

**BAYSWATER MARINA BERTH LICENCE**

**BERTH LICENCE  
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## PARTIES

**BAYSWATER MARINA LIMITED** (“Marina Manager”)

**THE PERSON(s)** named in the Schedule of Licence Details (included in the term the “Berthholder”)

## INTRODUCTION

Pursuant to the rights arising out of this licence, the Marina Manager hereby grants to the Berthholder a licence to use, occupy and enjoy the Berth in the Marina upon the following terms and conditions.

## COVENANTS

### 1. INTERPRETATION

#### Definitions

“**Authority**” means any local body, Government or other authority or department having jurisdiction or authority, over or in respect of, the Marina or its use or occupation.

“**Berth**” means the berth in the Marina or, in the case of a pile mooring in the Marina, described in the Schedule of Licence Details.

“**Berthholder**” means the person named in the Schedule of Licence Details as the Berthholder and includes the Berthholder’s executors, administrators, successors and permitted assigns.

“**Berthholder’s Proportion**” means the proportion specified in the Schedule of Licence Details but subject to adjustment in accordance with the provisions of Clause 4.2

“**Berthholder’s Proportion of Operating Expenses**” means the Berthholder’s Proportion of Operating Expenses payable by the Berthholder and, where the Berth is used by a Charter Boat, will be subject to adjustment in accordance with the provisions of Clause 22.3

“**Broken Period**” means either the period from the Commencement Date to the next succeeding 31 March or the period from the last occurring 1 April during the Term to the Termination Date.

“**Commencement Date**” means the date specified in the Schedule of Licence Details.

“**Company**” means Bayswater Marina Limited.

“**Default Rate**” means the Marina Manager’s bank overdraft interest rate plus a further 4% per annum.

“**Facilities**” means the foreshore areas, parking areas, driveways, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, the Reclaimed Area.

“**Goods and Services Tax**” and “**GST**” means tax levied pursuant to the Goods and Services Tax Act 1985 and includes any tax levied in substitution for such tax.

“**Marina**” means the Bayswater Marina situated within the Reclaimed Area and the Marina Area and includes the Structures, the Facilities and the Services.

“**Marina Area**” means the area of seabed adjoining the Reclaimed Area comprising approximately 4.94

ha shown coloured white on the plan appearing as the Third Schedule.

“**Marina Manager**” means Bayswater Marina Limited an incorporated company having its registered office at Auckland and includes its successors and assigns.

“**Marina Rules**” means the rules established by the Marina Manager set out in the Second Schedule and includes any variation to such rules.

“**Navigation Area**” means the area of seabed adjoining the Reclaimed Area and Marina Area comprising approximately 6.26 ha, part of which is shown coloured light gray on the plan appearing as the Third Schedule.

“**Nominated Vessel**” means the vessel specified in the Schedule of Licence Details or any other vessel nominated by the Berthholder by notice in writing to the Marina Manager in substitution for that vessel and which complies with the provisions of Clause 2.3.

“**Operating Expenses**” means the total of all rates, taxes, costs and expenses incurred by the Marina Manager or for which the Marina Manager is or may prospectively become liable in respect of the Marina and includes, without limitation, any additional amount or amounts which the Marina Manager properly and reasonably determines are appropriate to be set aside in relation to the control, operation, occupation, maintenance and management of the Marina (but excluding costs and expenses which are the direct responsibility of the Berthholder or of any other Berthholder in the Marina) and in particular but without limiting the generality of the foregoing includes the rates, taxes, costs and expenses specified in the First Schedule.

“**Purchaser**” means a proposed purchaser (of the Berthholder’s interest in this licence) nominated by the Berthholder.

“**Reclaimed Area**” means those areas of the foreshore and seabed of the Waitemata Harbour comprising approximately 3.487 ha shown marked (A) Pt Bed of Waitemata Harbour, (B) Pt Bed of Waitemata Harbour and (C) Pt Reclaimed Land on Deposited Plan 19921, but excluding that area marked “Area Not to be Reclaimed” on Plan DOC (CM) AK (00129) SO 63335, Sheet (1) of (1) deposited in the Auckland Regional Office of the Department of Conservation, part of which is shown coloured dark grey on the plan appearing as the Third Schedule.

“**Resource Consents**” means the various consents essential to the use and occupation of the Marina.

“**Schedule of Licence Details**” means the schedule of licence details attached to this licence which sets out various particulars pertaining to this licence.

“**Services**” means the power, water and other services provided for the benefit of the Berthholder in the Marina.

“**Structures**” means the breakwater, fingers, jetties, fueling jetty, loading jetty, piles and other structures constructed or placed on or in the Marina Area.

“**Term**” means the period commencing on the Commencement Date and ending on the Termination Date.

“**Termination Date**” means the date specified in the Schedule of Licence Details.

“**Trustee**” means The Trustees Executors and Agency Company of New Zealand Limited or any other trust company appointed by the Marina Manager.

“**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.

## 1.2 Headings

Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this licence.

## 1.3 Parties

References to parties are references to parties to this licence.

## 1.4 Persons

References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality.

## 1.5 Defined expressions

Expressions defined in the main body of this licence bear the defined meaning in the whole of this licence including the recitals.

## 1.6 Plural and singular

Words importing the singular number shall include the plural and vice versa.

## 1.7 Schedules

The schedules to this licence and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this licence.

## 1.8 Clauses and schedules

References to clauses and schedules are references to clauses of, and schedules to, this licence.

## 1.9 Negative obligations

Any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

## 1.10 Gender

Words importing one gender shall include the other genders.

## 1.11 Statutes and regulations

References to a statute include references to regulations, orders or notices made under or pursuant to such statute or regulations made under the statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to as incorporating any of the provisions.

## 2. CONSENT

### 2.1 Grant of Consent

In consideration of the Berthholder adopting the obligations imposed on the Berthholder by this licence, the Marina Manager hereby grants, to the Berthholder only, except as authorised by the Marina Manager in the case of a transfer or sublicensing, the rights to:

(a) berth the Nominated Vessel in the Berth, such Nominated Vessel being personally and beneficially owned (as to not less than a one quarter share) by the Berthholder;

(b) use the Structures and Facilities; and

(c) navigate vessels within the Navigation Area.

### 2.2 Right of third parties

The Berthholder acknowledges that the rights granted pursuant to subclauses 2.1(b) and 2.1(c) are subject to:

(a) the rights of public access provided for in the Resource Consents; and

(b) the rights of other Berthholders in the Marina and all other persons authorised by the Marina Manager from time to time.

