

# Berth Booking

## Licence Standard Terms and Conditions

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Licence, unless the context otherwise requires, the following words shall have the meanings set out opposite them:

"Berth"	the berth described in the Berth Booking Confirmation.
"Berth Booking Confirmation"	the confirmation of the Berth Booking Request sent from the Licensor to the Licensee to confirm booking of a berth.
"Berth Booking Request"	the On-line form completed by the Licensee requesting to book a Berth.
"Berth Booking Standard Terms"	these standard terms for a licence of a Berth available for viewing online with the Berth Booking Request
"Bond"	the sum referred to in the Berth Booking Confirmation.
"Casual"	means for a term which is terminable in accordance with clause 2.2.
"Commencement Date"	the date specified in the Berth Booking Confirmation.
"Default Interest Rate"	the daily rate of interest prevailing for the Westpac Banking Corporation 90 day bank bill bid rate as determined on any relevant day by reference to BKBM or its successive page on Reuters Monitor Screen at 10.45am on each relevant day or if not shown on a relevant day the closest preceding day in which such rate is shown plus a margin of 8%.
"GST"	goods and services levied under the GST Act.
"GST Act"	Goods and Services Tax Act 1985.
"Insurances"	the insurances set out in the Berth Booking Standard Terms to be effected by the Licensee pursuant to clause 10.
"Licence Fee"	the licence fee payable by the Licensee to the Licensor and described in the Berth Booking Confirmation (as varied from time to time pursuant to clause 3).
"Licensee"	the licensee described in the Berth Booking Confirmation and includes the Licensee's executors, administrators, successors and assigns and where appropriate includes the Licensee's employees, contractors, agents and visitors.
"Licensor"	Ports of Auckland Limited and/or Auckland Council and includes the Licensor's successors and assigns and where appropriate the Manager.
"Manager"	Viaduct Harbour Holdings Limited (VHHL) and includes the Manager's successors and assigns.
"Nominated vessel"	the vessel nominated by the Licensee described in the Berth Booking Request together with any tackle, goods, gear, machinery, fittings and the like used in connection with the operation of the Nominated vessel whether the same shall be attached thereto or not.
"Term"	the term of the Licence described in the Berth Booking Confirmation.
"Usage Period"	means the period of time that the Licensor has agreed to grant a licence to you of the Berth, commencing at midday on the first day of such rental period, and unless terminated earlier, expiring at midday on the day following the last day of such rental period.

"Utilities"	those utilities available at the Berth, the cost of which is to be borne by the Licensee in addition to the Licence Fee in accordance with clause 4.2.
"Viaduct Harbour"	the waterspace contained within Viaduct Harbour including all seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures controlled by the Licensor.

#### 1.2 Interpretation

Also for the purposes of interpretation or construction of this Licence:

- (a) Unless the context otherwise requires:
  - (i) Words importing one gender include the other genders;
  - (ii) Words importing the singular or plural number include the plural and singular number respectively;
  - (iii) Except where the context does not permit, references to sections, clauses, subclauses and schedules in this Licence and references to parties are references to parties to this Licence;
  - (iv) Expressions defined in the Berth Booking request and the Berth Booking Confirmation bear the defined meaning in the whole of this Licence;
  - (v) References to any statute refer also to any regulation, order, notice or by-law made under or pursuant to the statute or regulations made under the statute;
  - (vi) References to statutes and regulations refer also to statutes and regulations from time to time amending, consolidating or re-enacting those referred to;
  - (vii) Any reference to a month shall mean a reference to a calendar month;
  - (viii) Any reference to a day shall mean a reference to a period of 24 hours or a part thereof;
  - (ix) A right granted or reserved may be exercised from time to time;
  - (x) References to dates and time are to New Zealand dates and times;
  - (xi) References to monetary amounts are to New Zealand currency;
- (b) The obligations of each party contained or implied in this Licence shall bind each such party and every two or greater number of them jointly and each of them severally together with their respective heirs, administrators, successors and assigns;
- (c) Any obligation to be observed or performed by the parties to do or not to do any act or thing shall be construed as including an obligation to do or not to do or omit, suffer, permit, allow, cause or procure such act or thing and any such obligation shall be observed and performed from time to time;
- (d) Headings and marginal notes where used in this Licence are inserted for the sake of convenience of reference only and do not affect the interpretation of this Licence.

