

## Marina Berth Licence

LICENCE dated

### PARTIES

1. **LYTTELTON PORT COMPANY LIMITED** at Christchurch (**Licensor**)
2. **THE LICENSEE** being the person(s) identified as the licensee in the Schedule (**Licensee**)

### BACKGROUND

- A. The Licensor owns and operates the Marina.
- B. The Licensee has agreed to take a licence of the Berth in the Marina.
- C. The Licensor and the Licensee have entered this Licence setting out their respective rights, agreements and obligations.

### TERMS

#### 1. Definitions and Interpretation

- 1.1 **Definitions:** In this Licence the following initially capitalised terms shall have the meanings specified, unless the context requires otherwise:

<b>Annual Fee</b>	the annual fee payable by the Licensee to the Licensor in the amount set out in the Schedule and as may from time to time be varied in accordance with clause 6.1.
<b>Berth</b>	the berth identified in the Schedule (or such other berth as may be nominated by the Licensor from time to time in accordance with this Licence).
<b>Commencement Date</b>	the commencement date specified in the Schedule.
<b>Default Interest Rate</b>	the default interest rate set out in the Schedule.
<b>Initial Term</b>	the period specified in the Schedule.
<b>Extended Term</b>	the period defined in clause 3.1.
<b>Licence</b>	this licence to use a Berth in the Marina.
<b>Licensee</b>	the person(s) identified as such in the Schedule.
<b>Licensor</b>	Lyttelton Port Company Limited, being a registered company and having its registered office at 41 Chapmans Road, Hillsborough, Christchurch 8022 and includes its successors and assigns.
<b>Manager</b>	the Licensor and any manager appointed by the Licensor to manage the Marina.
<b>Marina</b>	the marina development owned and operated by the Licensor at Lyttelton and known as "Te Ana Marina".
<b>Named Boat</b>	the boat identified in the Schedule (or such other boat as may be approved by the Licensor from time to time in accordance with this Licence).
<b>Rules</b>	the Marina Rules adopted by the Licensor (as those rules may be varied, amended or replaced from time to time by the Licensor).

- 1.2 **Interpretation:** In the interpretation of this Licence (including the Rules), unless the context otherwise requires:

- (a) References to the parties include their respective executors, administrators, successors and permitted assigns;
- (b) References to "persons" include a natural person and any body or entity whether incorporated or not;
- (c) Words in the singular shall include the plural and vice versa;
- (d) Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (e) "Including", "in particular" and similar words do not imply any limitation;
- (f) Headings have been inserted for convenience only and shall not affect the construction of this Licence;
- (g) Reference to a statute includes all legislative instruments under that statute and any statute amending, consolidating or replacing that statute;
- (h) References to clauses and schedules shall be construed as references to the same in this Licence;
- (i) "working day" has the meaning given to that term in the Property Law Act 2007.

1.3 **Joint and Several Liability:** If a party comprises more than one person then each person comprising that party shall be bound jointly and severally.

## 2. **Grant of Licence**

The Licensor grants to the Licensee a licence to use the Berth on the terms and conditions set out in this Licence (including the Rules) and the Licensee accepts such licence.

## 3. **Term**

3.1 **Rolling one year terms:** The term of this Licence shall initially run from the Commencement Date until the expiry of the Initial Term (specified in the Schedule), after which it shall be extended for successive periods of one year (each such period being an **Extended Term**), unless or until cancelled in accordance with clauses 3.2 or 16.

3.2 **Cancellation on notice:** Either party may at any time cancel this Licence by giving at least two months' written notice to the other party.

## 4. **Rules**

4.1 **Rules are binding:** The Rules shall form part of this Licence. The Licensee shall at all times be bound by and strictly comply with, and ensure that all of its agents, contractors, employees and invitees at all time strictly comply this, the Rules and the rest of this Licence .

4.2 **Where to find the Rules:** The Rules are published on the Marina website at [www.teanamarina.co.nz](http://www.teanamarina.co.nz) and/or displayed on signs located on or about the Marina (and are also available on request to the Licensor).