### 2.3 Change in Nominated Vessel

The Berthholder may at any time by notice in writing, nominate a different Nominated Vessel provided that the vessel so nominated does not exceed the dimensions of the Berth specified in the Schedule of Licence Details and the Berthholder personally and beneficially owns not less than a one quarter share in the substituted nominated vessel.

## 3. TERM

### 3.1 Term

The term of this licence shall commence on the Commencement Date and shall terminate at midnight on the Termination Date.

## 4. OPERATING EXPENSES

### 4.1 Operating Expenses

The Berthholder shall pay to the Marina Manager throughout the Term the Berthholder’s Proportion of Operating Expenses.

### 4.2 Berthholder’s proportion

The Berthholder's Proportion shall initially be the proportion specified in the Schedule of Licence Details provided that the Marina Manager may subsequently adjust the Berthholder's Proportion to such reasonable and equitable proportion as the Marina Manager may specify by written notice to the Berthholder.

#### **4.3 Broken Periods**

As soon as practicable following the Commencement Date the Marina Manager shall advise the Berthholder of the amount of the Marina Manager's estimate of the Berthholder's Proportion of the Operating Expenses for the Broken Period to 31 March next following the Commencement Date.

The Berthholder shall pay to the Marina Manager the Berthholder's Proportion of the Operating Expenses as estimated by the Marina Manager for that Broken Period by equal instalments in advance on the 1st day of each month during that Broken Period with a proportionate payment calculated on a daily basis for any period of less than one month.

#### **4.4 Annual Operating Expenses**

As soon as practicable following each 1 April during the Term the Marina Manager shall advise the Berthholder of the amount of the Marina Manager's estimate of the Berthholder's Proportion of the Operating Expenses for the next succeeding period of 12 months. The Berthholder shall pay to the Marina Manager the amount of the Berthholder's Proportion of the Operating Expenses as estimated by the Marina Manager for each year by equal instalments in advance on the 1st day of each month during that period of 12 months.

#### **4.5 Reconciliation**

As soon as practicable after 31 March in each year during the Term the Marina Manager will provide to the Berthholder a statement of the actual Berthholder's Proportion of the Operating Expenses for the preceding period of 12 months or initial Broken Period (as the case may be) then ended as compared to the estimate previously notified by the Marina Manager and whatever adjustment as is necessary between the Marina Manager and the Berthholder shall be made after taking into account the payments previously made by the Berthholder in respect of that period of 12 months or initial Broken Period (as the case may be) on the basis that any refund shall be credited to future payments to be made by the Berthholder and any further payment by the Berthholder shall be payable to the Marina Manager upon demand.

#### **4.6 Final Reconciliation**

As soon as practicable after the Termination Date the Marina Manager shall provide a statement of the actual Berthholder's Proportion of the Operating Expenses for the concluding Broken Period as compared to the estimate previously notified by the Marina Manager and whatever adjustment as is necessary between the Marina Manager and the Berthholder shall be paid upon demand (subject to Clause 4.7) after taking into account the monthly payments made by the Berthholder in respect of the concluding Broken Period.

#### **4.7 Withholding by Marina Manager**

The Marina Manager may withhold the amount of any excess payments and apply the same in satisfaction of, or on account of, any other moneys owing by the Berthholder to the Marina Manager under this licence.

#### **4.8 No set off or deductions**

The Berthholder shall pay the amount of the Berthholder's Proportion of Operating Expenses to the Marina Manager without any deduction or set off.

#### **4.9 Bank authority**

If required by the Marina Manager, the Berthholder shall pay the amount of the Berthholder's Proportion of Operating Expenses by automatic bank authority.

#### **4.10 Default Interest**

The Berthholder shall pay interest at the Default Rate on the amount of the Berthholder's Proportion of Operating Expenses or any other moneys payable under this licence which remain unpaid 14 days after the due date for payment. Interest shall be calculated on a daily basis from the due date for payment until the actual date of payment and shall be payable on demand. The right of the Marina Manager to recover interest shall be without prejudice to any other rights, powers and remedies of the Marina Manager.

#### **4.11 Levies payable in addition to Operating Expenses**

The payments referred to in this Clause 4 shall be made exclusive of any taxes, duties, assessments, impositions, levies of every kind ("Levies") which during the Term shall be imposed or payable to the intent that any levies so imposed shall be paid by the Berthholder in addition to the moneys payable pursuant to this Clause 4.

### **5. MAJOR REFURBISHMENT FUND**

#### **5.1 Payments**

For the first period of the Term from the Commencement Date until the following 31 March, the Berthholder shall pay on the Commencement Date the sum specified in the Schedule of Licence Details on account of major refurbishment expenses. For each subsequent 12 month period during the term of this licence, the Berthholder shall pay the Marina Manager an annual major refurbishment contribution to be payable annually in advance at such rate as the Marina Manager shall reasonably determine in respect of each 12 month period of the Term as being adequate to cover prospective repairs, renovations, replacements and matters of a substantial but infrequent or irregular nature in respect of the Marina. The sum to be levied each year for the purposes referred to in this subclause (excluding the Marina Manager's margin) shall not be more than 10% of the Operating Expenses as defined in Clause 1.1 and the First Schedule for the preceding 12 month period of the last term plus the Marina Manager's margin calculated as a further 15% of the major refurbishment contribution.

#### **5.2 Funds held in trust**

The major refurbishment contribution fees together with any interest earned on such fees, will be held in trust by the Trustee in a separate bank account for the benefit of all the berthholders in the Marina and shall be applied, following the approval of the Trustee and the Marina Manager, for the purpose of carrying out the repairs, renovations, improvements, replacements and maintenance referred to in Clause 5.1.

### **5.3 Refund of credit on termination**

Should, as at the Termination Date, there exist a credit balance in the major refurbishment fund held on trust by the Trustee pursuant to this Clause 5, the Berthholder shall, as soon as practicable, be paid a refund of the Berthholder's Proportion of the major refurbishment fund.

## **6. GOODS AND SERVICES TAX AND OTHER DUTIES**

### **6.1 GST**

The Berthholder shall pay to the Marina Manager upon demand all Goods and Services Tax on any moneys payable by the Berthholder under or by virtue of this licence and the use by the Berthholder of the Berth.

### **6.2 Default**

If any Goods and Services Tax is not paid by the Berthholder upon demand it shall be recoverable and bear interest at the Default Rate and without prejudice to any other remedies available to the Marina Manager, the Berthholder shall pay an amount equal to the amount of any additional tax that shall have become chargeable pursuant to the Goods and Services Tax Act 1985.

