

MARSDEN COVE HAUL-OUT AND HARDSTAND CONTRACT

The Company agrees to provide the Services to the Customer on the terms set out in the following Schedule of Particulars ("Key Terms"), the Boat Maintenance Facility Terms and Conditions ("Terms and Conditions"), the Boat Maintenance Facility Rules ("Boat Maintenance Facility Rules") and any other documents expressly referred to in this contract (together the "Contract"). Any capitalised terms in the Key Terms have the meaning set out in the definitions section of the Terms and Conditions.

KEY TERMS

1. CUSTOMER AND VESSEL DETAILS

CUSTOMER DETAILS	VESSEL DETAILS
Name: _____	Name: _____
Address: (Physical and postal) _____ _____ _____	Length Overall: _____
Mobile: _____	Beam: _____
Business: _____	Draft: _____
Email: _____	Type: _____
	Design: _____
	Construction: _____
	Tonnage*: _____

** Laden weight - must not exceed 80 tonnes*

ALTERNATE CONTACT DETAILS FOR NOTICES	
<small>(See clause 17.3 of the Terms and Conditions)</small>	
Name: _____	
Address: (Physical and Postal) _____	
Mobile: _____	Email: _____

2. TERM (SEE CLAUSE 1 OF THE TERMS AND CONDITIONS)

Commencement Date (Haul-Out)	Departure / Expiry Date (Relaunch)	OR	Ongoing** <input type="checkbox"/>
/ /	/ /		Long Term Storage - <i>Approximate Days on Hardstand</i> -----

** 20 days' notice of termination required to terminate an ongoing term.

3. INSURANCE (SEE CLAUSE 12.3 OF THE TERMS AND CONDITIONS)

POLICY TYPE: PUBLIC LIABILITY		POLICY TYPE: HULL & MACHINERY	
Policy Expiry Date:	_____	Policy Expiry Date:	_____
Insurer:	_____	Insurer:	_____
Certificate of Currency:	_____	Certificate of Currency:	_____
<input type="checkbox"/> Copy of policies must be provided prior to Service commencing			
<input type="checkbox"/> Policies must include Third Party Public Liability Insurance for a minimum sum of NZ \$5,000,000			

4. VESSEL LIFTING AND HARDSTAND SERVICES TO BE PROVIDED BY COMPANY AND ASSOCIATED RATES (SEE CLAUSE 3 OF THE TERMS AND CONDITIONS)

DESCRIPTION
Waterblast Required? <input type="checkbox"/> Light Wash? <input type="checkbox"/> Hard Wash? <input type="checkbox"/> No Wash? <input type="checkbox"/>

5. LIVE ABOARD (SEE CLAUSE 3.5 OF THE TERMS AND CONDITIONS)

Do you intend to live aboard the Boat while in the Facility (fee applies)? <input type="checkbox"/> Yes Approximate number of days? <input type="checkbox"/> No
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6. CONTRACTOR WORKS (SEE CLAUSE 5 OF THE TERMS AND CONDITIONS)

Please tick ✓ if any of the following contractor works are to be undertaken:		
<input type="checkbox"/> Wet Sanding	<input type="checkbox"/> Tent Use	<input type="checkbox"/> Mast Removal
<input type="checkbox"/> Hot Work/Grinding	<input type="checkbox"/> Rudder Removal	
<input type="checkbox"/> Painting	<input type="checkbox"/> Antifouling	
<input type="checkbox"/> Spray Painting	<input type="checkbox"/> Outside Contractors	

If you have ticked any of the above Contractor Works you agree to immediately notify the Company if the scope of the Contractor Works changes or extends to include additional Contractor Works.