4.3 **Variation of Rules or Licence:** The Licensor may from time to time add to, vary, delete or substitute the provisions of this Licence (including the Rules). Unless an earlier effective date is specified by the Licensor in respect of amendments required to reflect changes in applicable law, any proposed amendments to the Licence/Rules will take effect at the commencement of the next Extended Term and the Licensor will give at least three months' notice (via the Marina website and/or Marina signs) of such amendments.

4.4 **Licence prevails over Rules:** In the event of inconsistency between the Rules and the rest of this Licence, the terms of this Licence shall prevail.

5. **Use of Berth**

5.1 **Berth the Named Boat only:** The Licensee shall use the Berth for:

- (a) the purpose of berthing the Named Boat; and
- (b) any other purpose authorised by this Licence (including the Rules), but for no other purpose.

5.2 **Named Boat owned by Licensee:** The Licensee covenants that the Named Boat is owned by the Licensee.

5.3 **Licensee must consent to a different boat:** The Licensee may seek the Licensor's consent in writing to nominate a different boat providing that the boat so nominated complies with the terms of this Licence (including the Rules), and in particular fits completely within the dimensions of the Berth.

5.4 **Notice when vacant:** The Licensee must advise the Manager in writing of any proposed period(s) of more than 72 hours during which the Berth will not be occupied by the Named Boat (**Unoccupied Berth Period**). The Licensee will use its best endeavours to give the Manager at least 7 days' advance notice of any Unoccupied Berth Period. The Licensor acknowledges that the timing and duration of the notified Unoccupied Berth Period may be an estimate only, provided that the Licensee will provide the Licensor with as much notice as is practicable of any changes to that estimate.

5.5 **Casual visitor berthing:** The Licensor may operate a **Visitors' Berth Pool** for visiting vessels on the following basis:

- (a) The Licensor will include the Berth in the Visitors' Berth Pool during any Unoccupied Berth Period. The Licensee may not use the Berth during the Unoccupied Berth Period without the Licensor's prior written consent (save that the Licensor shall grant such consent where the Berth is not booked or otherwise occupied by a visiting vessel). The Licensee acknowledges that the Berth may not be available for use by the Licensee during the Unoccupied Berth Period first notified to the Manager, despite any subsequent change to the Unoccupied Berth Period notified by the Licensee.
- (b) The Licensor may, at its discretion, from time to time allocate berths forming part of the Visitors' Berth Pool to visiting boats and charge such visitors a fee which is from time to time fixed by the Licensor. Any such fees received by the Licensor in respect of the Berth shall be separately accounted for by the Licensor, the total aggregate amount from time to time being the **Visitors' Berthing Fees**.
- (c) The Licensor may deduct from the Visitors' Berthing Fees on an annual basis the cost of repairing property damage caused by visitors using the Berth and any other costs incurred by the Licensor in relation to making the Berth available to visitors on a casual basis as part of the Visitors' Berth Pool.
- (d) Following the deduction of the costs referred to in clause 5.5(c), the balance (if any) of the Visitors' Berthing Fees for the Berth as at the end of each financial year of the Licensor shall be shared on a 60/40 basis between the Licensor (as to 60%) and the Licensee (as to the other 40%). The Licensee's share of the Visitors' Berthing Fees will be applied by the Licensor towards future instalments of the Annual Fee.

6. **Annual Fee**

6.1 **Pay in instalments, in advance:** The Licensee will pay the Annual Fee to the Licensor by instalments in advance in accordance with the Schedule. All other applicable charges are set out in the Marina Fee Schedule and are payable by the Licensee to the Licensor in addition to the Annual Fee in accordance with the Schedule.

6.2 **Adjustment of Annual Fee:** The Annual Fee payable by the Licensee with respect to the Initial Term shall be as specified in the Schedule and, thereafter, the Annual Fee shall be set annually as at the commencement of each succeeding Extended Term by the Licensor by notice in writing to the Licensee. The Licensor will give at least three months' notice of any increase in the Annual Fee. All other charges may be varied from time to time by the Licensor by publishing an updated Marina Fee Schedule on the Marina website.

## 7. **Manager**

- 7.1 **Manager can act for Licensor:** The Licensor shall be entitled to appoint from time to time a manager to perform on behalf of the Licensor some or all the obligations, and/or exercise on behalf of the Licensor some or all of the rights, of the Licensor under this Licence.
- 7.2 **Comply with instructions:** The Licensee shall strictly obey all lawful directions, instructions, guidelines or signage issued by the Licensor or the Manager (provided they are not inconsistent with the terms of this Licence).