### **6.3 Other duties and taxes**

The Berthholder shall pay all duties, taxes and other imposts in respect of this licence (which term shall in this clause include any berth licence agreement or other agreement entered into in anticipation of this licence) and/or in respect of the payments, fees and other moneys due under this licence including (without limitation), stamp duty.

The Berthholder's obligations under this licence shall apply regardless of whether the Marina Manager or the Berthholder is primarily liable in respect of any such duty, tax or other impost or is liable for the charging thereof or otherwise to the intent that, without prejudice to the foregoing, the Marina Manager shall be held indemnified by the Berthholder for any such duties, taxes and other imposts paid or payable by it in any capacity whatever.

## **7. USE AND OCCUPATION OF MARINA**

### **7.1 Nominated Vessel**

The Berthholder shall use the Berth solely for the purpose of berthing the Nominated Vessel. The Nominated Vessel shall conform to the dimensions (including spars, equipment or appurtenances of any kind) specified in the Schedule of Licence Details with the length in the case of a finger berth, being measured from the berth face of the adjacent walkway. The Nominated Vessel and any other vessel occupying the Berth pursuant to an

authorised sublicensing arrangement shall be equipped with either:

- (a) A sewage holding tank that can be discharged into the shore-based pump out facility; or
- (b) A suitable portable sewage holding tank that can be carried to and emptied at the shore-based pump out facility.

### **7.2 Prohibited uses**

The Berthholder shall use the Berth only for berthing the Nominated Vessel whilst it is used for recreational boating purposes. The Berthholder shall not use the Berth for berthing commercial fishing boats, work boats, commercial freight carriers or boats used for any other commercial or industrial purpose. Charter Boats shall be permitted to use the Berth where the Marina Manager's consent is given to that use pursuant to Clause 22.2

### **7.3 No alterations**

The Berthholder shall not alter or modify the Berth, the Structures or the Services.

### **7.4 Pollution**

The Berthholder shall not discharge any poisonous, noxious, dangerous or offensive substance or thing into or onto the Marina and shall comply in all respects with the provisions of the Resource Management Act 1991 in respect to the use and occupation of the Marina. In particular, but without limitation, the Berthholder shall not discharge any sewage or otherwise empty any latrines into the waters of the Marina or otherwise dispose of any garbage, oil, fuel or other material whatsoever in the Marina except into containers provided by the Marina Manager.

### **7.5 Noise**

The Berthholder shall ensure that all halyards, lines, ropes, rigging and sheets on any vessel berthed in the Marina for which the Berthholder is responsible are secured so as not to create a noise.

## **8. MARINA RULES**

### **8.1 Berthholder to comply with Rules**

The Berthholder shall at all times comply with the Marina Rules and with any special instructions issued by the Marina Manager in the case of emergencies.

### **8.2 Variation of Rules**

The Marina Manager may vary the Marina Rules by written notice to the Berthholder from time to time as may reasonably be necessary or desirable provided that no such variation shall derogate from the rights of the Berthholder under this licence. If there is any inconsistency between the provisions of this licence and the Marina Rules the provisions of this licence shall prevail.

## **9. MAINTENANCE OF VESSELS**

### **9.1 Maintenance**

The Berthholder shall keep any vessel occupying the Berth in good serviceable condition and repair so as not to obstruct, interfere with or endanger other vessels navigating or berthed in the Marina.

### **9.2 Repair notice**

Should the Berthholder default in compliance with the provisions of Clause 9.1, the Marina Manager may serve a notice on the Berthholder requiring the Berthholder to repair any vessel occupying the Berth as required by Clause 9.1, within a reasonable time.

### **9.3 Removal of vessel**

Should the Berthholder fail to comply with a notice given under Clause 9.2 within the time specified in the notice, the Marina Manager may (but without any obligation to do so), and without further notice, remove any vessel occupying the Berth and recover the cost of removal from the Berthholder.

Where the Marina Manager removes any vessel in accordance with this clause it shall be entitled to a lien on the vessel to the extent of the costs of removal and storage.

### **9.4 Custodians**

The Marina Manager may place and maintain on any vessel removed pursuant to Clause 9.3 such number of custodians as may be necessary in the circumstances.

### **9.4 Sale of vessel**

Should the Berthholder fail to make satisfactory arrangements for the repair of any vessel removed pursuant to Clause 9.3 within the period of one month after the date of such removal the Marina Manager may at any time thereafter offer the vessel for sale by public auction or private contract and apply such of the proceeds of any resultant sale first in satisfaction of the Marina Manager's expenses incurred in the removal and storage including administrative expenses and the cost of providing custodians, secondly in or towards satisfaction of any debts or liabilities owed by the Berthholder to the Marina Manager and thirdly to the Berthholder.

The Berthholder hereby irrevocably appoints the Marina Manager to be the attorney of the Berthholder to execute all documents and do all things as are necessary to give effect to such sale.

## **10. RELOCATION OF BERTH**

### **10.1 Relocation of Berth**

The Marina Manager may at any time require the Berthholder to vacate the Berth either on a temporary or permanent basis and to occupy another berth within the Marina.

### **10.2 Temporary relocation**

In the case of a temporary relocation the Marina Manager shall take all reasonable steps to ensure that the new berth is of no lesser size and has the same facilities as the Berth.

### **10.3 Permanent relocation**

In the case of a permanent relocation the Marina Manager shall ensure that the new berth is of no lesser size, has the same facilities and is no less conveniently located than the Berth.

### **10.4 No compensation**

The Marina Manager shall not be liable to pay any compensation in respect of any relocation under this section.

### **10.5 Application of this licence**

The terms of this licence shall continue to apply to any berth to which the Berthholder is relocated whether on a temporary or permanent basis.

### **10.6 Emergencies etc**

The Marina Manager reserves the rights to use the Berth in the case of an emergency and also to require the Berthholder to vacate the Berth if necessary to allow urgent repairs to be carried out. In such circumstances the Marina Manager may, but shall not be obliged to, provide an alternative berth or mooring.

## **11. TRANSFER OF BERTH LICENCE**

### **11.1 Personal licence**

This licence is personal to, and shall at all times be held beneficially by, the Berthholder to the intent that the Berthholder shall not, nor shall attempt to, assign, transfer, sublicense, or otherwise howsoever dispose of this licence or any interest in this licence, whether legal or beneficial except as provided in this licence. For the purpose of this clause, if the Berthholder is a company, any change in the company's shareholding or structure which alters the effective control of the company or, which after a series of changes alters the effective control of the company from that existing when the company first took the licence, shall be deemed to be an assignment of this licence.