7. OTHER

Under waterline external protrusions? (Boatowner is responsible for providing details) Details of work to be carried out? Power Requirements: Do you require power? <input type="checkbox"/> Yes <input type="checkbox"/> No Provide Amps: Do you have an EWOFF? (Electrical Warrant of Fitness for Shore Power) <input type="checkbox"/> Yes <input type="checkbox"/> No Do you have a Tagged/Tested Lead? <input type="checkbox"/> Yes <input type="checkbox"/> No Do you have a TIE? (Temporary Import Entry) <input type="checkbox"/> Yes <input type="checkbox"/> No (Copy Required for GST Exemption to Apply) Other Information:
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TERMS AND CONDITIONS

I acknowledge I have read and/or received a copy of the Terms and Conditions and the Boat Maintenance Facility Rules and agree to be bound by and comply with these at all times in the capacity as Customer.

Customer Signature	Date	
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By ticking this box, you consent to photos or videos of your vessel being used for marketing purposes, including social media.

Additional Comments:

OFFICE USE ONLY: Vessel Waterblasted Yes No Extra Fouling Charge Yes No



(a division of Marsden Maritime Holdings Ltd)

BOAT MAINTENANCE FACILITY TERMS AND CONDITIONS

1. TERM

1.1 This Contract shall commence on the Commencement Date and end on the earlier of:

- (a) the Expiry Date;
- (b) if the Term is described as "Ongoing" in the Key Terms, the date that it is terminated by either party giving the other party 20 days' notice; and
- (c) the date that it is terminated in accordance with its terms.

2. LICENCE

2.1 Subject to the Company's rights under this Contract, the Customer has a non-transferable licence to:

- (a) occupy the Hardstand during the relevant agreed periods solely in connection with providing the relevant Services and the performance of Contractor Works in respect of the Boat; and
- (b) access and use the Facility as permitted by the Company from time to time.

2.2 The Customer acknowledges and agrees that it has no right of exclusive occupation or use of any part of the Facility at any time and the licence granted under this Contract is subject always to the Company's right to enter the Facility at any time.

2.3 The Customer and its Representatives must not, and the Customer shall procure that any Contractor and its Representatives do not, enter or access any parts of the Facility that are designated to, or occupied by, another Customer of the Facility or any other areas within the Facility designated by the Company as a restricted area.

2.4 The Company makes no representation or warranty regarding the availability, adequacy, safety or suitability of the Facility for any use or intended use.

3. COMPANY SERVICES

3.1 Where the Company performs Services in relation to the Boat, it will do so in accordance with the terms of this Contract and will:

- (a) act with reasonable care, skill and diligence;
- (b) ensure that all personnel who provide the Services are suitably trained and hold all licences required for the relevant Services (if any); and
- (c) comply with all applicable laws, and obtain, maintain and comply with all licences, approvals and permits required by law in order for it to provide the Services (if any).

3.2 The Company shall use reasonable endeavours to perform the Services in accordance with the dates and timelines set out in the Key Terms, but shall not be liable to the Customer or to any other person for any delay or any failure to do so.

3.3 The Company will promptly notify the Customer of any changes to the Boat Maintenance Facility Rules or any Company Information.

3.4 After the Services have been performed or this Contract has been terminated or has expired, the Company shall be entitled to deliver the Boat to, or in accordance with the instructions of, the Customer or any person expressly authorised by the Customer.

3.5 The Company may grant the Customer (and any pets (if applicable)) the right to Live Aboard the Boat while it is in the Facility, provided that the Manager has the sole discretion whether or not to accept any application by the Customer to do so. "Live Aboard" for the purposes of these Terms and Conditions means sleeping overnight on the Boat for any number of nights. Without limiting the foregoing, the Company will only approve applications by the Customer to Live Aboard during the period that Contractor Works are being undertaken on the Boat and will not permit any person (or their pets (if applicable)) to Live Aboard for more than 60 consecutive nights. An additional Charge will be payable in relation to any Live Aboard Services provided by the Company in accordance with Item 5 of the Key Terms.