## 8. **Assignment / Subletting**

- 8.1 **Assignment/subletting prohibited:** This Licence is personal to the Licensee for the berthing of the Named Boat only and shall not be assigned, sublet, transferred or otherwise parted with or disposed of by the Licensee.
- 8.2 **Change in management/control:** For the purposes of this clause 8, if the Licensee or one of the persons comprising the Licensee is a body corporate, any change in effective management or control of the body corporate (for example, a change in the directorship or shareholding of the company) shall be deemed to be an assignment of this Licence.
- 8.3 **No encumbrances:** The Licensee shall not mortgage, grant a security interest in or over or otherwise encumber its interest under this Licence.
- 8.4 **Subsequent operators:** The Licensor may at any time transfer any or all of its rights and obligations under this Licence to any subsequent operator of the Marina.

## 9. **Nature of Rights Granted by this Licence**

- 9.1 **Licence only:** The parties acknowledge that this document grants a licence and not a lease. The legal right to possession and control in relation to the Berth remains with the Licensor, although the Licensee enjoys the occupation rights granted by this Licence.
- 9.2 **No proprietary rights:** The Licensee shall not be entitled to any proprietary right or interest in any real or personal property (including the Berth, any water space or any part of the airspace or seabed above or below the Berth or Marina).
- 9.3 **CCTV cameras may be used:** The Licensor may install and operate surveillance devices for the purpose of protecting the safety and security of the Licensor's property and that of its customers or third parties and/or assisting in the investigation and/or prosecution of any illegal act or any breach of this Licence. The Licensor's Privacy Policy (which is published on its website, as it is amended from time to time) applies to the Licensor's collection, use and disclosure of any personal information about the Licensee (or any of its agents, employees and invitees).

## 10. **Water Space and Access**

- 10.1 **Use of water space:** This Licence relates only to the allocated water space of the Berth.
- 10.2 **Right to moor boat and access:** This Licensee shall have the right, in common with all other licensees of berths in the Marina, to:
- (a) make fast to the allocated berth structures in the Marina; and
  - (b) access and use the common waterways and pathways of the Marina,
- in accordance with this Licence (including the Rules). The Licensee will comply with any access routes or restrictions designated by the Licensor from time to time.

## 11. **Moving Named Boat and Vacation of Berth**

- 11.1 **Licensor may enter/move boat:** The Licensor (and the Manager) shall be entitled to enter the Berth and/or the Named Boat (whether or not the Licensee is present) and to move or remove or carry out repairs to the Named Boat (or any other property), in order to prevent any loss or damage to any property, in an emergency situation (as reasonably determined by the Licensor) or if the Licensee fails to promptly comply with any of its obligations under this Licence. In such circumstances the Licensor (and the Manager) shall be deemed to be authorised by the Licensee to so enter and act. The Licensor will not be liable for, and the Licensee will indemnify the Licensor

and the Manager against, any actions, claims, demands, losses, costs and expenses incurred in, or resulting (whether directly or indirectly) from, the exercise of the powers contained in this clause 11.1 except to the extent caused by the Licensor's negligence.

11.2 **Vacation of Berth:** The Licensor may at any time require the Licensee to vacate the Berth either on a temporary or permanent basis and to take up another suitable berth within the Marina. In such event:

- (a) the Licensor shall take all such steps as are reasonably practicable (having regard to the period of relocation) to ensure that the new berth is similar in size and location as the Berth;
- (b) the Licensor will not be liable in any manner whatsoever to the Licensee or any other person in respect of the change of Berth;
- (c) the terms of this Licence shall apply to the new berth; and
- (d) the Licensee will promptly vacate the Berth and move the Named Boat to the new berth stipulated by the Licensor. Clause 16.3(a) shall apply as if the Licence of the Berth had been cancelled.

## 12. **Alterations to Berth**

The Licensee shall not make any alterations or additions to the Berth or adjacent structures without the prior written consent of the Licensor.