### **11.2 First offer to Marina Manager**

If the Berthholder wishes to assign or transfer its interest in this licence at any time during the term of this licence, the Berthholder shall first offer to assign or transfer its interest in this licence to the Marina Manager by delivering to the Marina Manager a written notice ("Offer Notice") making full and accurate disclosure of the terms and conditions upon which the Berthholder intends to assign or transfer its interest in this licence.

### **11.3 Acceptance of offer**

If the Marina Manager wishes to accept the offer on the terms specified in the Offer Notice, the Marina Manager shall deliver to the Berthholder a written notice of acceptance no later than 5 pm 10 Working Days from (but exclusive of) the date of receipt of the Offer Notice.

### **11.4 Non-acceptance of offer**

If the Marina Manager does not accept the offer contained in the Offer Notice within the above acceptance period, the Berthholder may assign or transfer its interest in this licence to any other party ("Third Party") (subject to compliance with the provisions of Clause 11.6, provided the terms and conditions offered to the Third Party are not more favourable to the Third Party than the terms offered to the Marina Manager.

### **11.5 Re-offer to Marina Manager**

If the Berthholder intends to assign or transfer its interest in this licence to a Third Party on terms and conditions more favourable to the Third Party than the terms offered to the Marina Manager, the Berthholder shall first re-offer to assign or transfer its interest in this licence to the Marina Manager

(“Re-Offer”) on the more favourable terms intended to be offered to the Third Party. Should the Marina Manager wish to accept the Re-Offer it shall deliver to the Berthholder a written notice of acceptance no later than 5.00 pm 5 Working Days from (but exclusive of) the date of receipt of the Re-Offer notice, after which date, if the Re-Offer is not accepted, the Berthholder may assign or transfer its interest in this licence to a Third Party (subject to compliance with the provisions of Clause 11.6) provided the terms and conditions offered to the Third Party are not more favourable to the Third Party than the terms offered to the Marina Manager.

#### **11.6 Pre-conditions to assignment**

The Berthholder shall be entitled to assign or transfer its interest in this licence subject to compliance with the provisions of Clauses 11.2 to 11.5 and with all of the following requirements which shall be conditions precedent to the existence of any such right to assign or transfer:

(a) the Berthholder shall submit to the Marina Manager the name, address, and occupation (or in the case of a corporation the registered office and details of business) of the Purchaser and the name and dimensions of the proposed nominated vessel (which must comply with the requirements of Clause 7.1 and the Schedule of Licence Details) together with such evidence as the Marina Manager may require:

(i) that such Purchaser is respectable, responsible and solvent;

(ii) confirming the terms and conditions upon which the Berthholder intends to assign or transfer its interest in this licence;

(b) all licence fees and other moneys for the time being due or payable by the Berthholder under this licence shall have been paid, and the Berthholder shall have observed and performed all the other obligations of the Berthholder under this licence and under any preliminary agreement to license up to the date of such transfer;

(c) the Purchaser shall have provided evidence that it is able to meet all the requirements of this licence;

(d) the Berthholder shall have paid the Marina Manager’s and any other costs of and incidental to the obtaining of the Marina Manager’s consent;

(e) the Berthholder shall have paid the transfer fee plus Goods and Services Tax calculated in accordance with Clause 11.7 and any statutory fees or charges payable at the time of the transfer;

(f) the Berthholder shall procure the execution by the purchaser of a deed of covenant by such Purchaser that the Purchaser shall at all times during the term of this licence comply with the Berthholder’s obligations under this licence;

(g) the consent of the Marina Manager which shall not be unreasonably or arbitrarily withheld.

#### **11.7 Transfer fee**

The transfer fee referred to in Clause 11.6(e) shall, in the case of an assignment or transfer in:

(a) the first financial period of the Term ending on the first 30 June date following the Commencement Date of this licence, be the sum specified in the Schedule of Licence Details, plus GST;

(b) the second financial year (commencing on the first 1 July date following the Commencement Date) and for each subsequent financial year of the Term, be the sum specified in the Schedule of Licence Details, increased each year by the percentage increase in the consumer price index (all groups) for the preceding year, plus GST, with the first adjustment to be made on 1 July 1999, to the intent that the transfer fee shall be adjusted annually on a compounding basis. If the consumer price index changes, then the nearest appropriate index shall be utilised. The Marina Manager’s decision on the amount of the increase shall be final. Should the transfer fee be varied in accordance with this clause it shall not, in any event, be subject to a reduction in the event of any decrease in the index.

#### **11.8 Exceptions to payment of transfer fee**

Notwithstanding the provisions of Clause 11.7, the transfer fee referred to in Clause 11.6(e) shall not be payable in the event of a transfer of a licence:

(a) to the Berthholder’s executors or administrators following the death of the Berthholder;

(b) to the beneficiaries under the Berthholder’s will or letters of administration following the death of the Berthholder;

(c) in circumstances where the Berthholder is a trust and there is a change of trustee under that trust.

#### **11.9 Marina Manager free to assign**

Should the Berthholder also be the manager of the Marina then, for such period as the Berthholder is the manager of the Marina, it shall be entitled to assign or transfer the berth free of the restrictions imposed by Clauses 11.2 to 11.7 (inclusive).

#### **11.10 Breach of intent**

Should the Berthholder breach the spirit or intent of this Clause 11 or enter into any practice, scheme or device intended to avoid compliance with this Clause 11, such action shall be deemed to be a breach of this licence and the provisions of Clause 17 shall apply.

#### **11.11 Assignment of Marina Manager’s interest**

The Marina Manager shall be entitled to assign or transfer its interest in this licence to a solvent and suitable assignee or transferee capable of performing the Marina Manager’s obligations under this licence.

#### **11.12 Time of the essence**

For the purposes of Clauses 11.3, 11.5, 12.2 and 12.4, time shall be deemed to be of the essence.

### **12. SUBLICENSING OF BERTH**

#### **12.1 First offer to Marina Manager**

If the Berthholder wishes to sublicense the Berth at any time during the Term, the Berthholder shall first offer to sublicense the Berth to the Marina Manager by delivering to the Marina Manager a written notice (“Offer Notice”) making full and accurate disclosure of the terms and conditions upon which the Berthholder intends to sublicense the Berth.

#### **12.2 Acceptance of offer**

If the Marina Manager wishes to accept the offer on the terms specified in the Offer Notice, the Marina Manager shall deliver to the Berthholder a written notice of acceptance no later than 5 pm 10 working days from (but exclusive of) the date of receipt of the Offer Notice.

