

*For office use only*  
 BERTH/MOORING  
 NUMBER:

## Port Tarakohe Long Term Marina Berth/Mooring Licence

**DATED:**

**PARTIES:**

1. **TASMAN DISTRICT COUNCIL**, a local authority whose registered office is at 189 Queen Street, Richmond, Tasman 7050 (the **Licensor**)
2. **THE LICENSEE**, the person(s) identified below as such in the Key Details (the **Licensee**)

**BACKGROUND:**

- A. The Licensor owns and operates Port Tarakohe, Golden Bay.
- B. The Licensee has agreed to take a licence of a berth or mooring in the marina at Port Tarakohe.
- C. The Licensor and the Licensee have entered this licence setting out their respective rights, agreements, and obligations.

**KEY DETAILS:**

Berth/Mooring Details		Dimensions			
Berth/Mooring:		Length (m):		Width (m):	
Licensee Information					
Full name(s):					
Address:					
Tel:		Mobile:			
Email:					
Details of Named Boat					
Name:					
Type:	Yacht/Multihull/Launch/FV/MV				
Overall length (m):		Beam (m):		Draught (m):	
<i>NB: Overall length for this purpose includes hull length at the vessel's longest point and any fittings or attachments (including pulpits, platforms, bowsprit, engines, rudders and dinghies).</i>					
Colour:			VHF call sign:		
Registration No:			<i>(if registered under the Ship Registration Act 1992)</i>		
Other details:	On board toilet		Holding tanks:		
<i>*A current Electrical Warrant of Fitness (EWOFF) is required for all vessels that</i>	Intention to connect to onshore power?				
	Tagged power lead?		EWOFF number*:		

wish to connect to on shore power.	Date of issue:		Date of expiry:	
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Insurance Details				
Policy Number:		Date of expiry:		Public liability of \$5,000,000
<i>Note: The Licensee must provide a certificate of currency of insurance to evidence the insurance cover in place prior to the Commencement Date and promptly following any change to such insurance and otherwise on request by the Licensor. You must have public liability insurance of at least \$5M.</i>				
Liveaboards (this section is only relevant if the Licensor has granted consent to the named individuals to live aboard the vessel)				
Full names and ages of those who are permitted to live aboard:				
<i>Note: No one may reside on board a vessel berthed or moored at Port Tarakohe without the Licensor's prior written consent.</i>				
Commercial Operations (this section is only relevant if the Licensor has granted consent to the Licensee to undertake commercial activities in the Port)				
Description of authorised commercial activities:				
<i>Note: You must not undertake any commercial activities in the Port without the Licensor's prior written consent. You must seek further prior written approval for any change to the nature of your proposed commercial operations or activities</i>				
Licence Details				
Approximate commencement Date:		Approximate End Date:		
Initial Term:	The period from the Commencement Date until: <ul style="list-style-type: none"> <li>a) 30 June in the same calendar year as the Commencement Date (where the Commencement Date falls on/between 1 January – 29 June); or</li> <li>b) 30 June in the following calendar year (where the Commencement Date falls on/between 1 July – 31 December)</li> </ul>			
Annual Fee & payment details for the initial terms	Note: See the prevailing Fees Schedule (published on <a href="http://www.tasman.govt.nz">www.tasman.govt.nz</a> ) for details of all fees and charges and any changes to these.  The Annual Fee is payable monthly in advance (together with all other applicable charges as set out in the Fees Schedule) due on or before the 20th day of each calendar month (other than the first monthly instalment which TDC may allow to be paid in arrears)			
Licensor's Contact Details				
Licensor's Address:	Tasman District Council Private Bag 4, Richmond 7050 Attention: Commercial Enterprises Team <a href="mailto:enterprises@tasman.govt.nz">enterprises@tasman.govt.nz</a>			
Port Manager's Details:	Steve Tennant 1011 Abel Tasman Drive, Port Tarakohe (03) 525 8174; 027 446 3891 <a href="mailto:port.tarakohe@tasman.govt.nz">port.tarakohe@tasman.govt.nz</a> ; <a href="mailto:steve.tennant@tasman.govt.nz">steve.tennant@tasman.govt.nz</a>			

## TERMS:

### 1. Definitions and Interpretation

1.1 **Definitions:** In this Licence the following terms have the following meanings, unless the context requires otherwise:

