

## Marina Berth Licence

LICENCE dated 2016

### PARTIES

1. SANDSPIT MARINA SOCIETY INCORPORATED at Sandspit (**Licensor**)
2. THE LICENSEE being the person(s) identified as the licensee in Schedule 1 (**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 into 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 Schedule 1 and as may from time to time be varied in accordance with clause 5.2.
<b>Berth</b>	the berth identified in Schedule 1 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 Schedule 1.
<b>CPI</b>	the Consumers Price Index - All Groups Index published by Statistics New Zealand or any replacement for such index.
<b>CPI Base Date</b>	1 January 2015 or such other date determined in accordance with clause 8.1.6.
<b>Default Interest Rate</b>	the default interest rate set out in Schedule 1.
<b>Expiry Date</b>	the date specified in Schedule 1 or if no date is so specified, 12 p.m. on 20 February 2046.
<b>Financial Year</b>	the financial year of the Licensor, commencing on 1 April and ending on 31 March in the following year, or such other financial year as may be adopted by the Licensor from time to time.
<b>Licence</b>	this licence to use a Berth in the Marina.
<b>Licensee</b>	the person(s) identified as such in the Schedule and where there is more than one person then each of them jointly and severally, and includes each such person's successors and assigns.
<b>Licensee's Proportion</b>	the Licensee's proportion of the Operating Expenses specified in Schedule 1.
<b>Licensor</b>	Sandspit Marina Society Incorporated, being a duly incorporated society and having its registered office at 1287 Sandspit Road, RD2 Warkworth and includes its successors and assigns.
<b>Manager</b>	a manager appointed by the Licensor to manage the Marina.

<b>Marina</b>	the marina development owned and operated by the Licensor and situated at Sandspit.
<b>Maximum Transfer Price</b>	the maximum transfer price for a Berth determined in accordance with clause 8.1.5.
<b>Named Boat</b>	the boat identified in the Schedule or such other boat as may be nominated by the Licensee and accepted by the Licensor from time to time in terms of this Licence.
<b>Operating Expenses</b>	all costs, charges, expenses, wages, salaries, fees and outgoings paid or payable by the Licensor (or on its behalf) in the management supervision and operation of the Marina as specified at clause 5.3.
<b>Refurbishment Account</b>	the refurbishment reserve fund to cover prospective repairs, renovations, works, replacements and maintenance of a substantial but infrequent or irregular nature in respect of the Marina structures and services.
<b>Rules</b>	the Marina Rules adopted by the Licensor at the date of this Licence as may be varied, amended or replaced from time to time by the Licensor.
<b>Sandspit Yacht Club</b>	the Sandspit Yacht Club Inc. which was registered on 9 May 1972 under No. 224020.
<b>Working Day</b>	the meaning specified in Section 4 of the Property Law Act 2007.

1.2 **Interpretation:** In the interpretation of this Licence, unless the context otherwise requires:

- 1.2.1 References to the parties include their respective executors, administrators, successors and permitted assigns;
- 1.2.2 References to persons include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons, government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them in any case whether having separate legal personality or not;
- 1.2.3 Words in the singular shall include the plural and vice versa;
- 1.2.4 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.2.5 *including, in particular* and similar words do not imply any limitation;
- 1.2.6 Headings have been inserted for convenience only and shall not affect the construction of this Licence;
- 1.2.7 Reference to a statute includes all statutes amending, consolidating or replacing the statute referred to;
- 1.2.8 References to clauses and schedules shall be construed as references to the same in this Licence.

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**

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

2.2 The Licensor shall have the right to vary, delete or substitute new terms for this Licence provided it has first obtained the prior approval for such changes by a resolution passed by a majority of not less than 75% of those of its members who are licensees of berths in the Marina and who are entitled to vote and are present in person or by proxy at any general meeting of the Licensor.