### **12.3 Non-acceptance of offer**

If the Marina Manager does not accept the offer contained in the Offer Notice within the above acceptance period, the Berthholder may sublicense the Berth to any other party ("Third Party") (subject to compliance with Clauses 12.5 to 12.7) provided the terms and conditions offered to the Third Party are not more favourable to the Third Party than the terms offered to the Marina Manager.

### **12.4 Re-offer to Marina Manager**

If the Berthholder intends to sublicense the Berth to a Third Party on terms and conditions more favourable to the Third Party than the terms offered to the Marina Manager, the Berthholder shall first re-offer to sublicense the Berth to the Marina Manager ("Re-Offer") on the more favourable terms intended to be offered to the Third Party. Should the Marina Manager wish to accept the Re-Offer, it shall deliver to the Berthholder a written notice of acceptance no later than 5.00 pm 5 Working Days from (but exclusive of) the date of receipt of the Re-Offer notice, after which date, if the Re-Offer is not accepted, the Berthholder may sublicense the Berth to a Third Party (subject to compliance with the provisions of Clause 12.5) provided the terms and conditions offered to the Third Party are not more favourable to the Third Party than the terms offered to the Marina Manager.

### **12.5 Pre-conditions to sublicensing**

Subject to compliance with the provisions of Clauses 12.1 to 12.4, the Berthholder may sublicense the Berth for any period which will not exceed 12 months or any combination of periods not exceeding 12 months in the aggregate, provided the following conditions and restrictions are first satisfied:

- (a) before entering into any sublicensing arrangements, the Berthholder shall give prior written notice to the Marina Manager setting out the full name, address and contact telephone numbers of the proposed sublicensee and full details of the proposed sublicensee's boat (which must comply with the requirements of Clause 7.1 and the Schedule of Licence Details) and shall specify the term of the proposed sublicensing;
- (b) such sublicensing shall be subject to the approval of the Marina Manager, that approval not to be unreasonably withheld;
- (c) the execution by the proposed sublicensee of a deed of covenant with the Marina Manager agreeing to comply with the terms and conditions of this licence other than the provisions of Clauses 4 and 5;
- (d) payment of the Marina Manager's costs associated with the consideration and administration of the proposed sublicensing arrangement.

### **12.6 Approval not to extend to further sublicensing**

The Marina Manager's approval of any specific sublicensing arrangement shall not extend to any other sublicensing arrangement and shall be strictly limited to the period and boat approved. If the Berthholder wishes to extend the period of sublicensing beyond the initial period or to substitute a different boat from that approved, the Berthholder shall make further written application to the Marina Manager, which may grant or withhold its approval in its absolute discretion

### **12.7 Miscellaneous sublicensing provisions**

Should the Berthholder:

- (a) wish to sublicense the Berth for a period or periods exceeding 12 months in the aggregate, it shall make written application to the Marina Manager which may grant or withhold its approval at its absolute discretion;
- (b) also be the manager of the Marina then, for such period as the Berthholder is the manager of the Marina, it shall be entitled to sublicense the Berth free of the restrictions imposed by Clauses 12.1 to 12.7 (inclusive);
- (c) breach the spirit or intent of this Clause 12 or enter into any practice, scheme or device intended to avoid compliance with this clause, such action shall be deemed to be a breach of this Clause 12 and the provisions of Clause 17 shall apply.

## **13. INDEMNITY**

### **13.1 Indemnity**

The Berthholder shall indemnify the Marina Manager, to the extent that the Marina Manager is not insured, against all actions, claims, demands, losses, damages, costs and expenses for which the Marina Manager shall be or become liable arising from:

- (a) the use or misuse of the Marina by the Berthholder or persons under the control of the Berthholder;
- (b) any act or omission by the Berthholder or persons under the control of the Berthholder; and
- (c) the recovery of the Berthholder's Proportion of Operating Expenses or other moneys payable by the Berthholder under the provisions of this licence.

### **13.2 Marina Manager not liable for loss**

The Marina Manager shall not be liable and accepts no responsibility for, loss or damage to vessels, 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 part of the facilities of the Marina and the Marina Manager shall not be liable to the Berthholder 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 Marina Manager, or its servants or agents or contractors or otherwise howsoever.

## **14. INSURANCE**

#### **14.1 Berthholder to insure vessels**

The Berthholder shall throughout the Term keep all of the Berthholder's vessels, equipment and other property in the Marina fully insured against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, aircraft, burglary, act of God and all other usual maritime risks.

#### **14.2 Berthholder to effect public liability cover**

The Berthholder shall also effect adequate public liability insurance against death and/or bodily injury to persons and loss or damage to property of others (including the Berthholder) arising out of the use of water craft and/or use or occupation of the Marina. The amount of such liability insurance shall be as specified by the Marina Manager from time to time.

#### **14.3 Delivery of copies of policies**

If requested, the Berthholder shall provide the Marina Manager with a copy of the above insurance policies and evidence that they are in full force and effect.

#### **14.4 Marina Manager to insure Structures**

The Marina Manager will take all reasonable steps to insure the Structures to their full reinstatement value or if reinstatement cover is not available, to the best insurable value, against loss, damage, or destruction by fire, earthquake, fire consequent upon earthquake, flood, lightning, storm, tempest, typhoon, tsunami, water damage and impact damage, the premiums for which shall form part of the Operating Expenses.

#### **14.5 Berthholder not to invalidate insurance**

The Berthholder will not do anything or allow anything to be done which may render void or voidable any policy of insurance affected by the Marina Manager or the Berthholder. If the Berthholder shall do anything or allow anything to be done which may render any increased or extra premium payable in respect of any such insurance, the Berthholder will forthwith on demand pay to the Marina Manager such increased or extra premiums as the Marina Manager may be liable to pay.

### **15. DESTRUCTION OR DAMAGE TO MARINA**

#### **15.1 Reinstatement if sufficient insurance moneys**

Subject to Clause 15.3, if the Structures shall during the term be destroyed or damaged, whether remaining partially available for use by the Berthholder or incapable of use and if there shall be sufficient insurance moneys to repair and reinstate fully, the Marina Manager shall proceed with all reasonable speed to repair and reinstate the Structures and shall apply all insurance moneys recovered in that behalf.