<b>Annual Fee</b>	the annual fee payable by the Licensee to the Licensor as specified in the Key Details for the Initial Term and as may be varied by the Licensor in accordance with clause 6.2;
<b>Berth</b>	the berth (if relevant) identified in the Key Details (or such other berth as may be allocated by the Licensor from time to time in accordance with this Licence);
<b>Commencement Date</b>	the commencement date specified in the Key Details;
<b>Default Interest Rate</b>	the relevant rate of interest set out in the Fees Schedule (or if no such rate is specified, then at the interest rate which is 5% above the overdraft rate charged by TDC's principal bankers at the relevant due date on any amount not <b>paid when due</b> );
<b>Initial Term</b>	the period specified in the Key Details;
<b>Extended Term</b>	the period defined in clause 3.1;
<b>Fees Schedule</b>	the prevailing Schedule of Fees and Charges set by the Licensor published on <a href="http://www.tasman.govt.nz">www.tasman.govt.nz</a> , and as may be varied, updated, or replaced from time to time by the Licensor. A copy of the Fees Schedule is available on request from the Port Manager;
<b>Key Details</b>	the specific details relevant to the Licensee and this Licence, as set out at the beginning of this document;
<b>Licence</b>	this licence which includes the Key Details, the Rules, and all other relevant documents referred to in this Licence or the Rules, which may be updated from time to time by the Licensor;
<b>Marina</b>	the marina development owned and operated by the Licensor at Port Tarakohe, Golden Bay;
<b>Mooring</b>	the mooring (if relevant) identified in the Key Details (or such other mooring as may be allocated by the Licensor from time to time in accordance with this Licence);
<b>Named Boat</b>	the boat identified in the Key Details (or such other boat as may be approved by the Licensor from time to time in accordance with this Licence);
<b>Port</b>	Port Tarakohe, Golden Bay
<b>Port Manager</b>	the person appointed or authorised by the Licensor to manage the Port (including anyone acting in that role during the Port Manager's absence). The Port Manager's contact details are set out in the Key Details (which may be updated by the Licensor from time to time);
<b>Rules</b>	the marina rules which apply to all Port users and which can be found at <a href="http://www.tasman.govt.nz">www.tasman.govt.nz</a> and/or available on request from the Port Manager, as may be varied, amended, or replaced from time to time by the Licensor.

- 1.2 **Interpretation:** In the interpretation of this Licence, 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 anybody or entity whether incorporated or not;
  - (c) words in the singular 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 do 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.
- 1.3 **Joint and Several Liability:** If a party comprises more than one person then each person comprising that party is bound jointly and severally.

## 2. Grant of Licence

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

- 2.1 **Rolling one-year terms:** The term of this Licence will initially run from the Commencement Date until the expiry of the Initial Term, after which it will 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.

- 2.2 **Cancellation on notice:** Either party may at any time cancel this Licence by giving at least one month’s written notice to the other party.

## 3. Rules and Variations

- 3.1 **Rules are binding:** The Rules form part of this Licence. The Licensee must always comply with the Rules and ensure that all of its agents, contractors, employees and invitees comply with the Rules and the other terms of this Licence.
- 3.2 **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 or Rules will take effect at the commencement of the next Extended Term and the Licensor will give at least three months’ notice (which may be via [www.tasman.govt.nz](http://www.tasman.govt.nz) and/or email and/or signs or notices at the Marina) of such amendments.
- 3.3 **Licence prevails over Rules:** In the event of inconsistency between the Rules and the rest of this Licence, the terms of this Licence will prevail.

## 4. Use of Berth or Mooring

- 4.1 **Berth or Moor the Named Boat only:** The Licensee will use the Berth or Mooring for:

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

- 4.2 **Named Boat owned by Licensee:** The Licensee warrants that it owns the Named Boat

and that all the vessel details contained in the Key Details are correct.

4.3 **Licensor 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, and in particular fits completely within the dimensions of the Berth or Mooring.

4.4 **Notice when vacant:** The Licensee must advise the Port Manager in writing of any proposed period(s) of more than 72 hours during which the Berth or Mooring will not be occupied by the Named Boat (**Unoccupied Berth Period**). The Licensee will use its best endeavours to give the Port 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.

4.5 **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 or Mooring in the Visitors' Berth Pool during any Unoccupied Berth Period. The Licensee may not use the Berth or Mooring during the Unoccupied Berth Period without the Licensor's prior written consent (noting that the Licensor must grant such consent where the Berth or Mooring is not booked or otherwise occupied by a visiting vessel). The Licensee acknowledges that the Berth or Mooring may not be available for use by the Licensee during the Unoccupied Berth Period first notified to the Port 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 determined by the Licensor.

## 5. Annual Fee and other charges

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

5.2 **Adjustments:** The Annual Fee payable by the Licensee with respect to the Initial Term is specified in the Key Details and, thereafter, the Annual Fee and all other charges will be set annually by the Licensor and published in the Fees Schedules and apply on and from the commencement of each succeeding Extended Term or such other period as the Licensor may specify.