## 13. **Use of Resources and Facilities**

The Licensee may use the water, power and any other resources and facilities forming part of the Marina in common with any other berth licensees from time to time. Where the Licensor determines in its discretion that any such use is excessive or unusually high (including by comparison with other licensees), the Licensor shall be entitled to charge such sum as it considers appropriate for such use, separate from and in addition to the Annual Fee.

## 14. **Notification of Licensee's Address**

14.1 **Notify address changes:** The Licensee shall at all times keep the Licensor informed of any change to the current address of the Licensee, or alternatively, the name and address of any agent to whom the Licensee grants unlimited authority to act for the Licensee in all matters concerned with or arising out of the Licence.

14.2 **Licensor may deal with agents:** Where the Licensee has appointed an agent then the Licensor shall be entitled to deal with that agent in all respects as if the agent was the Licensee and the Licensee shall be bound accordingly.

14.3 **Joint Licensee must appoint agent:** If the Licensee comprises more than one person, then all those persons comprising the Licensee shall appoint one of their number or some other person to be their agent as set out in clause 14.1 and in default of any such appointment the first named person in the description of the Licensee in the Schedule shall be deemed to be the agent of all such persons comprising the Licensee in terms of clause 14.1.

## 15. **Insurance**

15.1 **Licensee must insure:** The Licensee shall at all times keep all boats, craft and other property owned or brought into the Marina by the Licensee and/or invitees of the Licensee, fully insured whilst within the confines of or near to the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of God and all other usual maritime risks.

15.2 **Do not void Licensor insurance:** The Licensee must not do or allow anything to be done which renders any insurance effected by the Licensor void or voidable. If the Licensee does, or permits or fails to do, anything that may result in an increased or extra premium becoming payable by the Licensor, the Licensee must pay such increased or extra premium.

15.3 **Public liability insurance:** The Licensee shall also effect public liability insurance of such sum as the Licensor may from time to time require (and initially as set out in the Schedule) in respect of all loss or damage to the property of others arising out of the use of the Named Boat within the Marina or occupation of the Berth, such policy to cover the owner and the master of the boat against

liability for claims by the Licensor or by third parties in respect of such loss or damage. Evidence of the holding of such cover shall be provided to the Licensor (or the Manager) prior to the Commencement Date and thereafter upon demand being made.

## 16. Cancellation

16.1 **Default cancellation:** Subject to the Licensor first complying with any provisions in the Property Law Act 2007 applicable to cancellation of this Licence, the Licensor may cancel this Licence if any of the following default events occur in respect of the Licensee and are not remedied within 10 working days (or such longer period as the Licensor may specify in the notice) from the date on which the Licensor gives notice of such default event to the Licensee:

- (a) The Licensee breaches any of its obligations under this Licence (including the Rules) or any other agreement between the parties;
- (b) The Licensee suffers any insolvency event (including committing an act of bankruptcy; being adjudicated bankrupt; the appointment of any receiver, liquidator, administrator or statutory manager; the entry into any assignment, arrangement or composition for the benefit of creditors generally; or an inability to pay debts as they fall due);
- (c) The Licensee ceases to own the Named Boat, or otherwise hold all necessary rights to operate and use the Named Boat from the Berth; or
- (d) The Licensee, if an individual (or, if the Licensee comprises more than one individual, any such individual), dies or is subject to an order under the Protection of Personal and Property Rights Act 1988.

16.2 **Licensor's rights survive cancellation:** The cancellation of this Licence by the Licensor shall be without prejudice to the rights of the Licensor against the Licensee in respect of any act or omission on the part of the Licensee prior to such cancellation.

16.3 **Consequences of cancellation:** Upon cancellation of this Licence (whether under clause 3.2 or this clause 16):

- (a) the Licensee shall, within any timeframe stipulated by the Licensor (acting reasonably in the prevailing circumstances):
  - (i) remove the Named Boat from the Berth or any other boat, property or person occupying the Berth (unless the Licensor has exercised a lien over the relevant boat or property, in which case the boat or property shall be removed as soon as the lien is removed);
  - (ii) remove all rubbish from the Berth; and
  - (iii) clean and repair to the satisfaction of the Licensor any damage caused by the Licensee (or its agents, contractors employees and invitees) to the Berth and Marina,

If the Licensee fails to promptly comply with its obligations under this clause, the Licensor may take all necessary action itself, in whatever manner and by whatever means the Licensor reasonably considers necessary at the Licensee's risk and cost, in order to address such non-compliance;

- (b) the Licensor is not required to refund, and may retain, any monies paid in advance by the Licensee;
- (c) the Licensee shall have no right to any payment or compensation from the Licensor, and shall have no claim against the Licensor, arising out of such cancellation;
- (d) the Licensor shall be at liberty to grant a new licence for the Berth to such person and on such terms as the Licensor in its sole and absolute discretion determines appropriate.

