

ORAKEI MARINA

MARINA BERTH LICENCE

In Consideration of the licence fee paid by the Licensee named in the Schedule (**Licensee**) Orakei Marina Management Trust (**Licensor**) **GRANTS** to the Licensee a licence to use, occupy and enjoy the marina berth detailed in the Schedule (**Berth**) in the Orakei Marina (**Marina**) and to use, occupy and enjoy the ancillary facilities available in the Marina upon the following terms and conditions.

1. Term

- 1.1 The term of this Licence shall commence on the Commencement Date specified in the Schedule to this Licence and shall continue until the date specified in the Schedule, unless terminated earlier in accordance with the terms of this Licence or at law.

2. Personal Licence For Use For Nominated Boat

- 2.1 The Berth shall be available to, and shall only be used by, the Licensee whilst the Licensee personally and beneficially owns the boat nominated in the Schedule or a boat substituted pursuant to clause 2.2 (**Nominated Boat**) and, subject to clauses 7 or 8, while the Licensee uses the Berth for the Nominated Boat and not for any other boat.
- 2.2 The Licensee may at any time by notice to the Licensor substitute a different boat provided that the Licensee continues to own and use that boat and it does not exceed the maximum dimensions of the Berth as set out in this Licence. From the date of such notice the substitute boat shall be the Nominated Boat.
- 2.3 This Licence may, with the consent of the Licensor, be held by a number of persons jointly or in nominated shares provided such persons beneficially own the Nominated Boat jointly or in such shares.

3. Recreational Use Only

- 3.1 The Licensee shall, only subject to clause 3.3, use the Berth only for berthing the Nominated Boat whilst the Nominated Boat is used for pleasure boating purposes and not for any commercial or other use or purpose unless the Licensor, at its sole discretion, has given prior written consent to such use.
- 3.2 The Licensor may require the Licensee to sign a statutory declaration at any time as to the use or proposed use of the Berth or the ownership of the Nominated Boat.

- 3.3 The Licensee shall only use the Berth for a boat employed for charter purposes with the prior written consent of the Licensor. Such consent shall not be unreasonably withheld in respect of charters for recreational purposes but may be refused in the discretion of the Licensor in respect of charters for any other purpose.
- 3.4 The Licensee shall be permitted to live aboard the Nominated Boat for a period not exceeding 48 consecutive hours.
- 3.5 A Licensee with a Nominated Boat of 20 metres in length or greater which has mechanical and/or safety equipment and/or electrical systems including safety systems running, or which require monitoring, on a continuous basis shall be permitted to have crew stay onboard provided that the Nominated Boat is equipped with holding tanks approved by the Licensor for grey and black water.

4. Licence Fees

- 4.1 The Licensee shall on the date of issue of this Licence pay the initial licence fee specified in the Schedule for the period from the Commencement Date until the following 30 June.
- 4.2 Thereafter an annual fee shall be paid in advance by 1 July in each year for the year ending on the following 30 June. The annual licence fee shall be set by the Licensor by notice in writing to the Licensee and shall cover the Licensee's portion of the budgeted operating expenses for the Marina.
- 4.3 Where a boat uses a berth for charter purposes pursuant to clause 3.3, the Licensor shall be entitled to charge an additional licence fee, of an amount to be determined in the sole discretion of the Licensor, taking into account the additional services and the additional use of associated facilities that may result from such use.
- 4.4 If, at any time during the period from 1 July to 30 June, the Licensor considers that operating expenses have been, or will be, incurred which exceed the budgeted operating expenses for that year, the Licensor shall be entitled to charge additional licence fees, in amounts to be determined in the sole discretion of the Licensor, by notice in writing to the Licensee.
- 4.5 Operating expenses include, without limitation:
- 4.5.1 all contributions to a fund to cover the costs of periodic dredging of the Marina basin;
 - 4.5.2 all rates, charges, assessments, duties, levies and any other fees, fees of any local body or government body or authority for the Marina including, but not

limited to, the easement fee payable under the Easement Agreement referred to in clause 19.1 of this Licence;