4. TERMS AND CONDITIONS OF USE

4.1 The Customer will:

- (a) be responsible for safely delivering the Boat to the Facility and receiving the Boat from the Facility;
- (b) ensure that the Company is made fully aware of all features of the Boat (including underwater or structural features) that may be relevant to the placement of stops and the operation of the Boatlifter, or the positioning and placement of any equipment used to stand the Boat on the Hardstand.
- (c) provide the Company with all other information required to ensure the Company is able to safely and securely perform any Services having regard to (among other things) the specific nature and structure of the Boat;
- (d) confirm to the Company the laden weight of the Boat and warrants that the information contained in the Key Terms in relation to the laden weight of the Boat is correct. In circumstances where the laden weight of the Boat is in excess of 70 tonnes, the Customer will on request by the Company, provide the Company with a certificate of weight issued by an independent third party acceptable to the Company (acting reasonably).

- (e) promptly respond to all requests for information made by the Company in relation to the Services and the Contractor Works;
- (f) promptly comply with all requirements and directions of the Company in relation to the provision of the Services and the performance of any Contractor Works; and
- (g) provide reasonable cooperation and access to the Boat to enable the Company to verify the Customer's (and any Contractor's) compliance with the terms of this Contract.

4.2 The Customer will not sell or otherwise dispose of (or permit the sale or disposal of) the Boat during the Term without the prior written approval of the Company, which shall not be unreasonably withheld or delayed, provided that:

- (a) all Charges owed to the Company are paid in full prior to the sale or disposal date; and
- (b) the new owner undertakes to be bound by the terms of this Contract or a new Contract is put in place between the Company and the new owner.

If the Boat is sold or disposed of during the Term without the approval of the Company, the Customer shall remain liable for all Charges and this Contract shall continue to apply unless and until all Charges owed to the Company at the relevant time are paid in full and the new owner has undertaken to be bound by the terms of this Contract or entered into a new Contract with the Company in relation to the Boat.

4.3 The Customer must (and must ensure that its Representatives and Contractors and the Contractor's Representatives) strictly comply with the Boat Maintenance Facility Rules and all other terms of this Contract (and any amendment to the Boat Maintenance Facility Rules and/or this Contract).

4.4 The Customer shall comply with:

- (a) all applicable laws; and
- (b) all relevant requirements of the Company (including as specified in the Company Information) in connection with the Services and any Additional Services. The Company may require the Customer to pay the Additional Service Costs to the Company.

4.5 The Customer warrants that any information it provides to the Company in connection with this Contract will be true, accurate and complete and acknowledges and agrees that all such information will be relied on by the Company.

4.6 The Customer shall and will procure that its Representatives, any Contractor and the Contractor's Representatives:

- (a) At all times keep the area of the Hardstand immediately adjacent to and surrounding the Boat in a clean and tidy condition, and shall not store supplies and materials, accessories or debris on that area.
- (b) Deposit all garbage in the receptacles provided, provided that where the amount of waste to be removed from and around the Boat is considered by the Company, in its sole discretion, to be excessive, then the removal of this waste shall be at the Customer's expense.
- (c) At all times ensure that gas bottles are shut off while work is being carried out on the Boat on the Hardstand or anywhere else within the Facility.

4.7 The Customer shall not and will procure that its Representatives, any Contractor and the Contractor's Representatives do not:

- (a) Move or attempt to move or adjust any cradle, boat stand or any other means of vessel support. **THIS IS STRICTLY FORBIDDEN!**
- (b) Make or permit any noise or disturbance or perform any act which in the opinion of the Company, in its sole discretion may be an annoyance or cause a nuisance to any other person or body in or around any part of the Facility.
- (c) undertake any activity on or in relation to the Facility that encroaches on, or adversely affects either the Company, the Facility, or any owner or occupier of land adjacent to, or nearby, the Facility;
- (d) Carry out any work on the Boat or on the Hardstand (including Contractor Works) between the hours of 6.00pm and 7.00am, unless the Company has provided prior written consent for this.
- (e) Carry out any spray painting work without the prior written consent of the Company, and any such spray painting work shall be undertaken only with adequate covers and drop sheets for the protection of other vessels and the Hardstand.
- (f) Undertake or allow to be undertaken, dry sandblasting of the Boat on the Hardstand.
- (g) Undertake any dry sanding without the use of approved vacuum equipment.
- (h) Undertake any wet sanding unless suitable drop sheets and absorbent containment booms or similar, are used to collect all residue.
- (i) Carry out any welding or grinding without firstly obtaining the express written approval of the Company, which may be withheld at the Company's absolute discretion.
- (j) Refuel the Boat whilst it is located on the Hardstand.
- (k) Create any hazard for any other person on the Hardstand or anywhere else within the Facility.
- (l) Allow any work or activity to be carried out or undertaken on the Boat or on the Hardstand in contravention of any statute including (but not limited to) the provisions of the Resource Management Act 1991 and the HSWA.

