

BERTH LISTING AGREEMENT Agreement with respect to the sale of a licence to occupy a marina berth

PARTIES

1. Name _____ (CLIENT)

2. Bayswater Marina Services (BWMAS)

AGREEMENT DETAILS

Date of agreement: ____/____/____

Berth number

Reserve price \$

Agreement: The client engages Bayswater Marina Services to secure a purchaser for the licence held by the client with respect of a Marina Berth at Bayswater Marina having the berth number stated above, for a price equal to or greater than the reserve price stated above. The terms and conditions of this engagement are set out overleaf. **Fee payable to Bayswater Marina Services: 6% plus gst.**

Signed on behalf of **Client** _____ Date: ____/____/____

Signed on behalf of **Bayswater Marina Services** _____ Date: ____/____/____

TERMS AND CONDITIONS

1. Terms and Termination

1.1 This agreement commences on the date specified on the first page and shall terminate subject to clause 1.2, on the date payment is made in accordance with clause 5.3.

1.2 This agreement may be terminated by either party giving 7 days written notice to the other party, provided that neither party may terminate this agreement if BMS has received an offer of the nature referred to in clause 2.1(e), and the offerer has not given any indication that it no longer wishes to acquire the Licence.

2. BWMS's obligations

2.1 BWMS shall:

(a) List the Licence for sale at BWMS premises;

(b) List the Licence for sale at the offices of Bayswater Marina (if approval is given by the operator of Bayswater Marina);

(c) Respond to all inquiries with respect to the Licence, including showing the relevant berth at Bayswater Marina to any person making such enquiry (if access is available); and

(d) Use reasonable endeavours to procure that a prospective purchaser who wishes to acquire the Licence, and who has submitted an offer in accordance with clause 3.1(c), provides the information required of such prospective purchaser by clause 11.6 of the Licence, and executes the deed of covenant referred to therein.

3. Client's Obligations

3.1 The Client Shall:

(a) Pay BWMS the fee referred to on the first page, plus goods and services tax thereon payment to be made in accordance with clause 5.3;

(b) If the Client instructs BWMS to advertise the Licence, pay all advertising costs;

(c) Assist BWMS, if necessary, to obtain access to Bayswater Marina for the purposes of clause 2.1(e);

(d) Provide all information reasonably required by BWMS., or a prospective purchaser, with respect to the Licence; and

(e) Accept any offer procured by BWMS for the purchase of the Licence where the amount offered to the Client is equal to or greater than the Reserve Price, and act in accordance with clause 11.6 of the Licence to complete the transfer of the Licence (including making the payments referred to therein).

4. Warranties

4.1 The Client warrants that, to the best of the Client's knowledge and belief, all the information provided to BWMS with respect to the Licence will be correct in all material respects.

4.2 BWMS warrants that it shall make no statements or representations about the Licence, which are not in accordance with the information provided about the Licence by the Client.

4.3 The Client warrants that clause 11.2 of the Licence has been satisfied, and that the terms of the offer which BWMS is authorised to make are not more favourable than the terms of the offer made in accordance with clause 11.2 of the Licence.

5. Contract, Assignment and Payment

5.1 With respect to an offer in accordance with clause 3.1(e), the Client shall accept a conditional agreement for the sale of the Licence ("Contract") (on terms reasonably satisfactory to the Client), and BWMS shall use reasonable endeavours to procure that the prospective purchaser shall execute the contract and pay the agreed purchase price for the Licence.

5.2 On clause 11.6 of the Licence being satisfied in respect of an offer in accordance with clause 3.1(e), the client will execute a Licence Transfer and BWMS shall use reasonable endeavours to procure the purchaser to execute the Licence Transfer.

5.3 The purchase price shall be paid into a trust account held by BWMS.

5.4 BWMS may, once the payment by the prospective purchaser has cleared, deduct its fee from the purchase price, and release the executed assignment to the purchaser of the Licence. After deducting such fee, BWMS will immediately pay the balance of the purchase price to the client.

6. Indemnity

6.1 The Client indemnifies, and agrees to keep indemnified BWMS against all costs, damages, claims, expenses, liabilities, or proceedings whatsoever that may arise in connection with BWMS's performance of its obligations under this agreement.

7. Exclusivity

7.1 The Client agrees that BWMS has the exclusive rights (including as against the Client) to market the licence.

8. Liability

8.1 BWMS shall have no liability to the Client for any act, or omission, of a prospective purchaser of the Licence.