### 3. Use of Berth

- 3.1 The Licensee shall use the Berth for:
- 3.1.1 the purpose of berthing the Named Boat; and
  - 3.1.2 any other purpose authorised by this Licence, but for no other purpose.
- 3.2 The Licensee covenants that the Named Boat is individually and beneficially owned by the Licensee. The Licensee may at any time or times, by notice in writing to the Licensor, nominate a different boat, providing that the boat so nominated complies with clause 3.3.
- 3.3 The Licensee shall not, without the prior approval of the Manager, at any time:
- 3.3.1 allow any part of the Named Boat moored in the Berth to extend beyond the dimensions of the Berth; or
  - 3.3.2 permit any part of the Named Boat to extend onto or over any walkway forming part of the Marina.
- 3.4 The length of the Berth is measured from the face of the walkway serving the Berth to end of the centre pole.
- 3.5 The Licensee shall use the Berth only for berthing the Named Boat whilst it is used for recreational boating purposes and not for any commercial or other use or purpose unless the Manager, in its sole discretion, has given prior written consent to such use.
- 3.6 The Licensee may advise the Manager of any proposed periods during which the Berth will not be used by the Licensee. During such periods the Manager shall have the right to let the Berth. Any rental for the Berth shall be payable to the Licensee, after deduction of an administration fee set from time to time by the Licensor.

### 4. Term of Licence

- 4.1 This Licence commences on the Commencement Date and expires on the Expiry Date.
- 4.2 The Licensor shall take all reasonable steps to procure the renewal of all requisite consents to enable the Marina to continue to operate after the 20 February 2046. If the Licensor obtains such consents and in its absolute discretion determines that it should continue to operate the Marina, then if this Licence has not been otherwise terminated, the Licensee shall have an option to obtain a new licence for the Berth on the terms and conditions adopted at that time by the Licensor.
- 4.3 During any period between 12 p.m. on 20 February 2046 and the date of commencement of any new licence for the Berth, the Licensor shall hold the Berth upon trust for the Licensee on the terms of this License and the Licensee shall continue to pay to the Licensor all fees and operating expenses and comply with all of the Licensee's other obligations specified in this Licence or in the Rules.
- 4.4 As a pre-condition to the grant of a new licence, the Licensor shall be entitled to levy the Licensee with a charge to cover the proportionate costs incurred by the Licensor in obtaining new consents and issuing new licenses.

### 5. Annual Fee

- 5.1 The Licensee will pay the Annual Fee in respect of each Financial Year to the Licensor by instalments in the amounts and at the times provided for in Schedule 1. The Annual Fee shall include the Licensee's Proportion of the Operating Expenses and the Licensee's membership subscription for membership of the Licensor and of the Sandspit Yacht Club as required by clause 21.1.
- 5.2 The Licensee acknowledges that the Licensor may from time to time review the Annual Fee payable by the Licensee.
- 5.3 The term **Operating Expenses** includes, to the extent to which they are not specifically payable by any licensee of any part of the Marina under the terms of an applicable licence for use and occupation:
- 5.3.1 All rates, charges, levies and fees of any local body or Government body, authority or department, including levies payable by the Licensor under the Accident Compensation Act 1982, in respect of the Marina;