5. CONTRACTOR WORKS

5.1 Contractor Works may be performed on the Boat by a Contractor while the Boat is located on the Hardstand. Without limiting anything else in this Contract, the Customer is liable to the Company and to all other users of the Facility for the acts and omissions of all its Contractors.

5.2 No Contractor may perform any Contractor Works unless it is and remains an Approved Contractor. The Company may grant or withhold or revoke its approval of a Contractor for the purposes of this Contract, or may impose conditions on such approval, in its absolute discretion. A list of Approved Contractors is available on request from the Company.

5.3 Without limiting clause 5.2, the Customer acknowledges that all Contractors must refresh their induction training as a

Company Approved Contractor no less than every 12 months and their status as an Approved Contractor is conditional on such induction training being undertaken in accordance with this clause 5.3.

- 5.4 Before any Contractor Works are performed, the Customer must provide the Company with a "Contractor Works Plan", which sets out:
- (a) a description of the Contractor Works to be performed and the name and contact details of all Contractors that will perform each aspect of the Contractor Works;
 - (b) the proposed timeframe for the Contractor Works to be completed;
 - (c) the nature of any identifiable health and safety risks and how those will be mitigated;
 - (d) a copy of the Customer's health and safety plans and a description of how the Customer intends to otherwise comply with its obligations set out in clause 7 (regarding health and safety);
 - (e) the nature of any specific identifiable nuisances or hazards that may arise in the course of performing the Contractor Works (including noise or the use of Hazardous Substances); and
 - (f) any other matter reasonably requested by the Company from time to time (whether before or after the Contractor Works Plan is provided to the Company).
- 5.5 The Customer shall ensure that each Contractor is aware of the Customer's obligations under this Contract and that each Contractor does nothing (or does not fail to do anything) that would cause the Customer to be in breach of its obligations under this Contract, or that would cause the Company to be in breach of the terms of any licence, consent or permit held by the Company or any other law.
- 5.6 The Customer shall keep the Company informed as to the progress of the Contractor Works and notify the Company as soon as possible of any changes to the schedule of Services (including the duration of any occupation or a change to a scheduled use of the Boatlifter).