#### **15.2 Election if insufficient moneys**

If there shall be insufficient moneys to repair and reinstate the Structures fully then the Marina Manager shall elect, by giving written notice to the Berthholder within one month of the date of such

damage or destruction, ("Marina Manager's Notice") either:

- (a) to proceed (subject to Clause 15.3) with all reasonable speed to repair and reinstate the Structures in which event it shall apply all insurance moneys recovered in that behalf to repair and reinstate the Structures as soon as practicable and shall meet the cost of such repair and reinstatement to the extent that such costs exceed the insurance moneys recovered; or
- (b) elect to determine this licence in which event this licence shall be at an end and the insurance money shall be payable in accordance with Clause 15.3.

#### **15.3 Permit to rebuild not available**

If any necessary permit or consent to rebuild the Structures cannot reasonably be obtained or in the event of the Marina Manager electing to determine the licence pursuant to Clause 15.2(b) then:

- (a) the insurance moneys recoverable shall be applied first towards meeting the cost of compliance with any acts, regulations or Coastal Permit terms or conditions and the costs of clearing the damaged structures from the Marina Area;
- (b) any surplus insurance money after payment of the costs referred to in Clause 15.3(a) shall be disbursed to the Berthholder on a fair and equitable basis;
- (c) this licence shall be deemed to have ceased and determined as from the date the damage occurred, but without prejudice to the rights of either party against the other in respect of any antecedent breach of any of the covenants, conditions or agreements contained or implied in this licence.

#### **15.4 Operation Expenses to continue**

During the effecting of such repairs or reinstatement and until their completion, the Berthholder shall continue to pay the Operating Expenses and any contributions towards the major refurbishment fund.

#### **15.5 No obligation to reinstate in accordance with original plans etc**

Any repair or reinstatement under this clause will be carried out by the Marina Manager using such materials and forms of construction and according to such plans as shall be reasonably determined by the Marina Manager. The Berthholder acknowledges that the Marina Manager shall be under no obligation to effect the repairs or reinstatement strictly in accordance with the original materials, form of construction and plans.

### **16. PROTECTION OF RESOURCE CONSENTS**

#### **The Marina Manager shall:**

##### **16.1 Pay rent**

Pay the rent and any other moneys payable under the Resource Consents as and when the same are due.

##### **16.2 Observe condition**

Observe and perform all of the conditions in the Resource Consents.

##### **16.3 Surrender**

Not surrender the Resource Consents at any time during the term of this licence.

## **17. DEFAULT**

### **17.1 Termination**

If the Berthholder:

- (a) fails to pay the Berthholder's Proportion of Operating Expenses or any other moneys payable under this licence for a period of three months after payment is due; or
- (b) fails to observe or perform any of the Berthholder's other obligations under this licence for a period of one month from the date of receipt of a written notice from the Marina Manager specifying the failure; or
- (c) is deemed, through the operation of Clauses 11.9 and 12.7(c), to be in breach of the terms of this licence; or
- (d) provides false or misleading information to the Marina Manager or fails to provide full and accurate disclosure for the purposes of Clauses 11 and 12 of this licence, the Marina Manager may, without being required to give any further notice, withdraw the consents provided by Clause 2 and transfer this licence to the Marina Manager ("Default Transfer") as trustee for the Berthholder pending the sale of the Berthholder's interest in the Licence. The Berthholder hereby irrevocably appoints the Marina Manager to be the attorney of the Berthholder to execute all documents and do all such things as are necessary to give effect to such transfer and to the provisions of Clauses 17.3 and 17.5 (inclusive).

### **17.2 Previous Breaches**

Any Default Transfer shall be without prejudice to the rights of the Marina Manager against the Berthholder in respect of any antecedent breach of any of the provisions of this licence.

### **17.3 Removal of vessel**

Upon the Default Transfer the Berthholder shall forthwith remove any vessel occupying the Berth. If the Berthholder fails to remove such vessel the Marina Manager may do so and the provisions of Clauses 9.3, 9.4 and 9.5 shall be applicable with all necessary modifications.

### **17.4 Forfeiture of moneys**

The Berthholder shall have no rights to any compensation or claim against the Marina Manager arising from a Default Transfer. The Marina Manager is authorised to offer the Berth licence for sale by public auction or private contract at such price and on such terms as it shall determine at its discretion. The Marina Manager shall be entitled to purchase the Berth Licence provided that in the event of a private sale, the purchase price paid by the Marina Manager shall not be less than the value of the Berth licence as established by a valuation obtained from an independent and appropriately qualified valuer appointed by the Marina Manager. The proceeds of sale shall be received by the Marina Manager and applied firstly in payment of the costs of such sale, secondly in or towards satisfaction of any debts or liabilities to the Marina Manager, and thirdly to the Berthholder. In the event that the

proceeds of such sale are not sufficient to pay the costs of sale and to satisfy fully such debts or liabilities, the Berthholder shall remain personally liable to the Marina Manager for the amount which remains unsatisfied.

### **17.5 Marina Manager may remedy defaults**

Should the Berthholder fail to comply with any of the terms of this licence then, and in addition to any other rights and powers of the Marina Manager under this licence, and without prejudice to any other right or remedy the Marina Manager may have, it shall be lawful for, but not obligatory upon, the Marina Manager at its discretion to remedy such breach or consequence thereof at the Berthholder's cost and the Berthholder shall be deemed to have hereby irrevocably appointed the Marina Manager and its nominee or nominees to be the true and lawful attorney or attorneys of the Berthholder for such purpose.

## **18. ESSENTIALITY OF PAYMENTS**

### **18.1 Payment essential Berthholder obligation**

Failure to pay the amount of the Berthholder's Proportion of Operating Expenses or any other moneys payable under this licence shall be a breach going to the essence of the Berthholder's obligations under this licence. The Berthholder shall compensate the Marina Manager and the Marina Manager shall be entitled to recover damages from the Berthholder for such breach. Such entitlement shall subsist notwithstanding any Default Transfer and shall be additional to the Marina Manager's other rights and remedies. The acceptance by the Marina Manager of any arrears of the Berthholder's Proportion of Operating Expenses or other moneys payable under this licence shall not constitute a waiver of the Berthholder's continuing obligation to pay the Berthholder's Proportion of Operating Expenses and such other moneys.

## **19. REPUDIATION**

### **19.1 Damages for repudiation**

The Berthholder shall compensate the Marina Manager and the Marina Manager shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Berthholder constituting a repudiation of this licence or the Berthholder's obligations under this licence. Such entitlement shall subsist notwithstanding any Default Transfer and shall be additional to the Marina Manager's other rights and remedies.