- 5.3.2 All insurance premiums, valuation fees and other charges payable by the Licensor for the insurance of such items and against such risks as the Licensor shall in its sole discretion from time to time determine;
  - 5.3.3 All charges for utilities and other services or requirements whatsoever supplied to or used in the Marina;
  - 5.3.4 All running costs and costs of repairs and maintenance to and replacement of all utilities, services and equipment in the Marina, including the cost of service contracts in respect of such utilities, services and equipment and depreciation at normal rates on all machinery and equipment acquired by the Licensor for such purposes;
  - 5.3.5 All costs of repairs, painting, dredging channels, maintenance, renovations and replacements of and to the Marina;
  - 5.3.6 All costs and expenses associated with the repair and maintenance of common public facilities, parking areas, fencing, direction and information signs and drains, and the regular maintenance of lawns, landscaped and planted areas including the replacement of plants and shrubs;
  - 5.3.7 All costs and expenses in operating (including all taxes, levies and assessment of every nature and kind) Marina equipment, vessels, vehicles and other facilities, and including all costs and expenses of insuring, repairing, maintaining and replacing equipment, vehicles and other facilities relating to or serving the Marina and, where appropriate, an amount necessary for the amortisation of the Licensor's initial capital investment in such equipment, vessels, vehicles and other facilities over the expected life thereof;
  - 5.3.8 The cost of cleaning the Marina area including the common public facilities, parking areas, landscaped areas and the cost of garbage disposal and any charges or remuneration paid to any contractor for any such purpose;
  - 5.3.9 All costs (including wages, remuneration and other fees) of administration, operation, supervision, supply, caretaking, night watchmen, security personnel or contractors, parking attendants, cleaning, gardening and provisions of any other services to the Marina, which the Licensor may actually and reasonably incur;
  - 5.3.10 Such other costs and expenses including professional fees as may from time to time arise and be properly and reasonably assessed, charged, chargeable, paid, payable or otherwise incurred by, against or upon the Licensor in relation to the ownership, management and maintenance of the Marina;
  - 5.3.11 All licences or other fees payable by the Licensor in relation to the Marina under any licence, permit or consent from time to time in force in relation to the Marina;
  - 5.3.12 Any management fee charged by the Licensor, provided that any such management fee shall not exceed a sum equal to 10% of the aggregate of the costs, charges, expenses, wages, salaries, fees and outgoings referred to in clauses 5.3.1 to 5.3.11 (inclusive) above; and
  - 5.3.13 Such annual sum as the Licensor shall from time to time determine to be placed in the Refurbishment Account to cover prospective repairs, renovations, works, replacements and maintenance of a substantial but infrequent or irregular nature in respect of the Marina structures and services, provided that nothing in this clause shall affect the Licensees' obligations in terms of clause 5.5.
- 5.4 If any of the Operating Expenses are not incurred solely in respect of the Marina, the Licensor shall make an apportionment of the relevant Operating Expense so that a fair proportion of those Operating Expenses will be attributable to the Marina. The Licensor's determination of such proportion shall be final and binding on the Licensee.
  - 5.5 Where it has been determined by the Licensor that the funds held in the Refurbishment Account are not sufficient or it is not appropriate to use the funds held in the Refurbishment Account for the repair, renovation, replacement or substantial maintenance of the Marina structures and services, then the Licensee shall upon demand pay to the Licensor the Licensee's Proportion of any such insufficiency or the amount required to undertake the repair, renovation, replacement or substantial maintenance in one cash sum.

## 6. **Manager**

- 6.1 The Licensor shall be entitled to appoint from time to time, a manager to perform the obligations of the Licensor under this Licence. Such Manager shall act for and on behalf of the Licensor, and shall have all rights and powers of the Licensor under this Licence.
- 6.2 The Licensee shall obey all lawful directions of the Licensor's Manager whether or not the specific instruction is covered by the terms of this Licence or not.