## 17. Liability and Indemnity

17.1 **"As is, where is":** Access to and use of the Berth by the Licensee is provided by the Licensor on an "as is, where is" basis. The Licensee shall use and access the Berth and Marina entirely at the Licensee's risk and the Licensee acknowledges that the Licensor does not provide security services. Subject to clause 17.3, the Licensor accepts no responsibility for the adequacy or

otherwise of the Marina or the Berth or the facilities of the Marina or for any loss or damage to the Named Boat or any other property of the Licensee or any other persons using the Marina incurred or suffered within or about the Marina, except to the extent caused by the Licensor's negligence.

- 17.2 **Liability limited:** If the Licensor is found to be liable in connection with this Licence, the Licensor's liability is limited to the aggregate Annual Fee paid by the Licensee in the 12 months preceding the relevant event. Subject to clause 17.3, in no circumstances will the Licensor be liable (whether in contract, tort or otherwise) for any indirect or consequential loss or for any loss of profit, loss of revenue, loss of goodwill, loss of opportunity or economic loss (in each case whether direct or indirect and whether or not the Licensor was or should have been aware of the likelihood of such loss).
- 17.3 **No contracting out:** Nothing in this Licence is intended to exclude the application of any applicable law which cannot be excluded by contract (including the Consumer Guarantees Act 1993 (unless the Licensee uses the Berth in trade in which case the parties agree that none of the rights and remedies under that Act will apply) and the Fair Trading Act 1986).
- 17.4 **Licensee indemnity:** The Licensee indemnifies the Licensor against any loss, expense, liability, actions, claims, demands and costs reasonably incurred by the Licensor arising as a result of the Licensee's acts or omissions or the acts or omissions of its agents, contractors employees and invitees (except to the extent caused by the Licensor's negligence).

## 18. Payments

- 18.1 **Pay by due date:** All payments due by the Licensee under this Licence shall be paid to the Licensor together with GST (if any), without demand, in full and without any deduction or set-off of any kind (except to the extent expressly stated otherwise in this Licence), and in the manner and amount and by the due date notified to the Licensee from time to time by the Licensor or otherwise specified in this Licence.
- 18.2 **Default interest and enforcement costs:** The Licensee shall pay interest to the Licensor on demand at the Default Interest Rate on any amount not paid when due under this Licence, such interest being calculated from the due date for payment until the date of actual payment. The Licensee will also be liable for all costs and expenses incurred by the Licensor in recovering any amount due for payment by the Licensee under this Licence (or otherwise enforcing this Licence) and all such costs and expenses will also bear interest in accordance with this clause from the date those costs and expenses are incurred by the Licensor until reimbursement by the Licensee.
- 18.3 **Lien for unpaid amounts:** The Licensor shall have a lien over any vessel (or other property) located at the Berth or the Marina for all amounts payable by the Licensee to the Licensor under or in connection with this Licence. If any payment due under this Licence by the Licensee is more than 14 days in arrears and the Licensee fails to make payment in full within a further period specified in a notice from the Licensor referring to the Licensor's rights under this clause, the Licensor may sell or otherwise dispose of such vessel and/or other property in any manner and on any terms the Licensor thinks fit and apply the proceeds of such sale or disposal towards satisfaction of all amounts owed by the Licensee and the costs incurred by the Licensor in exercising its rights under this clause, returning the balance (if any) to the Licensee. Where the services provided by the Licensor under this Licence are subject to a common law or statutory lien, nothing in this clause shall exclude the application of such lien and the Licensor may elect to exercise its rights under such lien in addition to or instead of its rights under this clause 18.3.