### 2. TERM

#### 2.1 Initial Term

The Term of this Licence is for the period specified in the Berth Booking Confirmation.

#### 2.2 Holding Over

In the event that the Term is a month or longer and the Licensor permits the Licensee to continue to use the Berth beyond the last day of the Term. The Licensee shall do so on a monthly basis with the Licence Fee payable monthly in advance with the first payment to be made on the day following expiry of the Term and to be equal to the amount of the Licence Fee (on a monthly basis) payable under this Licence immediately prior to the expiry of the Term. The Licence so created shall be determinable at any time by either party upon one month's prior written notice, but otherwise the Licence shall continue on the same provisions as are contained in the Licence.

In the event that the Term is a month, a day or on a casual basis and the Licensor permits the Licensee to continue to use the Berth beyond the last day of the Term, the Licensee shall do so on a daily basis with the Licence Fee payable daily (or for such period nominated by the Licensor) in advance with the first payment to be made on the day following expiry of the Term and to be equal to the amount of the Licence Fee (on a daily basis) payable under this Licence immediately prior to the expiry of the Term. The Licence so created shall be determinable at any time by either party forthwith upon written notice, but otherwise the Licence shall continue on the same provisions as are contained in the Licence.

### 3. LICENSEE'S PAYMENTS

#### 3.1 Licence Fee

The Licensee shall pay the Licence Fee by equal monthly payments in advance with the first payment being due prior to commencement date. All Licence Fees shall be paid without deduction or set-off by automatic payment to the Licensor's bank account or by credit card or direct payment to the Manager as the Licensor may direct. The Licensee will make payment of any pre-payment of the Licence Fee referred to in the Berth Booking Confirmation. This sum is non-refundable.

#### 3.2 Utilities

The Licensee shall pay for all Utilities and services supplied to the Berth. If any of such Utilities or services is not metered then the Licensee shall pay the amount due for such Utilities or services whether or not such Utilities or services are actually used by the Licensee. Payment for Utilities and services are due immediately upon receipt of an invoice. The Licensee's liability to pay for Utilities and services during the Term shall subsist notwithstanding the end or earlier termination of the Term. The Licensor may vary any charge for Utilities or services if the cost of such Utilities or services increases so that the Licensee shall at all times pay a fair proportion of the charges incurred.

#### 3.3 Bond

As provided for in the Berth Booking Confirmation the Licensee will pay to the Licensor the Bond on Commencement Date. Such Bond will be refunded to the Licensee subject to any payments outstanding (whether for licence fees, Utility or service fees or other payments, damage or otherwise incurred under this Licence) as soon as practicable after the Licensee has vacated the Berth upon termination of this Licence (whether by time or otherwise).

#### 3.4 GST

The Licensee shall pay to the Licensor or as the Licensor shall direct GST payable by the Licensor in respect of the Licence Fee and other payments payable by the Licensee. GST in respect of the Licence Fee shall be payable on each occasion when any Licence Fee falls due for payment and in respect of any other payment shall be payable upon demand. If the Licensee shall make default in payment of the Licence Fee or other moneys payable hereunder and the Licensor becomes liable to pay additional GST then the Licensee shall upon demand pay to the Licensor the additional tax.

#### 3.5 Default Interest

Without prejudice to the other rights, powers and remedies of the Licensor under this Licence, if the Licence Fee or any part of it is in arrears and unpaid 7 days after the due date for payment (whether or not any formal demand for payment has been made) (and without any formal demand being necessary) such money shall be payable upon demand and shall bear interest at the Default Interest Rate computed on a daily basis from the date payment was due until date of payment in full.

#### 3.6 Costs

The Licensee shall pay the Licensor's solicitor's costs of and incidental to any variation or renewal of this Licence and the Licensor's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Licensor's rights, remedies and powers under this Licence.