## 7. **Restrictions on Assignment**

- 7.1 This Licence is personal to and shall at all times be held beneficially by the Licensee and shall not be assigned except as provided by the terms of this Licence.
- 7.2 The Licensee shall not assign, transfer or otherwise dispose of this Licence or any interest in this Licence without first obtaining the Licensor's consent. The Licensor may refuse its consent if, in its sole discretion, the Licensor considers:
- 7.2.1 That the proposed assignee (**Assignee**) or occupant is not a suitable party to have use of the Berth;
- 7.2.2 That the Berth is not suitable for the boat owned by the Assignee;
- 7.2.3 Where the Licensee proposes to sub-licence this Licence or grant an occupancy right in respect of the Berth, that the period of the sub-licence or grant is unacceptable to the Licensor, provided that the Licensor will not withhold its permission on this ground where the proposed period(s) will not exceed 12 months in aggregate; or
- 7.2.4 That the terms of the sublicense or grant of occupancy rights do not expressly provide that the sublicensee or occupant shall comply with the terms and conditions of this Licence and all references to the Licensee in this Licence shall be read, as necessary, as references to the sublicensee or occupant.
- 7.3 The Licensee's application for consent to assignment or to the grant of an occupancy right in respect of the Berth shall be subject to the following conditions:
- 7.3.1 The application shall include:
- (a) full particulars of the name, type, beam, length and draft of the boat which will occupy the Berth, if consent is given by the Licensor and satisfactory evidence that the boat which the Assignee, sublicensee or occupant proposes to berth at the Berth is suitable in all respects;
  - (b) the name, address and occupation (or in the case of a corporation, the registered office and details of business) of the Assignee, sublicensee or occupant.
  - (c) in the case of a proposed assignment, details of the proposed sale price and such evidence as the Manager may require that the Assignee is respectable, responsible, solvent and able to meet the requirements of this Licence and;
  - (d) in the case of a proposed sub-licence or grant an occupancy right in respect of the Berth, the application shall specify the period of the proposed sub- licence or grant;
- 7.3.2 The Licensor shall have the rights specified in clause 8 in respect of any proposed assignment of the Licence, other an assignment of the nature specified in clauses 7.3.6(b)(i) to 7.3.6(b)(iv).
- 7.3.3 All licence fees and other money for the time being due or payable by the Licensee shall be paid and any existing defaults of the Licensee under the Licence shall be rectified;
- 7.3.4 The boat of the Assignee, sub-licencee or occupier must meet the dimensions and other requirements of the Berth;
- 7.3.5 An Assignee must be a paid up member of the Licensor and of the Sandspit Yacht Club;
- 7.3.6 In the case of an assignment:
- (a) The Licensor shall sign a surrender of this Licence and the Assignee shall sign a new licence for the Berth for the unexpired residue of the term of this Licence, but otherwise on the terms and conditions set out in the Licensor's then current licence form.

- (b) The Licensee shall pay to the Manager an administration fee of \$500 and a surrender and regrant fee equal to 1% of the sale price of the Licence, or such other sum as set by the Licensor from time to time, unless such assignment is:
  - (i) To the Licensee's executors or administrators following the death of the Licensee;
  - (ii) To the Licensee's beneficiaries following the death of the Licensee; or
  - (iii) Where the Licensor is satisfied that the Licensee is holding the Berth as trustee of a trust and the transfer is to a new trustee or trustees appointed for such trust or to beneficiaries of the trust;
  - (iv) Where the Licence is held by more than one person, to a lesser number of the same people.

7.3.7 In the case of an assignment of the type specified in clause 7.3.6(b) or the grant of a sublicense or occupancy right, the Licensee shall pay to the Licensor, the reasonable costs of the Licensor in providing a consent.

7.4 The Licensor's consent to any assignment by the Licensee shall not extend to any other assignment by the Licensee and in the case of a sub-licensing or grant of occupancy right the Licensor's consent shall be strictly limited to the period approved.

7.5 Notwithstanding anything contained in this Licence, the maximum number of persons comprising the Licensee at any one time shall not exceed 3.

7.6 For the purposes of this clause 7, 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.

7.7 The Licensee shall not mortgage, charge, pledge or otherwise encumber its interest under this Licence.

## 8. **Maximum Transfer Price**

8.1 If the Licensee wishes to sell this Licence, then the following provisions shall apply:

8.1.1 The Licensee shall notify the Licensor in writing of the Licensee's desire to sell the Licence including the details specified in clause 7.3.1(b) (**Sale Notice**) and the Licensor shall within 10 Working Days of receipt of the Sale Notice, advise the Licensee of the Maximum Transfer Price and the name or names of any prospective purchasers nominated by the Licensor.

8.1.2 Contemporaneously with the Licensor performing its obligations under clause 8.1.1, it shall notify the prospective purchaser or prospective purchasers nominated pursuant to clause 8.1.1 of:

- (a) The offer of the Licence for sale by the Licensee; and
- (b) The sale price for the Licence, being the lesser of the sale price nominated by the Licensee in accordance with clause 8.1.1 and the Maximum Transfer Price.