- 4.5.3 all insurance premiums, valuation fees and any other charges payable by the Licensor to insure the facilities and structures which make up the Marina and to effect such other insurance the Licensor may consider necessary, in its sole discretion, in relation to the Marina or any liability of the Licensor or its Manager in that regard;
- 4.5.4 all contributions to a major refurbishment fund to provide for refurbishment of the Marina and the Marina structures and facilities;
- 4.5.5 all utilities and services charges relating to the Marina;
- 4.5.6 all costs associated with the operation, maintenance, cleaning and repair of the Marina structures and facilities, including all public areas, carparking areas and landscaping;
- 4.5.7 all bank fees and other financial costs, including interest on any financial accommodation of the Licensor or associated with the Marina;
- 4.5.8 all costs such as wages and other remuneration of personnel providing operational, maintenance, repair, cleaning, gardening, security or any other services to the Marina;
- 4.5.9 all extraordinary costs not contemplated by the Licensor as being costs which are usually incurred in the normal course of the management or operation of the Marina but incurred in any event;
- 4.5.10 all fees payable in relation to any resource consent or other consent for the time being in force in relation to the Marina;
- 4.5.11 all amounts payable to Ngati Whatua o Orakei Maori Trust Board pursuant to the annual grant from the Licensor for environmental enhancement programmes and/or educational scholarships.

5. Appointment of Manager

- 5.1 The Licensor shall be entitled to appoint from time to time, a manager to perform the obligations of the Licensor under this Licence (**Manager**). Such Manager shall act for and on behalf of the Licensor, and shall have all rights and powers of the Licensor under this Licence.

- 5.2 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.

6. Maximum Dimensions

- 6.1 The Licensee shall at no time allow any part of any vessel using or moored in the Berth to extend beyond the maximum permitted dimensions of the Berth as specified in the Schedule.
- 6.2 The length of each berth shall be measured from the wharf face of the walkway serving the Berth to the centre line of the pile ring securing the end of the finger walkway.

7. Transfer of Licence

- 7.1 This Licence is personal to, and shall at all times be held legally and beneficially by, the Licensee. The Licensee shall not assign, transfer, or otherwise howsoever dispose of this Licence, or any interest in this Licence, whether legal or beneficial unless the written consent of the Licensor is obtained and in the case of a proposed assignment, transfer or other disposition of this Licence or any interest in this Licence:

- 7.1.1 The name, address and occupation (or in the case of a corporation, the registered office and details of business) of the party which proposes to acquire the Licence or an interest in the Licence (**Assignee**), together with such evidence as the Licensor may require that the Assignee is respectable, responsible, solvent and able to meet the requirements of this Licence, have been provided to the Licensor; and
- 7.1.2 All licence fees and other money for the time being due or payable by the Licensee have been paid and the terms and conditions of this Licence have been performed and observed up to the date of disposition; and
- 7.1.3 Subject to clause 7.4 the Licensee shall have paid to the Licensor a surrender and re-grant fee of equal to 2% of the recommended sale price of the Marina Berth as set out by the Licensor from time to time (plus GST), or such other sum as set by the Licensor from time to time; and
- 7.1.4 The Assignee's boat meets the dimensions and other requirements of the Berth; and
- 7.1.5 The Licensee shall have paid the costs of obtaining the Licensor's consent to the disposition; and

- 7.1.6 The Licensee has signed a surrender of this Licence and the Assignee has signed 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 Marina Berth Licence.
- 7.2 A surrender and re-grant fee shall not be payable in the event of a transfer of a Licence:
 - 7.2.1 To the Licensee's executors or administrators following the death of the Licensee; or
 - 7.2.2 To the beneficiaries of the Licensee's will or letters of administration following the death of the Licensee; or
 - 7.2.3 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
 - 7.2.4 Where there are existing joint holders (holding the Berth with the consent of the Licensor) and the transfer is to a lesser number of the same holders.
- 7.3 For the purposes of clause 7.1 any change in the effective management or control of a corporate licensee during the term of this Licence shall be deemed to be an assignment of the Licence.
- 7.4 The Licensee shall comply with all of the Orakei Marina Rules or Bylaws adopted from time to time by the Licensor or the Licensor's Manager. The Licensee shall procure that all of the Licensee's sublicensees, invitees and contractors at all times comply with such rules.