### 4. USE OF BERTH

#### 4.1 Nominated vessel

The Licensee shall use the Berth only for the purposes of berthing the Nominated vessel.

#### 4.2 Maximum Dimensions

The Licensee shall at no time allow any part of the Nominated vessel, including any dinghy tender or the like whether fixed on board the Nominated Vessel or moored in the water adjacent to the Nominated Vessel, to extend beyond the maximum physical dimensions of the Berth.

#### 4.3 Lay up Berthage

In the event that the Berth will be used for lay up purposes the Licensee shall use the Berth for lay up purposes only on the basis that provisioning, servicing, loading, unloading, fuelling and maintaining of the Nominated vessel in the Berth is strictly prohibited and that no Utilities or services are to be connected or provided to the Nominated vessel or any other vessel in the Berth from any adjoining seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and other structures connected to adjoining land.

#### 4.4 No Alterations

The Licensee shall not make any alterations or modifications to the Berth or Viaduct Harbour or affix any object or signage thereto without the prior approval in writing from the Licensor which may be given or withheld at the entire discretion of the Licensor.

#### 4.5 Electrical Connections

The Licensee warrants that the Nominated Vessel (when connecting to the shore supply or when applicable) shall at all times hold all appropriate warrants of fitness as may be required pursuant to the Electricity Regulations 2010, or any other applicable Act or Regulation. In the event that the Licensor wishes to see evidence of any applicable warrant of fitness or otherwise the Licensee agrees to immediately provide all evidence of such documents requested by the Licensor. All vessels connecting to shore power must display a current Electrical Warrant of Fitness. Shore power leads must be tested and display a current test tag.

#### 4.6 No Rafting

The Licensee shall not at any time allow or permit the rafting of the Nominated Vessel or any other vessel in the Berth or Viaduct Harbour.

#### 4.7 Maintenance of Vessel

The Licensee shall at all times keep the Nominated Vessel on the Berth in such order, condition and state of repair so as to prevent the Nominated Vessel from becoming a nuisance or causing annoyance or damage to any other person or property. The Licensee shall not carry out any maintenance works on the Nominated Vessel within Viaduct Harbour without the prior written consent of the Licensor and, if such consent is so given, the Licensee will ensure that any maintenance work does not create a danger, impediment, obstacle, nuisance or inconvenience to the other licensees or other users of Viaduct Harbour. The Licensee is responsible for any maintenance workers he employs.

#### 4.8 Mooring Lines

The Licensee shall ensure that mooring lines are of a high quality and of such standard appropriate for the size of the Nominated Vessel and sea conditions and are maintained to the Licensor's satisfaction. If the mooring lines prove to be inadequate by design or lack of maintenance, no liability shall attach to the Licensor and the Licensee shall keep the Licensor indemnified against all claims arising there from.

#### 4.9 No Pollution

The Licensee shall not pollute or permit the pollution of Viaduct Harbour or discharge into Viaduct Harbour or its waters any poisonous, noxious, dangerous or offensive substance or thing and in particular shall comply with the provisions of the Resource Management Act 1991. Without prejudice to the generality of the foregoing, the Licensee will not allow the discharge of any sewage or the emptying of any latrines into

Viaduct Harbour or otherwise dispose of any garbage, oil, fuel, bilge water or other material whatsoever on or in Viaduct Harbour

#### 4.10 Holding Tank

The Licensee shall ensure that the Nominated Vessel is equipped with either a sewage holding tank that can be discharged into a land based pump out facility or a suitable portable sewage holding tank that can be carried to and emptied at a place outside Viaduct Harbour which is designated for such purpose.

#### 4.11 No Animals

The Licensee will not permit any pet or animal of whatever nature to be kept on the Nominated Vessel or at Viaduct Harbour.

#### 4.12 No Swimming

The Licensee shall not engage in any swimming or diving within Viaduct Harbour other than for carrying out underwater maintenance of any vessel in the Berth and in so doing the Licensee will comply with all reasonable directions of the Licensor.