8.1.3 The Licensee shall accept the first offer to purchase the Licence by one of the nominated prospective purchasers nominated by the Licensor in accordance with clause 8.1.1 at the sale price determined in accordance with clause 8.1.2.

8.1.4 If the Licensee does not receive an offer in accordance with clause 8.1.3 within 10 Working Days of the Licensee receiving notice from the Licensor under clause 8.1.2 then the Licensee may assign the Licence to any person who otherwise satisfies the requirements of clause 7, but the sale price shall not exceed the Maximum Transfer Price.

8.1.5 The Maximum Transfer Price shall be calculated according to the following formula: **Maximum Transfer Price = (A+B) x I** Where:

- A** is the total sum paid by the Licensee for purchase of the Licence;
- B** shall only apply to the first sale of a Licence issued at or about the time of the opening of the Marina to an original Licensee of the berth who provided funding to cover the initial

costs of establishing the Marina and in respect of such sales, shall be the sum of \$25,000; and

- I is an amount equal to 1 plus the percentage change in the CPI between the CPI Base Date and the date of the last published figure for the CPI prior to the date on which the Licensee gave notice under clause 8.1.1.

8.1.6 The Licensor may from time to time, in its sole and absolute discretion, increase the Maximum Transfer Price to any figure greater than that calculated in accordance with the formula specified in clause 8.1.5. Whenever the Licensor makes such an increase in the Maximum Transfer Price then, in respect of assignments after the date of the Licensor's resolution increasing the Maximum Transfer Price, the CPI Base Date shall be deemed to be the date of the Licensor's resolution increasing the Maximum Transfer Price.

8.1.7 The parties acknowledge that the consideration paid by the original licensee of a licence for the Berth was calculated on a cost only basis with no profit to the developer of the Marina. For that reason the Licensee's right to receive any profit or capital gain from the Licensee's interest in the Licence is restricted. Accordingly, any consideration payable to the Licensee on the assignment of the Licence shall be limited to the Maximum Transfer Price.

## 9. Nature of Rights Granted by this Licence

9.1 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 The Licensee shall not be entitled to any proprietary right or interest in the water space or other facilities of the Marina.

## 10. Moving Named Boat and Vacation of Berth

10.1 The Licensor shall be entitled, in the absence of the Licensee and in order to prevent any damage to any property, to enter the Named Boat and to move it or carry out repairs to the Named Boat, and in such circumstances the Licensor shall be deemed to be authorised to do so by the Licensee. The Licensee will indemnify the Licensor 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 10.1.

10.2 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.

10.3 If the Licensor requires the Licensee to permanently vacate the Berth:

10.3.1 The Licensor shall take all such steps as are reasonably practicable to ensure that the new berth is similar in size, value and location as the Berth;

10.3.2 The Licensor will not be liable to pay any compensation in respect of which change of Berth; and

10.3.3 The terms of this Licence shall apply to the new berth.

10.4 The Licensor may use the Berth in case of emergency and may require the Licensee to vacate the Berth to enable the Licensor to carry out repairs or maintenance and in either such case the Licensor shall not be obliged to provide an alternative berth.

10.5 Where the Licensor is entitled to remove any boat occupying the Berth because of default on the part of the Licensee or any persons for whom the Licensee is responsible:

10.5.1 The Licensor may recover the cost of removal of the boat from the Licensee;

10.5.2 The Licensor shall not incur any liability to the Licensee under such circumstances;

10.5.3 Where the Licensor removes any boat in accordance with this clause, the Licensor shall be entitled to a lien on such boat for the costs of removal and storage;

10.5.4 If the Licensee fails to claim such boat within a period of three (3) months after the date of removal, the Licensor may offer such boat for sale. The Licensor may utilise the proceeds of sale:

- (a) In payment of all costs and expenses of and incidental to the sale;
- (b) To recover the costs of removal and storage of such boat; and
- (c) Subject to the lawful claims of any other persons, pay the balance of the proceeds of sale to the Licensee; and

10.5.5 The Licensor may (but shall not be obliged to) appoint a custodian for the care of such boat pending any sale and the cost of doing so shall be treated as a cost incurred in the course of the sale in terms of clause 10.5.4(a).

