the person named in the Specific Terms, if applicable.

Invitees means any of the Customer's agents, servants, contractors, employees, licensees, or invitees and includes any Contractor.

Manager means Auckland Council, and includes its successors and assigns.

Marina means Westhaven Marina and includes the Berth, all structures, wharves, foreshore areas, parking areas, driveways, accessways, services, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, Westhaven Marina.

Marina Rules means the Westhaven Marina Rules published on the Westhaven Marina website, as updated by the Manager from time to time.

PPSA means the Personal Property Securities Act 1999.

Rental Fee means the rental fee described in the Specific Terms, subject to review by the Manager in accordance with clause 3.2.

Representative means any duly authorised employee, officer, contractor or agent of the Manager.

Shore Services has the meaning set out in clause 4.2.

Specific Terms means the document titled Berth Rental Agreement Specific Terms which contains details regarding the Customer, Vessel, insurance, and other berth licence arrangements.

Start Date means the rental start date specified in the Specific Terms.

Subletter has the meaning set out in clause 8.1.

Term means the period described at clause 2.1.

Vessel means the vessel specified in the Specific Terms.

Westhaven Marina Contractor Registration Process means the Manager's process for reviewing, approving and registering Contractors for the purpose of carrying out works and services on vessels within the Marina, and includes any replacement process implemented by the Manager from time to time.

Working Day means any day of the week other than: (a) a Saturday, Sunday, or public holiday (as defined in the Holidays Act 2003) in Auckland; and (b) a day in the period commencing with 24 December in any year and ending 5 January in the following year. A Working Day shall be deemed to commence at 9.00am and terminate at 5.00pm.

- 26.2 In these General Terms and Conditions, unless the context requires otherwise
- (a) words in the singular include the plural and vice versa;
 - (b) references to "persons" include references to individuals or entities;
 - (c) references "entities" include references to companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
 - (d) if a party comprises more than one person, each person's liability is joint and several;
 - (e) references to "clauses" are to clauses in these General Terms and Conditions;
 - (f) references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it;
 - (g) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
 - (h) the term "including" means including without limitation.

