

BERTH RENTAL TERMS AND CONDITIONS

WESTHAVEN MARINA

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BERTH RENTAL TERMS AND CONDITIONS

1. BERTH RENTAL LICENCE

- 1.1 The Manager grants a licence to the Customer to occupy the Berth during the term of the Agreement 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 Berth Rental Agreement, 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 terms and conditions.
- 1.4 The full agreement and the terms of the licence between the Manager and the Customer are contained within:
- a) the Berth Rental Agreement;
 - b) these Berth Rental terms and conditions;
 - c) the "A – Z Guide to Westhaven Marina"; and
 - d) any other document published or administered by the Manager or its duly authorised employee, contractor or agent for the purpose of managing the Marina.
- 1.5 If there is any inconsistency between the provisions of the documents listed in clause 1.4 of these terms and conditions, the documents shall have the following order of priority (to the extent of any inconsistency): 1) the Berth Rental Agreement; 2) these Berth Rental terms and conditions; 3) the A-Z Guide to Westhaven Marina; and 4) any other document published or administered by the Manager or its duly authorised employee, contractor or agent for the purpose of managing the Marina.
- 1.6 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 Subject to clause 2.2, the Agreement shall start on the Start Date and remain in effect until the earlier of:
- a) the End Date;
 - b) where the occupation of the Berth is "Ongoing" under the Berth Rental Agreement or does not otherwise have an agreed End Date, the date it is terminated by either party giving ten (10) Working Days' notice to the other party; or
 - c) the date it is terminated by the Manager in accordance with clause 14.
- 2.2 Without prejudice to the Manager's rights, if the Manager permits the Customer to remain in occupation of the Berth beyond the End Date, the occupation shall be on a fortnightly holding over arrangement at the Rental Fee then payable calculated on a daily basis, terminable by either party giving ten (10) Working Days' notice and otherwise on the same terms and conditions of the Agreement.

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 one (1) month's 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 this 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. OUTGOINGS: POWER AND OTHER SHORE SERVICES

- 4.1 In addition to the Rental Fee, the Customer shall pay the monthly Outgoings invoiced by the Manager within five (5) Working Days of receiving the invoice (time being of the essence). The obligation to pay the Outgoings 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, complies with the Agreement and all relevant bylaws, rules, regulations and legislation governing the supply or discharge of power, water, sewage or other shore services.

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 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 shall not, whether directly or indirectly, nor shall its agents, employees or contractors, 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 loss or damage 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 shipways, buildings, piers, walkways, pontoons, gangways, ramps, mooring gear and any other facilities that comprise the Marina and the Berth, and the Customer agrees that it will use those 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 (as defined in clause 15.1), 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. For the avoidance of doubt, any security interest granted under this 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 of the Agreement, then the proceeds of sale of the Vessel shall remain subject to the Manager's security interest.

6. DIMENSIONS OF VESSEL

- 6.1 At all times, the Customer shall ensure that the dimensions of the Vessel (as specified in the Berth Rental Agreement) 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 during the term of the Agreement. For further guidance regarding dimensions, see the diagrams regarding vessel length on the Berth Rental Agreement.
- 6.2 The Customer undertakes to inform the Manager:
- a) in advance if the Customer intends to moor a new vessel in the Berth. In such circumstances, the Customer shall provide the Manager with written information regarding the new vessel (including name, type of vessel, dimensions, colour and whether it is equipped with holding tanks), and shall confirm to the Manager that the dimensions of the new vessel do not exceed the Vessel dimensions specified in the Berth Rental Agreement. Provided these requirements are complied with, the new vessel shall become the "Vessel" for the purposes of the Agreement; and

- b) if any material changes are made to the Vessel.

7. VISITORS TO THE MARINA

- 7.1 The Customer shall ensure that:
- 7.1.1 all of its Invitees comply with the terms of the Agreement and all relevant bylaws, rules, regulations and legislation; and
 - 7.1.2 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.
- 7.2 The Customer is responsible for ensuring that any contractor invited into the Marina by the Customer (or by any of its Invitees) has completed a Contractor Access Application Form, and submitted that form to the Manager, in accordance with the Manager's health and safety policy.
- 7.3 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.

8. SUBLETTING OF BERTH

- 8.1 Any subletting of the Berth during the term of the Agreement must be approved in advance by the Manager which approval may be granted on terms and conditions as stipulated by the Manager at its sole and absolute discretion. Without limiting the foregoing, 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 (as required pursuant to clause 12 of these terms and conditions) in respect of the vessel that will occupy the Berth pursuant to the subletting arrangement;
 - b) responsible for ensuring that the vessel that will occupy the Berth pursuant to the subletting arrangement has a current electrical warrant of fitness; and
 - c) required to provide the Customer's parking permit(s) and Marina pier access cards to the third party that sublets the Berth for the duration of the subletting arrangement.
- 8.2 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 8.2, 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.
- 8.3 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 Agreement relates only to the exclusive use of 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 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.
- 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 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. To avoid doubt, the Customer acknowledges that subletting the Vessel or permitting third parties to stay on board for reward is not permitted. A breach of this clause may constitute a default that is not capable of remedy for the purposes of clause 14 of these terms and conditions.

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 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 are entirely at the risk of the Customer while at the Marina and shall remain at the Customer's risk during the term of the Agreement.