## **11. Water Space and Access**

11.1 This Licence relates only to the allocated water space of the Berth.

11.2 This Licensee shall have the right, in common with all other licensees of berths in the Marina, to:

11.2.1 Make fast to the allocated berth structures in the Marina; and

11.2.2 Access and use the common waterways and pathways of the Marina, in accordance with this Licence and the Rules.

## **12. Alterations to Berth**

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

## **13. Use of Facilities and Car Parks**

13.1 The Licensee will be provided with an access card to provide access to the Marina, the toilets and rubbish compound. In addition the Licensee will be issued with a parking permit to authorise the parking of vehicles in the Marina car park area. Permits must be displayed in the window of vehicles at all times.

13.2 The Licensee may use the water, power and any other facilities forming part of the Marina in common with any other berth licensees from time to time. The Licensor shall be entitled to charge such sum as it considers appropriate for the use of the facilities.

13.3 Mooring ropes shall be provided by the Licensee at its cost and shall be of a standard approved by the Licensor and shall be used and maintained to the Licensor's satisfaction. If such ropes are inadequate, no liability shall attach to the Licensor.

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

14.1 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 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 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 on the Licence shall be deemed to be their agent in terms of clause 14.1.

## **15. Insurance**

15.1 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 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 premiums.

## 16. Rules

- 16.1 The Rules and any rules made in addition to or in substitution for the same shall form part of this Licence.
- 16.2 The Licensee and all agents, employees and invitees of the Licensee shall at all times comply with the Rules.
- 16.3 The Licensor may add to, vary, delete or substitute new rules for the Rules, provided that it first obtains approval for such changes in the manner provided in clause 2.2. No change in the Rules shall vary or modify the terms contained or implied in the Licence.
- 16.4 In the event of inconsistency between the Rules and this Licence the terms of this Licence shall prevail.

## 17. Default

- 17.1 The Licensor may cancel this Licence without notice to the Licensee if:
  - 17.1.1 The Licensee fails to remedy any default under the terms of this Licence, whether expressed or implied, for a period of 1 month from the date on which the Licensor forwarded to the Licensee, notice of the Licensee's default requiring that the default be remedied; or
  - 17.1.2 The Licensee or any one of the persons comprising the Licensee (or in the case of a body corporate or unincorporated body, its nominee), as the case may be, ceases to be a member of the Licensor.
- 17.2 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 default on the part of the Licensee prior to such cancellation.
- 17.3 Upon cancellation of this Licence, the Licensee shall immediately remove the Named Boat or any other boat occupying the Berth from the Berth. If the Licensee fails to do so the Licensor may remove that boat in accordance with the Rules.
- 17.4 Upon cancellation of this Licence the Licensor may take proceedings against the Licensee for any money then owing to the Licensor and the money already paid by the Licensee to the Licensor shall be deemed to be forfeited to the Licensor as liquidated damages, it being acknowledged by the Licensee that the Licensor has relied upon the Licensee making all payments in accordance with the terms of this Licence and the Rules for the purpose of developing and maintaining the Marina.
- 17.5 Any action taken by the Licensor in accordance with clause 17.4 shall be without prejudice to the Licensor's other rights at law or in equity in respect of this Licence and any default under the Licence by the Licensee.
- 17.6 Upon cancellation of this Licence, the Licensee shall have no right to any payment or compensation from the Licensor and shall have no claim against the Licensor.
- 17.7 Upon cancellation of this Licence, 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.