8. Continuous Use and Sub-Letting

- 8.1 To provide for maximum utilisation of mooring space in the Marina, the Licensee shall:
 - 8.1.1 Use the Berth continuously; or
 - 8.1.2 Make the Berth available to the Licensor for placement in the pool of berths available for visiting boats upon such conditions as may be determined from time to time by the Licensor; or
 - 8.1.3 Sub-licence the Berth for any period providing that the following conditions and restrictions are first satisfied:

- (a) Before entering into any sub-licensing arrangement, the Licensee shall give prior written notice to the Licensor setting out the full name, address and contact telephone numbers of the proposed sub-licensee and full details of the proposed sub-licensee's boat (which must comply with the maximum dimensions as set out in clause 6) and shall specify the term of the proposed sub-licensing; and
- (b) Such sub-licensing shall be subject to the approval of the Licensor, that approval not to be unreasonably withheld; and
- (c) The Licensee shall have paid the Licensor's costs for considering the proposed sub-license; and
- (d) It shall be a term of the sub-licence that the sub-licensee 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 sub-licensee.

9. Orakei Explosives Anchorage

- 9.1 The Orakei Explosives Anchorage is located in the middle of the Waitemata Harbour about 500-700 metres directly north of the Marina location. Boats should keep at least 200 metres away from any vessel moored at the Explosives Anchorage and displaying a red flat or an all-round red light.

10. Car Parking

- 10.1 The Licensee will be issued with parking permits to authorise the parking of vehicles in the Marina public car park area. Permits must be displayed in the window of the vehicles at all times. It is acknowledged by the Licensee that parking may not be available at all times.

11. Water Space, Access and Use of Facilities

- 11.1 This Licence relates only to the allocated water space of the Berth. In common with others, the Licensee shall have a right of making fast to the allocated Berth structures and access and use rights over the structures of the Marina.
- 11.2 The initial set or mooring ropes shall be provided by the Licensor at its cost but subsequent 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.

- 11.3 The Licensee shall not alter or modify the Berth or adjacent structures. Any addition or alternation, such as fendering and dinghy supports, shall be first approved by the Licensor and fitted by an installer approved by the Licensor.
- 11.4 The Licensee, and any other person permitted by the Licensor, may use water, power and any other facilities provided on the structures in common with other Licensees. This clause entitles the Licensee to casual use only of these facilities. If a Licensee requires more regular use of common facilities, special arrangements may need to be made with the Licensor and the Licensor may make an additional charge to cover any extra expenses associated with such use and may require the installation of meters at the cost of the Licensee.

12. Indemnity

- 12.1 The Licensor, and its Manager, shall not be liable or responsible for the safety of boats or persons using boats or third party property within the Marina whether in tort (including the negligence of the Licensor, or its servants, or agents or contractors), contract, breach of statutory duty, equity or otherwise, or for the adequacy or otherwise of the Marina, or for the Berth, or any other part of the facilities of the Marina.
- 12.2 The liability of the Licensor and its Manager to the Licensee, or any other person, for any loss, costs, expenses, demands or liability, or for any death, or personal injury incurred or suffered within the Marina whether in tort (including the negligence of the Licensor, or its servants, or agents, or contractors), contract, breach of statutory duty, equity or otherwise, is excluded to the fullest extent permitted by law.
- 12.3 The Licensee hereby indemnifies the Licensor against any loss, costs, expenses, demands, liability or claims suffered by the Licensor within the Marina and arising as a direct result of the Licensee's acts or omissions or the acts or omissions of the Licensee's sub-licensees, invitees or contractors or the acts or omissions of others to which the Licensee has contributed.

13. Default

- 13.1 This licence may be terminated by the Licensor on the giving of written notice to the Licensee if the Licensee makes default in the observance or performance of any obligation on the part of the Licensee, expressed or implied, in this Licence and such default remains unsatisfied after one month from the date of written notification from the Licensor to the Licensee specifying the default complained of and requiring it to be remedied.
- 13.2 If the Licensor exercises the right of termination then:

- 13.2.1 Termination shall not prejudice the rights of the Licensor against the Licensee in respect of any breaches subsisting at the date of termination.
- 13.2.2 The Licensee shall forthwith remove the Nominated Boat from the Berth and from the Marina.
- 13.2.3 If the Licensee fails to remove the Nominated Boat pursuant to clause 13.2.2 then the Licensor may remove the Boat and/or store it at the risk and cost of the Licensee. In such case the Licensor shall have, and the Licensee hereby grants a lien over the Nominated Boat for all moneys due from the Licensee including all costs of termination of this Licence, and of removal and storage of the Boat.
- 13.2.4 After expiry of one month from the date of notice from the Licensor to the Licensee that it is claiming a lien on the Nominated Boat pursuant to clause 13.2.3, the Licensor shall be free to sell the Nominated Boat and appropriate the proceeds of sale in satisfaction of moneys due to it from the Licensee. Any surplus shall be paid to the Licensee. It is acknowledged by the Licensee that exercise of these rights is not distraint.
- 13.2.5 The Licensor may proceed against the Licensee for any moneys then owing and any moneys already paid by the Licensee in relation to operating expenses for the period following the termination date shall be deemed forfeited to the Licensor as liquidated damages. Regardless of the termination of this Licence, the Licensee shall remain liable for all licence fees until a new licence is granted pursuant to clause 13.2.6.
- 13.2.6 The Licensor shall be at liberty to grant a new licence in respect of the Berth to such person and in such manner as the Licensor in its sole discretion may determine. The Licensor shall be entitled to retain any licence fees obtained from any new licensee.