#### 4.13 Refuelling

The Licensee shall not carry out any refuelling of the Nominated Vessel within the Berth or Viaduct Harbour.

#### 4.14 No Noise Nuisance

The Licensee shall ensure that all halyards, lines, ropes, rigging and sheets on the Nominated Vessel in the Berth are secured so that they shall not create any noise. The Licensee shall not create a nuisance through parties or the use of television, radio, musical apparatus or any other form of sound reproduction.

#### 4.15 No Living on Board

The Licensee shall not live on board the Nominated Vessel or vessel at the Berth or permit anyone else to do so.

#### 4.16 Unlawful or Unsafe Activities

The Licensee shall ensure that no unlawful or unsafe activities of any nature are conducted from or in the Nominated Vessel or the Viaduct Harbour.

#### 4.17 Control of Visitors

The Licensee shall ensure that the loading and unloading of passengers, goods and other supplies to and from the Nominated Vessel are undertaken in a safe and orderly manner and without damage, annoyance, nuisance or disturbance to any person or property. Nothing in this clause shall derogate from the restrictions contained in clause 4.3. The Licensee must ensure that all its invitees comply with all the Licensee's obligations under these Terms (where the context permits) and all bylaws.

#### 4.18 Control of Boats in Viaduct Harbour

The Licensee shall not sail or anchor within Viaduct Harbour and will manoeuvre any vessel in accordance with the applicable maritime rules so as to avoid creating a danger, impediment, obstacle or inconvenience to any other users of Viaduct Harbour or obstructing the public right of navigation through Viaduct Harbour.

#### 4.19 Use of Fire Hoses

The Licensee shall not use firefighting equipment supplied by the Licensor for any purpose other than the fighting of fires.

#### 4.20 No Storage

The Licensee shall not permit or allow any property, gear or equipment under the control or direction of the Licensee to be stored on or in Viaduct Harbour including the walkways, fingers or foreshore thereof without the written permission of the Licensor. Nothing in this subclause shall derogate from the provisions of clause 4.3.

#### 4.21 Children

The Licensee shall not permit or allow any child under the age of 12 years that the Licensee is responsible for to enter into Viaduct Harbour unless accompanied by an adult.

#### 4.22 Subsequent Use

In the event that the Licensee wishes to use any Berth following the expiry of the Term, the Licensee agrees that the Licensee shall be bound by the standard terms of berthage as contained in this Agreement or as amended from time to time by the Licensor.

### 5. ASSIGNMENT OR SUBLETTING

The Licensee shall not sublicense or part with possession of the Berth to any person.

The Licensee shall not assign or transfer this Licence without first obtaining the written consent of the Licensor. If the following conditions precedent are fulfilled:

- The Licensee proves to the satisfaction of the Licensor that the proposed assignee is (or in the case of a company the shareholders of the proposed assignee are) respectable, responsible and has the financial resources to meet the Licensee's commitments under this Licence.
- The Licence Fee and other moneys payable have been paid and there is not any subsisting breach of any of the Licensee's covenants.
- In the case of an assignment a deed of covenant in a form approved or prepared by the Licensor is duly executed and delivered to the Licensor.
- In the case of an assignment to a company (other than a listed company) a deed of guarantee in a form approved or prepared by the Licensor is duly executed by the principal shareholders of that company and delivered to the Licensor.
- The Licensee pays the Licensor's proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Licensor concerning any proposed assignee or guarantor.

then the Licensor shall not unreasonably withhold its consent to an assignment of the Licence.

5.3 Where any Licensee is an unlisted company then any change in the legal or beneficial ownership of any part of its shares or issue of new capital whereby in either case there is a change in the effective management or control of the company is deemed to be an assignment of this Licence.

### 6. TEMPORARY VACATION OF BERTH

#### 6.1 Alternative Mooring

The Licensor reserves the right to:

- require the Licensee to vacate the Berth for such period or periods as may be necessary to allow repairs or maintenance to be carried out;
- require the Licensee to vacate the Berth for such period or periods as may be necessary to facilitate the staging of events within Viaduct Harbour;
- use the Berth in cases of emergency; but in those events will use all reasonable endeavours to provide an alternative mooring or berthage within Viaduct Harbour for the use of the Licensee and the Nominated Boat during the period involved.