## 6. Port Manager

6.1 **Port Manager can act for Licensor:** The Licensor is entitled to appoint from time to time a Port 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.

6.2 **Comply with instructions:** The Licensee must strictly obey all lawful directions, instructions, guidelines or signage issued by the Licensor or the Port Manager (provided they are not inconsistent with the terms of this Licence).

6.3 **Criminal Conviction History checks:** The Licensee:

- (a) warrants that neither the Licensee nor any other person named in the "Liveaboard" section above (if applicable) has been convicted in the last 10 years of an offence punishable by more than three years imprisonment (unless the person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004); and
- (b) authorises the Licensor to undertake a Criminal Conviction History prior or at any time during the Licensee's visitation at the port for any of the persons named in the "Liveaboard" section (if applicable).

## 7. Assignment / Subletting

7.1 **Assignment/subletting prohibited:** This Licence is personal to the Licensee for the berthing or mooring of the Named Boat only and the Licensee must not assign, sublet, transfer, or otherwise part with or dispose of, mortgage, or grant a security interest in or over, the Licensee's rights under this Licence. **For clarity, if the Licensee sells the Named Boat this Licence ends, and the new owner of the Named Boat will have no berthing or mooring rights until they submit a new application for berthing or mooring rights to the Licensor and that application has been approved.**

7.2 **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) is deemed to be an assignment of this Licence.

7.3 **No encumbrances:** The Licensee must not mortgage, grant a security interest in or over or otherwise encumber its interest under this Licence.

7.4 **Subsequent operators:** The Licensor may at any time transfer any or all its rights and obligations under this Licence to any subsequent operator of the Marina.

## 8. Nature of Rights Granted by this Licence

8.1 **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 or Mooring remains with the Licensor, although the Licensee enjoys the occupation rights granted by this Licence.

8.2 **No proprietary rights:** The Licensee is not entitled to any proprietary right or interest in any real or personal property (including the Berth or Mooring, any water space or any part of the airspace or seabed above or below the Berth or Marina).

8.3 **CCTV cameras may be used:** The Licensor operates 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 [www.tasman.govt.nz](http://www.tasman.govt.nz), as may be amended from time to time) applies to the Licensor's collection, use and disclosure of any personal information about the Licensee (and any of its agents, employees, and invitees).

## 9. Water Space and Access

9.1 **Use of water space:** This Licence relates only to the allocated water space of the Berth or Mooring.

9.2 **Right to moor boat and access:** This Licensee has the right, in common with all other licensees of berths or moorings in the Marina, to:

(a) make fast to the allocated berth structures or moorings in the Marina; and

(b) access and use the common waterways and pathways of the Marina, in accordance with this Licence. The Licensee will comply with any access routes or restrictions designated by the Licensor from time to time.

## 10. Moving Named Boat and Vacation of Berth or Mooring

10.1 **Licensor may enter/move boat:** The Licensor (and the Port Manager) are entitled to enter the Berth or Mooring 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 Port Manager) are deemed to be authorised by the Licensee to so enter and act. The Licensor will not be liable for, and the Licensee indemnifies the Licensor and the Port 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 10.1 except to the extent caused by the Licensor's negligence.

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

- (a) the Licensor/Port Manager must take all such steps as are reasonably practicable (having regard to the period of relocation) to ensure that the new berth or mooring is similar in size and location as the Berth or Mooring;
- (b) neither the Licensor nor the Port Manager will be liable in any manner whatsoever to the Licensee or any other person in respect of the change of Berth or Mooring;
- (c) the terms of this Licence will apply to the new berth or mooring; and
- (d) the Licensee will promptly vacate the Berth or Mooring and move the Named Boat to the new berth or mooring stipulated by the Licensor/Port Manager. Clause 16.3(a) will apply as if the Licence of the Berth or Mooring had been cancelled.

#### **11. Alterations to Berth or Mooring**

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

#### **12. 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 and mooring 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 is entitled to charge such sum as it considers appropriate for such use, separate from and in addition to the Annual Fee.

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

13.1 **Notify address changes:** The Licensee must always 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.

13.2 **Licensor may deal with agents:** Where the Licensee has appointed an agent then the Licensor and the Port Manager are entitled to deal with that agent in all respects as if the agent were the Licensee and the Licensee will be bound accordingly.

13.3 **Joint Licensee must appoint agent:** If the Licensee comprises more than one person, then all those persons comprising the Licensee must 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 Key Details is deemed to be the agent of all such persons comprising the Licensee in terms of clause 14.1.

#### **14. Insurance**

14.1 **Licensee must insure:** The Licensee must always keep all boats, craft and other property owned or brought into the Marina by the Licensee and/or invitees of the Licensee, fully insured while 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.