## **20. COMPLIANCE WITH ACTS AND REGULATIONS ETC**

### **20.1 Berthholder to comply with acts and regulations**

The Berthholder shall, in its use of the Berth and the Nominated Vessel, comply with all statutes, ordinances, regulations, by-laws, planning decisions, resource consents and associated conditions, or other lawful requirements effecting 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 having jurisdiction in respect of the Berth and the Nominated Vessel, or the use and occupation of the Berth and the Nominated Vessel and shall keep the Marina Manager indemnified in respect of any non-compliance by the Berthholder with the Berthholder's obligations under this subclause.

### **20.2 Berthholder to comply with special instructions**

The Berthholder shall also comply with any special instructions from time to time issued by the Marina Manager or any of its agents for the efficient, safe and harmonious use of the Marina and Facilities.

### **20.3 Berthholder to comply with navigational provisions**

The Berthholder shall, in its use of the common waterways within the Marina comply with the provisions of the Ministry of Transport General Harbour Regulations, the International Collision Regulations, Harbour by-laws 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.

## **21. NOTICES**

### **21.1 Service of notices**

All notices or other communications which the Marina Manager is required to give to the Berthholder under this licence shall be deemed to be sufficiently served, given or communicated if given in writing by the Marina Manager and posted to the Berthholder or the Berthholder's agent at the address for the Berthholder or the Berthholder's agent stated in the Schedule of Licence Details or to the last address for the Berthholder or the Berthholder's agent notified to the Marina Manager in writing and any notices or communications so posted shall be deemed to have been delivered and received in the ordinary course of post.

### **21.2 Notification of address**

The Berthholder shall at all times notify the Marina Manager in writing of any change to the Berthholder's or Berthholder's agent's address from that stated in the Schedule of Licence Details.

### **21.3 Multiple Berthholders**

Should there be more than one Berthholder or the Berthholder is a company or a trust, then all Berthholders 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 Berthholder shall be deemed to be the agent of all the Berthholders.

## **22. CHARTER BOATS (SPECIAL PROVISIONS TO APPLY WHERE BERTH USED FOR CHARTER BOATS)**

### **22.1 Definition**

For the purposes of this clause, the words "Charter Boat" mean a vessel which is available for public

charter or which is used for the teaching of yacht and boat handling skills.

### **22.2 Written consent to use of berth for Charter Boats**

The Berthholder shall not allow the Berth to be used by a Charter Boat unless the written consent of the Marina Manager is obtained. The Marina Manager's consent may be given or withheld at its absolute discretion.

### **22.3 Conditions of use**

Where the Marina Manager has consented, in accordance with the provisions of Clause 22.2, to the use of the Berth by a Charter Boat, the Marina Manager may impose such terms and conditions to the use of the Berth, as it in its absolute discretion, deems fit including, but without limitation:

- (a) the obligation on the Berthholder to pay, in addition to the operating expenses payable in accordance with Clause 4, an additional levy equivalent to 25% of operating expenses ordinarily payable by the Berthholder under Clause 4, such sum to be treated by the Marina Manager when calculating the liability of all berthholders in the Marina, as a credit against the total Operating Expenses in the Marina;
- (b) a restriction on the Berthholder that it will only undertake the loading and unloading of passengers, goods and supplies at the facility nominated from time to time by the Marina Manager within the Marina;
- (c) a requirement that should any particular Operating Expenses be incurred:
  - (i) solely for the benefit of the Berthholder; or
  - (ii) for the benefit of the Berthholder to a greater extent than other berthholders in the Marina, then the Marina Manager shall be entitled to attribute those costs, or a fair proportion thereof, to the Berthholder for whose benefit the costs have been incurred, such costs being payable upon demand;
- (d) a requirement that the Berthholder shall pay, on demand, any additional reasonable charges to cover any other costs or expenses arising from the use of the Berth by a Charter Boat.

## **23. PILE MOORINGS (SPECIAL PROVISIONS TO APPLY WHERE BERTH IS A PILE MOORING)**

23.1 Where the Berth is a pile mooring the Berthholder acknowledges that it will not have the use of power or water services at the pile mooring.

23.2 The Marina Manager may in its absolute discretion, whether at the request of the pile mooring Berthholders or otherwise, install power and/or water to the floating breakwater at the cost of the pile mooring Berthholders. If power or water services are installed then all on-going costs shall be deemed to be included in the Operating Expenses set out in the First Schedule. In addition, the Berthholder shall reimburse the Marina Manager for the costs of such installations.

## **24. DINGHY RACK**

24.1 With the prior approval of the Marina Manager, the Berthholder may install and use an individual dinghy rack in the location nominated from time to time by the Marina Manager. A dinghy rack shall be supplied to the Berthholder upon payment of the cost of the dinghy rack to the Marina Manager.

24.2 The Marina Manager may require the Berthholder to remove any dinghy rack which has not been approved under Clause 24.1 or which has not been supplied by the Marina Manager.

24.3 The Berthholder shall not leave its dinghy in any part of the Marina (including the pier, finger and floating breakwater) except in the Berthholder's dinghy rack approved under Clause 24.1.

24.4 If, in the opinion of the Marina Manager, any dinghy on the Berthholder's dinghy rack is not in reasonable condition, is not of a suitable size or is otherwise unsuitable, then the Marina Manager may require the Berthholder to remove its dinghy immediately.

24.5 If the Berthholder fails to comply with a request of the Marina Manager under Clause 24.2 or 24.4 with 7 days of receipt of such request, then the Marina Manager may remove the dinghy or dinghy rack (as appropriate) at the cost of the Berthholder.

## **FIRST SCHEDULE OPERATING EXPENSES**

1. All rates, charges, taxes, assessments, duties, royalties, impositions, levies and fees at any time payable to any Authority (including any levies payable by the Marina Manager under the Accident Compensation Act 1982 or royalties or fees under the Resource Management Act 1991 or any acts in substitution thereof and GST):

- (a) in respect of the Marina; or
- (b) in respect of this licence; or
- (c) in consequence of the Marina Manager having any estate or interest in the Marina (but excluding income tax or any other tax assessed in respect of the Marina Manager's income or profits).

2. All insurance premiums, valuation fees and other charges payable by the Marina Manager in respect of all insurances on the Marina to the full insurable reinstatement value of the same against fire, earthquake, flood, lightning, storm and tempest, aircraft and other usual risks and such other insurances including loss of rent, loss or profits, plate glass and public liability insurance as the Marina Manager may deem necessary or desirable in relation to the Marina or the Marina Manager's interest therein or in relation to any liability of the Marina Manager in respect of the Marina or its management or use.