#### 6.2 Modified Licence

Should the Licensee occupy another Berth as a result of this clause, the terms of this Licence shall be deemed to apply for the duration of that occupation with only such modifications as are absolutely necessary.

- 6.3 No Compensation**  
The Licensor will not be liable to pay any compensation to the Licensee in respect of any vacation of the Berth and temporary relocation pursuant to the provisions of this clause.
- 7. RELOCATION OF BERTH**
- 7.1 Permanent Vacation**  
The Licensor reserves the right to require the Licensee permanently to vacate the Berth so as to permit construction of the overall development scheme in Viaduct Harbour or for the purpose of any alteration to the scheme or layout of berths in Viaduct Harbour.
- 7.2** At any time during the Usage Period, the Licensor is entitled to temporarily or permanently relocate you from your current Berth at Viaduct Harbour to another comparable berth without compensation.
- 8. WATERSPACE AND ACCESS RIGHTS**
- 8.1** This Licence relates only to the allocated waterspace of the Berth. In common with others, the Licensee shall have the right to tie up to the allocated Berth structures including all seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures and shall have the right of access in, and the use of, the common waterways and pathways of Viaduct Harbour subject to such rules as to access and during such hours as the Licensor may from time to time specify for the safety, security and preservation of good order in Viaduct Harbour.
- 9. Health and Safety**
- 9.1** The Licensee must at all times comply with its obligations under any health and safety legislation, regulations, codes and guidelines (including any manufacturer's guidelines for the use of any vessel, tool, machinery, product or other personal property).
- 9.2** The Licensor as a responsible marina operator maintains health and safety policies and guidelines, including procedures for identifying and mitigating any risks and hazards in the Viaduct Harbour. The Licensee must ensure it is familiar with the Licensor's health and safety guidelines including any notices displayed in the Viaduct Harbour. The Licensee must at all times comply with any instructions or directions of the Licensor, its employees, agents or any Health and Safety official or inspector.
- 9.3** The Licensee must at all times ensure so far as is reasonably practicable, that the health and safety of all persons is not put at risk from any activity by the Licensee carried out within Viaduct Harbour or any property brought onto the Viaduct Harbour by the Licensee.
- 9.4** The Licensee must ensure that any person working on the Licensee's vessel is competent and suitably qualified to conduct the work and has received the appropriate training in the safe use of any equipment, tools or machinery including within a marina environment.
- 9.5** The Licensee must as soon as reasonably practicable notify the Licensor in writing of any:  
(a) Health and safety incident, event, injury or illness that occurs within the Viaduct Harbour; or  
(b) Any potential hazard or risk within the Viaduct Harbour.
- 9.6** The Licensor may require the Licensee to file a health and safety report including providing a written statement to the Licensor to assist it to meet any health and safety obligations. Where the Licensor requires the Licensee to provide a health and safety report and/or written statement the Licensee must provide such a statement as soon as reasonably practicable.
- 9.7** If the Licensor observes any activity or property which the Licensor considers is unsafe, illegal or in breach of any health and safety obligation the Licensor may require the activity to cease or the property to be removed immediately. The Licensor reserves the right in its absolute discretion to take any of the following actions for any breach of any health and safety obligation set out in this Licence:  
(a) Issue warning notices;  
(b) Remove any person from the Viaduct Harbour;  
(c) Refuse any person entry to the Viaduct Harbour;  
(d) Suspend a person's right of access for a specified period;  
(e) Terminate this Licence; or  
(f) Take such other action as it considers appropriate.