The Licensee hereby irrevocable appoints the Licensor, the Manager and their nominees (severally) as the attorney of the Licensee to execute all documents and do all such things as are necessary to give effect to such grant. Any new licensee shall not be required to see to the application of the licence fees paid by the new licensee nor shall the new licensee's title be affected by any irregularity of invalidity in the sale proceedings.

The proceeds of sale shall be received by the Licensor and applied first in payment of the costs of sale, secondly in or towards satisfaction of any monies owing to the Licensor, and thirdly to the Licensee. If the proceeds of sale of

the Licence are not sufficient to pay the costs of sale and all monies owing to the Licensor in full, the Licensee shall remain personally liable to the Licensor for the amount which remains unsatisfied.

- 13.3 In the case of any default on the part of the Licensee and without prejudice to its other rights the Licensor may remedy such default at the Licensee's cost and the Licensee hereby irrevocably appoints the Licensor, the Manager and their nominees (severally) to be the attorney of the Licensee for such purpose.

14. Compliance With Laws

- 14.1 The Licensee shall, in the use of the Berth and the Orakei Marina, comply with and be bound by all Acts of Parliament and regulations which are relevant to the Orakei Marina, the terms of any relevant resource consent and all local authority bylaws, marina rules or by-laws, and the instructions of the Licensor or the Manager.

15. Licensee's Address

- 15.1 The Licensee shall at all times keep the Licensor informed of any change of address from that stated in the Schedule or alternatively the name and address of any agent to whom the Licensee has granted unlimited authority to act for the Licensee in all matters concerned with or arising out of this Licence.
- 15.2 The nominated address shall be the address for service of all notices of default, or otherwise, issued in respect of this Licence and the address for the posting of demands for annual licence fees or such other costs as may arise from time to time. Service of any notice shall be deemed sufficient if, and to have been received by the Licensee 3 days after, it is sent to the Licensee's notified address, provided that notices sent pursuant to Clause 13 shall be sent by Registered Post.

16. Relocation of Berths

- 16.1 The Licensor reserves the right to require the Licensee to temporarily or permanently vacate the Berth so as to permit construction or maintenance work necessary to maintain and develop the Marina and to use the Berth in an emergency provided that:
- 16.1.1 In the case of a permanent vacation of the Berth where possible the Licensor shall grant to the Licensee a substitute licence for the balance of the unexpired term of this Licence for a berth of substantially similar characteristics, including berth dimensions, within the Marina.
- 16.1.2 In the case of a temporary vacation of the Nominated Boat where possible the Licensor shall provide to the Licensee an alternative berth or mooring in the

Marina and this Licence will continue to apply to such alternative mooring or berth with only such modifications as are necessary.

16.1.3 The Licensor will not be liable to pay any compensation to the Licensee in respect of the surrender of the Licence or in the vacation and re-location of a Berth pursuant to this clause.

17. Licensee's Insurance

17.1 The Licensee shall at all times keep all boats, craft and any other property owned or brought into the Marina by the Licensee and/or any sub-licensee or invitee fully insured while in or near to the Marina. Such insurance shall cover loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, Act of God and all other usual and reasonably insurable risks.

17.2 The Licensee shall also effect adequate public liability insurance against death and/or bodily injury to persons and loss or damage to the property of others arising out of the use of water craft within the Marina or occupation of the Berth. The amount of such public liability insurance shall be as specified by the Licensor from time to time.

17.3 The Licensee shall, if requested by the Licensor, provide the Licensor with copies of the policies effected pursuant to this clause together with a certificate of currency for such policies.

18. Licensor's Insurance

18.1 The Licensor will take all reasonable steps to insure the structures within the Marina to their full reinstatement value against loss, damage, or destruction by fire, earthquake, fire subsequent upon earthquake, flood, lightning, storm or other natural event, the premiums for which shall form part of the operating expenses.