3. All costs and expenses of providing, operating, repairing, servicing and maintaining the services furnished or supplied to the Marina and depreciation at normal rates on all machinery, equipment and Structures acquired by the Marina Manager for the Marina.

4. All costs and expenses of repairs (including structural repairs), dredging, maintenance, renovations, replacements and painting of and to the Marina.

5. All costs and expenses associated with the repair and maintenance of public facilities, driveways, parking areas, fencing, security systems, lighting, signs, drains, lawns and planted areas including the replacement of plants and shrubs.

6. All costs and expenses of operating, repairing, servicing and maintaining all plant, equipment, vessels, vehicles and other facilities relating to or serving the Marina including, without limitation, the cost of all service contracts.

7. All costs and expenses of cleaning the Marina including the Facilities and costs of garbage, sewerage and other waste disposal.

8. All costs and expenses (including salaries, professional and supervisor's fees, the Trustee's and consultant's fees) of the management, ownership, maintenance, administration, operation, supervision and supply of the Marina including the costs of caretakers, night watchmen, security personnel, parking attendants, cleaners, gardeners and other personnel.

9. All rentals, resource royalties, licence fees or other expenditure payable by the Marina Manager in relation to the Marina under any lease, licence, resource or occupation consent from time to time in force in respect of the Marina.

10. All bank charges and other financial costs, including interest on any financial accommodation associated with, or incurred for, the operation and management of the Marina.

11. All extraordinary costs not normally associated with, or contemplated by the parties as management or operational costs being costs which are not incurred in the normal course of the control, operation, occupation, maintenance and management of the Marina but nevertheless incurred by the Marina Manager in respect of the Marina.

12. All costs and expenses associated with the preparation and supervision of financial records and statements of the Marina Manager, and the auditing of those accounts and statements.

13. All costs and expenses (including all legal fees) incurred by the Marina Manager or Trustee in:

(a) instituting, prosecuting and compromising any legal proceedings to obtain or recover any moneys payable to the Marina Manager or the Trustee by Berthholders;

(b) seeking advice on any question, case or proceeding the determination of which is or may be of significance to the Marina or the Berthholders, and of taking such further steps in relation to any such case or proceeding as the Marina Manager or the Trustee considers desirable.

14. The sum of 15% of the total of all the costs and expenses referred to in paragraphs 1 to 13 inclusive, as the Marina Manager's profit margin.

## SECOND SCHEDULE

### MARINA RULES

The following rules have been established to provide for the efficient and harmonious operation of the Marina and for the safety of the Berthholders and visitors to the Marina.

#### Obstruction of entrances

1. The Berthholder shall not obstruct any of the entrances to the Marina or use them for any purpose other than for ingress to, and egress from, the Marina.

#### Berth lines

2. The Berthholders shall use only the standard berth lines provided by the Marina Manager for the purpose of berthing vessels occupying the Berth. The Berthholder shall pay the cost of fixing, repairing and replacing such lines when reasonably required by the Marina Manager. Should the mooring lines prove to be inadequate, no liability shall attach to the Marina Manager.

#### Services

3. The Berthholder may use the Services in common with other Berthholders and persons authorised by the Marina Manager on an occasional basis only. If the Berthholder requires more regular use of any Services then such use shall be subject to the prior written approval of the Marina Manager which may make an extra charge to cover the costs of providing such Services. The Berthholder shall:

- (a) not use any Services for a purpose for which they were not designed; and
- (b) utilise only appropriate fittings which comply with all relevant codes and regulations.

#### Navigation

4. The Berthholder shall not moor or navigate any vessel within the Navigation Area so as to create a danger, impediment, obstacle or inconvenience to any other vessel.

#### Security

5. The Berthholder shall take all reasonable steps to protect any vessel occupying the Berth from theft and vandalism and shall keep all hatches and other openings closed and securely fastened when such vessel is not in use.

#### Fire hazards

6. The Berthholder shall not do anything in the Marina which creates a fire hazard or which may contravene the regulations or bylaws of any Authority and, without limitation, shall not use fire fighting equipment supplied by the Marina Manager for any purpose other than the fighting of fires.

#### Dangerous goods

7. The Berthholder shall not bring into, store or use within the Marina any chemicals, inflammable gases, fluids or substances except in the ordinary course of using the Nominated Vessel for recreational purposes.

#### Conduct and noise

8. The Berthholder shall not make any improper noise or interfere in any way with other Berthholders or persons lawfully in the Marina. Noise shall be kept to a minimum at all times and the Berthholder shall not create a nuisance by the use of television, radio, musical apparatus, or any other form of sound reproduction. No unlawful activities shall be conducted from the Nominated Vessel or the Berth.

#### Rubbish

9. The Berthholder shall not deposit any rubbish or useless property in the Marina.

#### Notice of defects

10. The Berthholder shall promptly notify the Marina Manager on becoming aware of any defect or damage to the Marina.

#### Alcohol

11. The Berthholder shall not consume alcohol within the Marina except on private vessels or on licensed premises or other premises where consumption of alcohol is not prohibited by law.

#### Storage

12. The Berthholder shall not store any property, gear or equipment under the control or direction of the Berthholder, in the Marina without the prior written consent of the Marina Manager.

#### No swimming

13. The Berthholder shall not swim or dive within the Marina provided that the Berthholder may carry out bottom scrubbing of the Nominated Vessel subject to such reasonable directions as the Marina Manager may stipulate from time to time and subject also to compliance with the provisions of Clause 7.4.

#### Living on board

14. The Berthholder shall not sleep on board any vessel occupying the Berth for more than two consecutive nights or permit any other person to do so without the prior written consent of the Marina Manager.

#### Animals

15. The Berthholder shall not permit any animal in the Berthholder's control to enter or remain in the Marina unless properly restrained and provided it does not disturb other persons. The Berthholder shall be responsible for promptly cleaning up any droppings of any pets brought to the Marina by the Berthholder or any invitees of the Berthholder.

#### Emergency contact

16. The Berthholder shall advise the Marina Manager of the name and telephone number of a person other than the Berthholder who can be contacted by the Marina Manager in the event of an emergency.

**Visitors to the Marina**

17. The Berthholder shall ensure that:

- (a) all of its invitees comply with the terms of this licence; and
- (b) any children under the age of 13 and for whom the Berthholder or its visitors are responsible, are accompanied by an adult.

**THIRD SCHEDULE  
PLAN OF MARINA AREA**

**SCHEDULE OF LICENCE DETAILS**