11.3 Neither the Manager, nor any of its employees, agents, officers or contractors, shall be liable (in negligence or otherwise) for any:

- 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 including, but without limiting the generality of the foregoing, loss or damage caused by 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;
- 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
- 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 of the Agreement, the Customer:

- must effect and maintain protection and indemnity insurance (to cover any third party loss caused by the Customer, its Invitees or its Vessel) for at least \$5,000,000 per event or claim; and
- may effect and maintain marine hull insurance (to cover any loss or damage to the Vessel), and the Customer acknowledges that the Manager recommends such cover.

12.2 The Customer shall provide the Manager with a detailed certificate of currency for the insurance policy effected pursuant to clause 12.1(a), such certificate to be provided on execution of the Berth Rental Agreement, each time that the 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 entity, period of insurance, type of insurance, name of the insurer, a policy number, and confirmation of the amount of insurance.

13. PAYMENTS AND DEFAULT INTEREST

13.1 All monies due under the Agreement are to be paid by the Customer by direct debit. To this end, the Customer agrees to complete and return a direct debit form to 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, Outgoings 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, Outgoings 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 including any interest at the Default Rate.

14.2 If the default as detailed in the Default Notice is not remedied within five (5) Working Days of the Customer's receipt of the Default Notice (or 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, Outgoings (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 (Outstanding Costs).

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:

- the continued existence and validity of the rights and obligations of the parties under the following clauses which shall survive termination: the Agency provision and the Guarantee provisions set out in the Berth Rental Agreement, clauses 5.2, 5.4, 5.7, 11, 14.2, 14.3, 14.4, 14.5, 15, 20, 21 and 23 of these terms and conditions, and any other provisions that are intended by their nature to survive termination; and
- 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:

- 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;
- the Customer has not complied with a Default Notice issued under clause 14.1 within the timeframe stipulated in the Default Notice;
- 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) the Manager shall be entitled in its sole discretion to:
- take the Vessel into its possession and lock and/or impound the Vessel until all outstanding Charges and all other amounts outstanding under the Agreement are paid in full; and/or
- 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 total discretion, either secure the Vessel in its Berth or alternatively remove the Vessel to another berth or hardstand. Without limiting any other right or remedy the Manager has under the Agreement, 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 (Vessel sale).

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 discretion.

16.2 Should the Customer fail to comply with sub-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 total 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 in the case of an emergency and also to require the Customer to vacate the Berth if 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 In extreme emergencies, 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 if necessary to facilitate construction, development, alterations or maintenance within the Marina. In such circumstances, the Manager shall provide an alternative berth for the Customer to use.

17.4 Where the Manager has used reasonable endeavours to contact the Customer regarding a requirement to vacate the Berth pursuant to this clause 17, and the Manager is unable to make contact with the Customer, 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 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 charges.

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 1993) held by the Manager and to request correction of any errors in that information.
22. **NOTICES**
- 22.1 Customer warrants that its contact details on the Berth Rental Agreement 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 of the Agreement.
- 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 Berth Rental Agreement 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. **GUARANTEE (IF APPLICABLE)**
- 23.1 In consideration of the Manager entering into the Agreement at the Guarantor's request the Guarantor guarantees the payment of the Rental Fee, Outgoings and the performance by the Customer of the covenants in the Agreement, and indemnifies the Manager against any monies owed, loss the Manager might suffer should the Agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person.
- 23.2 The Guarantor covenants with the Manager that:
- 23.3.1 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.
- 23.3.2 This guarantee and indemnity shall extend to any holding over by the Customer.

- 23.2.3 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 Outgoings.
- 23.2.4 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.

24. **GOVERNING LAW**

- 24.1 The Agreement is subject to New Zealand law.

DEFINITIONS

"**Agreement**" means the full agreement between the Manager and the Customer, as described at clause 1.4 of these terms and conditions.

"**Berth**" means the berth in the Marina described in the Berth Rental Agreement.

"**Berth Rental Agreement**" means the document titled "Berth Rental Agreement" and which contains details regarding the Customer, Vessel, insurance, and other berth licence arrangements, and is signed by the Customer, Guarantor (if applicable), and Manager.

"**Customer**" means the person or entity named in the Berth Rental Agreement.

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

"**End Date**" means the end date specified in the Berth Rental Agreement.

"**Event of Default**" has the meaning set out in clause 15.1 of these terms and conditions.

"**Guarantor**" means, if applicable, the person named in the Berth Rental Agreement.

"**Invitees**" means any of the Customer's agents, servants, contractors, employees, licensees, or invitees.

"**Manager**" means Panuku Development Auckland Limited as the manager of the Westhaven Trusts (as appointed by Westhaven Marina Limited as trustee of the Westhaven Trusts), the body appointed to run the Marina and to bind the Marina in its legal affairs, and includes its successors and assigns, except where the Berth Rental Agreement relates to rental of a pile mooring, in which case "Manager" means Panuku Development Auckland Limited as the owner of the pile mooring.

"**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.

"**Outgoings**" means the cost of all services supplied to, or used by the Customer in the Marina (including but not limited to power, water, rubbish collection and any pump out services) during the term of the Agreement 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).

"**PPSA**" means the Personal Property Securities Act 1999.

"**Rental Fee**" means the rental fee described in the Berth Rental Agreement.

"**Start Date**" means the start date specified in the Berth Rental Agreement.

"**Vessel**" means the vessel specified in the Berth Rental Agreement.

"**Working Day**" means any day of the week other than: (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and Auckland Anniversary Day; 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.