- 9.8** The Licensee agrees to indemnify the Licensor (including as to solicitor and client costs) for any breach of a health and safety obligation by the Licensee.
- 10. INDEMNITY**
- 10.1 Indemnity**  
The Licensee indemnifies the Licensor against all losses, damages, expenses and claims incurred by it that result from, or are caused or contributed to by, the Licensee's use of the Berth, the Nominated Vessel and/or Viaduct Harbour, and/or any of the Licensee or the Licensee's invitee's acts or omissions (in each case including breaches of these Terms and the Bylaws).
- 10.2 Third Party**  
The Licensor shall not be liable and accepts no responsibility for, loss or damage to boats, craft, third party property or persons using the same within the confines of, or near to Viaduct Harbour, nor for the adequacy or otherwise of Viaduct Harbour or of the Berth or any other part of the facilities of Viaduct Harbour and the Licensor shall not be liable to the Licensee or any person for any loss or damage to property, or death or personal injury incurred or suffered within Viaduct Harbour however the same occurs and whether or not such happening is attributable to the acts or defaults of the Licensor, or its servants or agents or contractors or otherwise howsoever.
- 10.3 Coastal Permit**  
The Licensee, in addition, shall indemnify the Licensor as holder of a coastal permit or any use and occupation resource consent against any loss, expense, legal 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 Viaduct Harbour by the Licensee.
- 10.4 Warranty/representation**  
The Licensee warrant and represent to the Licensor that the Nominated Vessel is seaworthy and in sound working order, that the Licensee is fit to operate the Nominated Vessel safely at all times, and that the Nominated Vessel will at all relevant times be secured properly and safely moored to the Berth.
- 11. INSURANCE**
- 11.1 Marine**  
The Licensee shall at all times keep the Nominated Vessel and any other property owned or brought into Viaduct Harbour by the Licensee and/or invitees, fully insured whilst in the confines of, or near to, Viaduct Harbour against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, act of God and all other usual maritime risks. Without limiting the foregoing the Licensee warrants that the insurance policy referred to in the Berth Booking Request satisfies the aforesaid obligation and that such policy is current.
- 11.2 Public Liability**  
The Licensee shall also effect public liability insurance in the sum set out in the Berth Booking Confirmation against death and/or bodily injury to persons and loss or damage to property of others (including the Licensee) arising out of the use of water craft and/or use or occupation of Viaduct Harbour.
- 11.3 Currency**  
The Licensee shall provide the Licensor with a certificate of currency for such policies and if requested by the Licensor, provide the Licensor with copies of the policies effected pursuant to this clause.
- 12. RISK**
- 12.1 No Representation by Licensor**  
The Licensee agrees that the Licensee has examined the Berth and relies on its own judgment in accepting the use of it and does not rely on statements or representations made by the Licensor or anyone on its behalf.
- 12.2 Suitability**  
The Licensee acknowledges that the Licensor gives no warranty that the Berth will be suitable for the mooring of the Nominated Vessel due to the wave and swell action and disturbance resulting from the exposed nature of the Berth or created by passing vessels. Any vessel moored at the Berth at any time is moored entirely at the risk of the Licensee.
- 12.3 No Liability of Licensor**  
The Licensor will not whether directly or vicariously nor will any servant, agent or employee of the Licensor be liable in negligence or otherwise for any damage to or theft or loss of the Nominated Vessel or any vessel or any tackle, goods, gear, machinery or other property thereon whilst at the Berth or in or around Viaduct Harbour no matter how or from what cause such loss or damage may arise or occur including (but without limiting the generality of the foregoing) loss or damage caused or contributed to by the use or removal of the vessel by any person not authorised by the Licensee to so use or remove it whether such use or removal is permitted by the Licensor or not.