## 19. Dispute Resolution

- 19.1 **Mediation:** If a dispute or difference arises out of or in connection with this Licence ("**Dispute**") which cannot be resolved by negotiation within 14 days of one party giving notice of the Dispute to the other party, either party may by written notice to the other refer the Dispute to mediation. The mediation shall be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties within 14 days of notice given pursuant to this clause 19.1 the mediator shall be selected by the Chair for the time being of Resolution Institute. The parties agree to mediate any dispute in terms of the Resolution Institute standard Mediation Agreement (NZ version).
- 19.2 **Arbitration:** If the Dispute is not resolved by mediation within 14 days of the appointment of the mediator (or within such further period as the parties may agree in writing) then either party may by written notice to the other refer the Dispute to arbitration. Arbitration shall be conducted in Christchurch by a single arbitrator agreed by the parties or, failing agreement within 14 days of notice

given pursuant to this clause 19.2, nominated by the President for the time being of the New Zealand Law Society at the request of either party.

19.3 **Court proceedings:** Nothing in this clause 19 shall prevent either party from seeking or obtaining any injunctive or interim relief in any court of competent jurisdiction, nor prevent the Licensor from issuing proceedings in any court of competent jurisdiction (or taking any other step) in relation to any failure by the Licensee to pay any undisputed amount when due.

## 20. Further Developments and Port Operations

20.1 **Further Developments permitted:** The Licensee acknowledges that the Licensor will be entitled from time to time to improve, extend, add to, reduce or alter the Marina (**Further Development**) in any manner whatsoever. Where the Licensor exercises such right:

- (a) The Licensor will endeavour to keep the Licensee informed regarding Further Developments (including by publishing information on the Marina website) and cause as little inconvenience to the Licensee as is practicable in the circumstances;
- (b) The Licensee will not, directly or indirectly, make (or encourage, fund or support any other person to make) any requisition, objection, opposition, complaint or claim (including for any compensation), nor issue any proceedings, in respect of the Further Development. To avoid doubt, nothing in this clause shall limit any right or remedy the Licensee may have if the Licensor breaches any applicable law; and
- (c) The Licensee will, if required by the Licensor, sign all such consents and surrenders as may be required by the Licensor to give effect to the Further Development.

20.2 **No objection to port operations:** The Licensee further acknowledges that the Marina is located within an operational port and accordingly agrees that it will not, directly or indirectly, make (or encourage, fund or support any other person to make) any requisition, objection, opposition, complaint or claim (including for any compensation) in respect of any discharge, disturbance, annoyance or interference from port operations. To avoid doubt, nothing in this clause shall limit any right or remedy the Licensee may have if the Licensor breaches any applicable law.

## 21. General

21.1 **Governing law:** This Licence shall be interpreted in accordance with the laws of New Zealand.

21.2 **Notices:** All demands, requisitions, consents, approvals or notices to be given by either the Licensor or the Licensee under this Licence must be in writing. A notice to the Licensor may be given to or served upon the Licensor at the postal or email address specified in the Schedule (or otherwise notified by the Licensor). A notice to the Licensee may be given by being posted or emailed to the Licensee at the address specified in the Licence or such other address as the Licensee may from time to time notify the Licensor. Any such demand, requisition, consent or notice will be deemed to be received: (i) if posted, three days after it has been put into the post; (ii) if emailed, at the time of sending if sent before 4.30 pm on a business day (being any weekday which is not a public holiday in Christchurch) and in any other case at 10.00am on the first business day after the date of sending (provided that the message is not returned undelivered or as an error or an automatically generated "out of office" message (or other indication on non-receipt) is not received by the sending party).

21.3 **Licensor consent is discretionary:** In any case where pursuant to this Licence the doing or execution of any matter or thing by the Licensee is dependent upon the consent or approval of the Licensor, such consent or approval may be given conditionally or unconditionally or withheld by the Licensor in its absolute uncontrolled discretion (unless otherwise provided in this Licence) and such consent must be given in writing.

21.4 **Entire agreement:** This Licence constitutes the entire agreement of the parties about its subject matter and any previous agreements, arrangements, understandings, representations and negotiations on that subject matter cease to have effect. Any existing licence agreement between the parties regarding the use of a berth at a marina within Lyttelton Harbour shall cease to have any effect on and from the Commencement Date, but without prejudice to any accrued obligations of the Licensee at such date (including the Licensee's obligation to pay all amounts due for the period up to the Commencement Date and to vacate the relevant berth).