## 18. Liability and Indemnity

- 18.1 The Licensor shall not be liable for the death or any personal injury to the Licensee or other persons using the Marina incurred or suffered within or about the Marina, howsoever such death or injury occurs and whether or not such death or injury is directly or indirectly attributable to the acts or defaults of the Licensor, its employees, agents, contractors, licensees or otherwise.
- 18.2 The Licensor accepts no responsibility for the adequacy or otherwise of the Marina or the Berth or the facilities of the Marina or for the 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, howsoever such loss or damage occurs and whether or not such loss or damage is directly or indirectly attributable to the acts or defaults of the Licensor, its employees, agents, contractors, licensees or otherwise.
- 18.3 The Licensee indemnifies the Licensor against any loss, expense, liability, claims and costs incurred by the Licensor arising as a result of the Licensee's acts or omissions or the acts or omissions of others to which the Licensee has contributed or the acts or omissions of any persons invited into the Marina by the Licensee.

## 19. Taxes and Duties

- 19.1 The Licensee shall pay all duties, taxes and other costs payable in respect of this Licence, the Berth and/or in respect of any payments, fees or other moneys due or payable under this Licence or in relation to the Berth, including Goods and Service Tax.
- 19.2 The Licensee's obligations under this clause 19 shall apply regardless of whether the Licensor or the Licensee is primarily liable in respect of any such duty, tax or other payment.
- 19.3 The Licensee shall indemnify the Licensor for any such duties, taxes or other payment paid or payable by the Licensor in any capacity whatsoever.

## 20. Payments

- 20.1 All payments due by the Licensee under this Licence shall be paid to the Licensor without demand and free of all deductions in the manner and amount notified to the Licensee from time to time by the Licensor and at the time provided for by the Licensor.
- 20.2 The Licensee shall pay interest to the Licensor at the Default Rate on any payment due under this Licence by the Licensee which is more than 10 Working Days in arrears, such interest being calculated from the due date for the payment until the date of actual payment.

## 21. Membership Requirements.

- 21.1 Subject to clause 21.2, all persons comprising the Licensee shall at all times remain fully paid up members of the Licensor and of the Sandspit Yacht Club.
- 21.2 Where the Licensee or one of the persons comprising the Licensee is:
  - 21.2.1 A body corporate or unincorporated body, it shall ensure that at least one person nominated by it remains a fully paid up member of the Licensor and the Sandspit Yacht Club at all times; or
  - 21.2.2 The trustee or trustees of a trust holding this Licence, the trustee(s) shall ensure that the person who has the principal use of the berth and the Named Boat remains a fully paid up member of the Licensor and the Sandspit Yacht Club at all times.
- 21.3 A sub-licensee of any Berth is not required by this clause 21 to be a member of the Society or of the Sandspit Yacht Club.

## 22. General

- 22.1 This Licence shall be interpreted in accordance with the laws of New Zealand.
- 22.2 All demands, requisitions, consents, approvals or notices to be given by either the Licensor or the Licensee under this Licence must be in writing or by way of facsimile, email or other forms of electronic communication. A notice to the Licensor may be given to or served upon the Licensor by delivery to the Licensor at its registered office or at the Marina office during normal business hours. A notice to the Licensee may be given by being posted 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 if posted will be deemed to be received on the date it would have been received in the ordinary course of posting.
- 22.3 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 this Licence and such consent must be given in writing.

## 23. Further Development

- 23.1 The Licensee acknowledges that the Licensor will be entitled from time to time to improve, extend, add to, reduce or alter the Marina in any manner whatsoever with the consent of the statutory supervisor (if any). In exercising such right the Licensor will endeavour to cause as little inconvenience to the Licensee as is practicable in the circumstances.

- 23.2 To the extent to which the further development has been approved pursuant to clause 23.1:
  - 23.2.1 The Licensee will not be entitled to make any requisition objection or claim for compensation in respect of the further development;
  - 23.2.2 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;
  - 23.2.3 The Licensee will not object either to the operations associated with the construction and completion of additional floating structures, fingers and jetties or other improvements in the Marina or to any nuisance which may arise from the construction operations; and
  - 23.2.4 The Licensee will not institute or prosecute any action or proceedings for injunction or damages arising out of or consequent upon any such construction operations.