- 12.4 Damage to Structures**  
The Licensee agrees that the Licensee is responsible for all damage to persons using Viaduct Harbour and to all seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures or property of the Licensor arising from any act or omission, neglect or default by the Licensee or the Licensee's agents, servants, contractors, employees and invitees.
- 12.5 Occupancy at Licensee's Risk**  
Without limiting the generality of the foregoing the Licensee acknowledges and agrees that:  
(a) the Licensor gives no warranty whatsoever to the Licensee as to the condition of the Berth and any seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and all other structures and any cranes, hoists, mooring gear and other facilities and the Licensee agrees that the Licensee uses the facilities provided for berthing, storage, mooring solely at the Licensee's own risk.  
(b) the Licensor is not liable for the care or protection of the Nominated Vessel, its fittings or contents or any other vessel, its fittings or contents.  
(c) the Licensor is not responsible for injuries to persons or property occurring upon or in the vicinity of Viaduct Harbour and will not be responsible for the condition of any seawalls, piers, jetties, walkways, pontoons, piles, fingers, gangways, ramps and any other structures within Viaduct Harbour.  
(d) the Licensee will occupy and use the Berth at the Licensee's risk and shall release the Licensor (to full extent permitted by law) from all claims and demands of any kind, and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about Viaduct Harbour.
- 13. DEFAULT**
- 13.1 Termination**  
If at any time during the Term:  
(a) the Licence Fee or any other money payable by the Licensee under this Licence is in arrears for the space of 7 days after it becomes due, although no formal demand for payment has been made;  
(b) the Licensee fails to comply with any covenant, obligation or rule on the Licensee's part herein expressed or implied under this Licence and the Licensee continues to be in breach of any such obligation for 7 days after the date written notice has been given by the Licensor to the Licensee of the breach requiring the breach to be remedied;  
(c) execution is levied against any of the assets of the Licensee; or  
(d) the Licensee either:  
(i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation first approved in writing by the Licensor);  
(ii) is wound up or dissolved;  
(iii) makes or attempts to make any composition, assignment or other arrangement with, or for the benefit of the Licensee's creditors or any class thereof;  
(iv) assigns, transfers, sublicences, mortgages, charges or otherwise disposes of the Licensee's interest in this Licence;  
(v) a receiver or manager of any of its assets is appointed who does not carry on the Licensee's business in the same manner; or  
(e) the Licensee is subject to any action for distress or execution against any of the Licensee's property;  
then notwithstanding any prior waiver or failure to take action by the Licensor or indulgence granted by the Licensor to the Licensee in respect of any such matter or default whether past or continuing, the Licensor may forthwith terminate this Licence.
- 13.2 Removal on Termination**  
The Licensee hereby irrevocably appoints the Licensor to be its agent to remove, store and dispose of any vessel, boat, craft or other property left by the Licensee in the Berth for more than 7 days after the date written notice has been given by the Licensor to the Licensee of the termination of this Licence (whether by effluxion of time or otherwise) on any terms that the Licensor thinks fit and without the Licensor being liable to the Licensee save to account for the net proceeds of sale less the costs of any custodian employed to take possession, removal, storage, payment of any arrears of the Licence Fee, making good any breach of any covenant, obligation or rule under this Licence and any other expenses reasonably incurred by the Licensor. The Licensee hereby agrees to indemnify the Licensor against any liability incurred by the Licensor to any third party whose property shall have been sold by the Licensor in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to the Licensee.