- 21.5 **Force Majeure:** Neither party will be liable for any delay in performance or non-performance of any of its obligations under this Licence or any damage or loss, to the extent caused by any event or circumstances beyond the reasonable control of that party, including any industrial action, storm, wind, flood, fire, explosion, earthquake, or other acts of God. To avoid doubt, nothing in this clause shall excuse any delay or non-payment of amounts due under this Agreement.
- 21.6 **Severability:** If any part of this Licence is held by a court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Licence.
- 21.7 **No waiver:** No waiver of any breach of, or failure to enforce any provision of, this Licence at any time by the Licensor will in any way limit the right of the Licensor to enforce and compel strict compliance with the provisions of the Licence.
- 21.8 **Counterparts:** This Licence may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each party may enter into this Licence by executing a counterpart. The parties acknowledge that this Licence may be executed by an exchange of scanned and emailed PDF copies and execution of this Agreement by that means is valid and sufficient execution.

## SCHEDULE

### Licensor notice details

Address for notices or other communications to the Licensor

Te Ana Marina  
Private Bag 501  
Lyttelton 8841  
info@teanamarina.co.nz

### Licensee Information

Licensee Full Name

Licensee Address  
(including postcode)

Tel. (Business)

Tel. (Residential)

Mobile

Email

### Berth Details

Pier

Berth

Dimensions Length \_\_\_\_\_ Width \_\_\_\_\_

### Details of Named Boat *[The Licensee warrants that the details set out below are accurate]*

Name

Type Yacht / Multihull / Launch

Model

Manufacturer

Beam

LOA<sup>1</sup>

<sup>1</sup> **Note:** LOA (overall length) for this purpose includes hull length at the vessel's longest point as well as any fittings or attachments (including pulpits, platforms, bowsprit, engines, rudders and dinghies).

Draught

Displacement

Colour

VHF call sign

**Insurance details**  
(insurer, policy type and insured amount, expiry date)<sup>2</sup>

<sup>2</sup> **Note:** The Licensee must provide a certificate of currency of insurance to evidence the insurance cover in place prior to the Commencement Date, promptly following any change to such insurance and otherwise on request by the Licensor

**Registration No.**  
(if registered under the Ship Registration Act 1992)

## Licence Details

**Commencement Date** \_\_\_\_\_ or such other date agreed in writing between the parties.

**Initial Term** The period from the Commencement Date to 31 March in the following calendar year

**Annual Fee<sup>3</sup> for the Initial Term** \$ \_\_\_\_\_

<sup>3</sup> **Note:** See the prevailing Marina fee schedule (published on the Marina website) for details of all charges.

**Payment details** The Annual Fee shall be payable in 12 equal monthly instalments, with each monthly instalment (together with all other applicable charges as set out on the prevailing Marina Fee Schedule) due on or before the 1<sup>st</sup> day of each calendar month (other than the first monthly instalment which is due on or before the Commencement Date).

Any deposit paid by the Licensee to the Licensor in respect of the Berth and this Licence shall be applied by the Licensor towards each instalment of the Annual Fee otherwise payable by the Licensee until the deposit is exhausted.

**Default Interest Rate** The rate of interest per annum which is 5% in excess of the prevailing overdraft rate charged by LPC's principal bankers at the due date for the relevant payment (as determined by LPC)

**Amount of Public Liability Insurance cover required to be held by Licensee** \$5,000,000

**Signed** by the parties.

**SIGNED** for and on behalf of the **Licensor**:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

**SIGNED** by the **Licensee**:

Signature: \_\_\_\_\_ Signature \_\_\_\_\_

Position \_\_\_\_\_ Position \_\_\_\_\_

Witness to signature(s):

Signature: \_\_\_\_\_ Name: \_\_\_\_\_

Occupation: \_\_\_\_\_ Address: \_\_\_\_\_

**Note:** Individual Licensees must each sign and have their signatures witnessed. Company Licensees must sign by at least one director, whose signature must be witnessed. Trust Licensees must sign by all trustees with each signature witnessed.