18.2 The Licensee will not do or allow anything to be done to render void or voidable any policy of insurance effected by the Licensor.

18.3 If the Licensee shall do, permit or fail to do anything which may result in any increased or extra premium becoming payable in respect of such insurance, the Licensee will forthwith on demand from the Licensor pay to the Licensor such increased or extra premium or premiums.

18.4 If the Berth or any material part of the Marina is destroyed or damaged and the Licensor determines in its sole discretion that it is not feasible (for any reason) to proceed with reinstatement, then the Licensor may elect to terminate this Licence from the date of the rights of the occurrence of such destruction or damage. Such

Termination shall be without prejudice to the parties in respect of any prior breach. Where the Licensor has received any insurance proceeds, those proceeds shall be applied as follows:

18.4.1 first, in payment of all costs incurred by the Licensor in complying with any Acts of Parliament, regulations or resource consents and removing any destroyed or damaged structures from the Marina;

18.4.2 secondly, any surplus proceeds shall be paid to the licensees of the Marina on the basis determined by the Licensor, acting reasonably.

18.5 If the Berth or any material part of the Marina is destroyed or damaged and the Licensor decides to proceed with reinstatement of such damage or destruction, then:

18.5.1 the Licensor shall be entitled to require the Licensee to vacate the Berth for the period necessary to effect such reinstatement;

18.5.2 the Licensee shall not be entitled to any refund of any licence fees or to any compensation for the lack of availability of the Berth or otherwise;

18.5.3 The Licensor shall be entitled to complete such reinstatement using such materials and form of construction, and in such manner, as the Licensor deems appropriate;

18.5.4 The Licensee shall continue to be liable for all licence fees.

19. Acknowledgements by Licensee

19.1 The Licensee acknowledges that:

19.1.1 The Licensor has been granted Resource Consents to enable development and operation of the Marina ("**Resource Consents**") and, in turn, under this Licence grants to the Licensee the right to enjoy that part of the Resource Consents relating to the Berth specified in the Schedule; and

19.1.2 The Licensor provides access to the Marina over land of Auckland City Council under the terms of an Easement Agreement; and

19.1.3 Pursuant to the common law and to the terms of the Resource Consents and the Easement Agreement, the Auckland City Council may terminate the Easement Agreement and the Auckland Regional Council or the Auckland City Council (as applicable) may terminate the Resource Consents if the terms of the Resource Consents are breached; and

19.1.4 Should the Resource Consents or the Easement Agreement be revoked or determined, the Licensee shall have no right or claim against the Licensor, the management of the Licensor or their successors or assigns whatsoever.

20. Law and Jurisdiction

20.1 The Law to which this Licence is to be subject is New Zealand law.

20.2 The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

21. Variation

21.1 This Licence may be varied or added to with the agreement of the Licensor and the Manager.

DATED _____ 20

The Licensee accepts the within Licence and agrees to observe and perform all the terms and conditions contained and implied in this Licence signed by the Licensee.

ATTESTATION

SIGNED by the LICENSEE

_____ (Signature of Licensee)

_____ (Signature of witness)

_____ (Occupation)

_____ (Address)

SIGNED for and on behalf of the LICENSOR

_____ (Authorised signatory)

SCHEDULE

Part I (Licensee and Licensor Particulars)

Full Name(s) of Licensee(s) _____

Licensee(s) Address: _____

Contact Number of Licensee: Home: _____ Business: _____

Mobile: _____ Fax: _____ Email: _____

Full name of Licensee's agent: _____

Contact address of agent: _____

Contact telephone number of Licensee's agent: _____

Full name of Licensor: Orakei Marina Management Trust

Licensor's Address: Orakei Marina Office, 8-12 Tamaki Drive, Orakei, Auckland.

Contact Number of Licensor: Business: (09) 524 8444 Fax: (09) 524 8892

Part II (Nominated Boat Details)

Nominated Boat: _____

Registration Number (if any): _____

Type of Boat: (Yacht/Launch/Multihull): _____

Dimensions of Nominated Boat: Length: _____ Beam: _____

Part III (Berth Details)

Marina Berth number: _____ (pier) _____ (number)

Dimensions of Berth Length: _____ Beam: _____

Part IV: Licence Terms

Commencement Date: _____

Termination Date: _____

Initial Licence Fee: _____