#### **14. ACKNOWLEDGMENT BY LICENSEE**

##### **14.1 The Licensee acknowledges that:**

- (a) Ports of Auckland Limited and Auckland Council hold coastal permits relating to Viaduct Harbour;
- (b) should the coastal permit be surrendered, revoked or terminated for any reason, this Licence shall immediately terminate and the Licensee shall have no right or claim against the Licensor or the Manager or their successors, whatsoever;
- (c) where the Licensor surrenders that part of its coastal permit relating to the Berth, the Manager shall take reasonable steps, but without creating any legal obligation on the Licensor or the Manager, to procure at its sole expense, the Auckland Council as the holder of a coastal permit relating to the Viaduct Harbour to grant to the Licensee a licence for the Berth for the balance of the term of this Licence then unexpired and at the licence fee and upon such other terms and conditions as the Licensor shall be granting for licences of berths of similar type and dimensions within the Viaduct Harbour at the time;
- (d) the Licensor has not represented to the Licensee that the Berth or Viaduct Harbour is adequate for the Licensee's intended use;
- (e) nothing in, or arising from, these Terms, or the fact of the Licensee's hire of the Berth, shall constitute the Licensor as a bailor of the Nominated Vessel.

#### **15. COMPLIANCE WITH ACTS, REGULATIONS, BY-LAWS AND INSTRUCTIONS**

- 15.1** The Licensee shall, in the use of the Berth and the Nominated Vessel, comply with all statutes, ordinances, regulations, by-laws, planning decisions and associated conditions, or other lawful requirements affecting or relating to the Berth and the Nominated Boat or the use or occupation of the Berth and the Nominated Vessel and shall also comply with the provisions of all licences, requisitions, notices or orders made or given by any authority having jurisdiction in respect of the Berth and the Nominated Vessel or the use and occupation of the Berth and the Nominated Vessel and shall keep the Licensor indemnified in respect of any non-compliance by the Licensee with the Licensee's obligations under this subclause.
- 15.2** The Licensee shall also comply with any special instructions from time to time issued by the Licensor or any of its agents for the efficient, safe and harmonious use of Viaduct Harbour and any of its facilities.
- 15.3** The Licensee shall, in its use of the common waterways, within Viaduct Harbour comply with the provisions of the Ministry of Transport General Harbour Regulations, Nautical and Miscellaneous, the International Collision Regulations, Harbour By-laws and any other provisions passed in substitution for, or in succession to, the above or Acts and Regulations passed after the Commencement Date relating to the use of the common waterways.
- 15.4** The Licensee shall at all times when navigating within Viaduct Harbour monitor VHF channel 73 and communicate its intentions to Viaduct Control

#### **16. NOTICES**

##### **16.1 Change of Address**

The Licensee shall at all times advise the Licensor in writing of any change to the Licensee's current address and contact phone numbers from that stated in the Berth Booking Request or alternatively the name, contact, phone number 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, this Licence and in the event of the appointment of an agent the Licensor shall be entitled to deal with that agent in all respects as if the agent were the Licensee and the Licensee shall be bound accordingly. In the event that there is more than one Licensee or the Licensee is a company or trust, then all Licensees shall appoint either one of their number or some other person to be their agent and in default of any such appointment the first named Licensee shall be deemed to be the agent of all the Licensees.

##### **16.2 Service**

Wherever in this Licence:

- (a) the Licensor is required to give notice to or communicate in any way with, the Licensee, such notice or communication shall for all purposes be deemed sufficiently made, given, served or communicated if given in writing by the Licensor and either delivered to and affixed upon the Nominated Vessel or posted to the Licensee or the Licensee's agent at the last address or emailed to the Licensee at the Licensee's email address recorded with the Licensor and any notification so posted shall be deemed to have been delivered and received in the ordinary course of post;
- (b) any notice or request or other communication with the Licensor is called for, the same shall be made in writing to the Licensor's address and if not so made shall be deemed of no effect whatever.

#### **17. REGULATIONS**

- 17.1** The Licensor is entitled to make any regulations or issue any directions which it considers are desirable for the better management, navigation, safety, cleanliness or harmonious use of Viaduct Harbour
- 17.2** Any regulations made under these provisions will be:
  - (a) notified to the Licensee in writing in the manner set out in clause 16.
  - (b) binding upon the Licensee (once notice has been validly given) in the same way as they would have been if fully set out in this Licence.
- 17.3** The Licensor will not be liable for failing to enforce any of the regulations.

#### **18. MANAGER**

- 18.1** The Licensee acknowledges that the Licensor has appointed the Manager to act on its behalf as its agent in all matters in relation to the operation of those parts of Viaduct Harbour in respect of which it holds a coastal permit.
- 18.2** Any direction, notice or other communication given by the Manager or any officer, servant, agent or employee of the Manager shall be binding and have the same full force and effect as if it had been made, given or taken by the Licensor.
- 18.3** The Licensor or its duly appointed Manager or agent may, without reason, refuse to hire a berth to any person.

#### **19. PRIVACY**

- 19.1** The Licensee authorises the Licensor to seek and obtain any relevant information about the Licensee from any person (including debt collection agencies) and to use any information about the Licensee held by the Licensor for purposes associated with the Licensee's use of the Berth or Viaduct Harbour.
- 19.2** The Licensee authorises the Licensor to send the Licensee Viaduct Harbour newsletters and other promotional and marketing material from time to time.