14.2 **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.

14.3 **Public liability insurance:** The Licensee must also effect public liability insurance of such sum as the Licensor may from time to time require (and initially as set out in the Key Details) 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 or Mooring, 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. The Licensee must provide proof of such cover to the Licensor (or the Port Manager) prior to the Commencement Date and thereafter upon request by the Licensor or the Port Manager.

## 15. Cancellation

- 15.1 **Default cancellation:** 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 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;
  - (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; or
  - (e) if a Criminal Conviction History check identifies that the Licensee any other person named in the "Liveaboard" section above (if applicable) has been convicted in the last 10 years of an offence punishable by more than three years imprisonment (unless the person is an eligible individual for the purposes of the Criminal Records (Clean Slate) Act 2004).
- 15.2 **Licensor's rights survive cancellation:** The cancellation of this Licence by the Licensor will 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.
- 15.3 **Consequences of cancellation:** Upon cancellation of this Licence (whether under clause 3.2 or this clause 16):
- (a) the Licensee must, within any timeframe stipulated by the Licensor (acting reasonably in the prevailing circumstances):
    - (i) remove the Named Boat from the Berth or Mooring or any other boat, property or person occupying the Berth or Mooring (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 or Mooring; 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 or Mooring and Marina;
  - (b) the Licensor is not required to refund, and may retain, any monies paid in advance by the Licensee;
  - (c) the Licensee will have no right to any payment or compensation from the Licensor, and will have no claim against the Licensor, arising out of such cancellation;
  - (d) the Licensor will be at liberty to grant a new licence for the Berth or Mooring to such person and on such terms as the Licensor in its sole and absolute discretion determines appropriate.
- 15.4 If the Licensee fails to promptly comply with its obligations under clause 16.3(a), 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.

## 16. Liability and Indemnity

- 16.1 **"As is, where is":** Access to and use of the Berth or Mooring by the Licensee is provided by



the Licensor on an "as is, where is" basis. The Licensee must use and access the Berth or Mooring 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.

- 16.2 **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).
- 16.3 **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 or Mooring 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).
- 16.4 **Licensee indemnity:** The Licensee indemnifies the Licensor against any loss, expense, liability, actions, claims, demands and costs reasonably incurred by the Licensor arising because 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).

## 17. Payments

- 17.1 **Pay by due date:** All payments due by the Licensee under this Licence must 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.
- 17.2 **Default interest and enforcement costs:** The Licensee must 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.
- 17.3 **Lien for unpaid amounts:** The Licensor will have a lien over any vessel (or other property) located at the Berth or Mooring 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 will 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.

## 18. Dispute Resolution

- 18.1 **Mediation:** If a dispute or difference arises out of or in connection with this Licence ("**Dispute**"),

the parties agree to attempt to amicably resolve it between themselves in the first instance. If appropriate, the Licensee may request that the Dispute is referred to a senior manager within the Licensor's organisation, with the aim of the senior manager assisting with the resolution of the Dispute. If a Dispute cannot be resolved 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 will 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 (NZversion).

18.2 **Court proceedings:** Nothing in this clause 19 prevents 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.

## 19. Further Developments and Port Operations

19.1 **Further Developments permitted:** The Licensee acknowledges that the Licensor is 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 Licensor's 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 limits 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.

19.2 **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 limits any right or remedy the Licensee may have if the Licensor breaches any applicable law.

## 20. General

20.1 **Governing law:** This Licence is to be interpreted in accordance with New Zealand law and governed by the jurisdiction of the New Zealand courts.

20.2 **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 Key Details (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 Nelson) 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).

20.3 **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.

- 20.4 **Entire agreement:** This Licence constitutes the entire agreement of the parties about its subject matter and all 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 or mooring at the Marina will cease to have 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 or mooring).
- 20.5 **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 excuses any delay or non-payment of amounts due under this Licence.
- 20.6 **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 will not impair the enforceability of the remaining parts of this Licence.
- 20.7 **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.
- 20.8 **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 using electronic signatures and by an exchange of emailed PDF copies and execution of this Agreement by that means is valid and sufficient execution.

<b>Signed by Licensee/s*</b>			
..... Authorised signatory For and on behalf of the licensee	..... Full name	..... Position (if relevant)	..... Date
..... Authorised signatory For and on behalf of the licensee	..... Full name	..... Position (if relevant)	..... Date
..... Authorised signatory	..... Full name	..... Position (if relevant)	..... Date

\*Note: Individual Licensees must each sign. Company Licensees must sign by at least one director. Trust Licensees must sign by all trustees.

<b>Approved by TDC</b>			
..... Authorised signatory on behalf of TDC	..... Full name	..... Position	..... Date