6. CHARGES AND PAYMENTS:

- 6.1 The Customer must meet all the Company's reasonable procedural and administrative requirements in relation to payments, which include providing the Company with information required by the Company and completing direct debit authorities (in a form acceptable to the Company) in relation to the payment by the Customer of Charges due to the Company by the Customer under this Contract. The Customer shall not withdraw any direct debit instruction unless the Company is in breach of this Contract, and not without first providing the Company with at least 20 days' notice of its intention to withdraw its instruction, together with detailed reasons for why the Customer asserts the Company is in breach of this Contract.
- 6.2 The Company shall be entitled to **charge the Customer a fee of \$250** in the event of the Customer failing to keep an appointment for the use of the Boatlifter.
- 6.3 The Charges shall be calculated on the basis of the Rates for Services provided (or to be provided).
- 6.4 The Charges may be varied from time to time by the Company posting updated Rates on the marsdencovemarina.co.nz website, provided that no increase in Rates during the Term shall be effective without the Company first giving the Customer at least 14 days written notice of the updated Rates.
- 6.5 Unless stated otherwise, all Rates and Charges are expressed on a GST exclusive basis and the Customer shall pay GST in addition to the Rates and Charges.
- 6.6 The Customer shall duly and punctually pay all Charges for Services provided by the Company when required by the Company, and in any event, before the Boat is removed from the Hardstand.
- 6.7 The Customer must pay the Company the Charges in full, by direct debit, or such other payment method approved by the Company within 3 days of receipt of a valid tax invoice issued the Company. If the direct debit fails for any reason, the Company reserves the right to require the Customer to immediately electronically transfer or deposit any Charges due to the Company into the Company's nominated bank account. All Charges must be paid in full, in cleared funds and without deduction, counterclaim, set-off or withholding on any account whatsoever, and regardless of any dispute between the Company and the Customer.
- 6.8 The Customer must pre-pay the Company for any Services booked with less than 3 days' notice. To avoid doubt, unless and until the Company has received full payment of all Charges, the Company is not required to remove a Boat from the Hardstand and return it to the water.
- 6.9 The Company may (without prejudice to its other rights and remedies) require that the Customer pay default interest at the rate of 1.5% per month (or part month) on all sums due and unpaid from the date the amount became due up until the date of payment. Default interest shall be payable on a compounding basis.
- 6.10 Without limiting clauses 6.12 to 6.14 (inclusive) or clause 14 (termination), if any Charges are not paid by the due date for payment, the Company shall be entitled to suspend any Services not yet provided.
- 6.11 The Customer agrees to pay the Additional Service Costs to the Company upon demand by the Company. Payment of the Additional Service Costs shall be due on the earlier of the Expiry Date or on the 20th of the month following the date of the relevant invoice.
- 6.12 If any moneys are owing under this Contract by the Customer to the Company the Company shall be entitled to seize the Boat immediately on providing written notice to the Customer and shall, from the date of such seizure, have a general lien upon, and the right to retain and have exclusive possession of the Boat until all Charges payable by the Customer to the Company under this Contract (including any costs incurred by the Company in recovering the unpaid amount or exercising its rights under this lien) have been paid in full.
- 6.13 For so long as the Company retains the Boat under clause 6.12, the Company may restrict access to the Boat in its sole and absolute discretion (including restricting access for the Customer, its Representatives or any Contractor), and the Company

will not be liable to any person in respect of such restrictions.

6.14 If any Charges remain unpaid for a period of 14 days after the Company has given notice to the Customer of seizure of the Boat under clause 6.12, the Company shall be entitled without further notice to do one or both of the following:

- (a) remove the Boat from the Facility and store it at another location (and the Company shall not be liable to any person for any damage caused to the Boat during such removal provided that the Company has used reasonable skill and care in relocating the Boat); and/or
- (b) sell the Boat by auction or otherwise, together with any chattels situated on or in the Boat, and the proceeds of such sales shall be applied:
 - (i) first towards the expense of seizure and sale (including any costs incurred in recovering unpaid Charges or exercising its rights under the lien and of any removal and relocation of the Boat);
 - (ii) secondly, the payment of all Charges due to the Company by the Customer;
 - (iii) lastly, payment of the balance (if any) to the Customer.

If there is a deficiency of funds from any sale pursuant to this clause 6.14, the Company may proceed to recover such deficiency from the Customer via summary proceedings.

6.15 The Customer agrees to indemnify and hold harmless the Company from all claims, suits and demands made by any person or entity in respect of the Boat or any chattels seized and sold pursuant to this Contract.

6.16 The Customer acknowledges and agrees that the Company's rights under clauses 6.12 to 6.14 (inclusive) constitute a security interest in the Boat for the purposes of the Personal Property Securities Act 1999 ("PPSA"). The Customer will do all things reasonably requested by the Company for the Company to perfect its security interest in the Boat. The Customer waives any right it may have to receive a copy of the financing statement, verification statement or financing change statement relating to the Boat (as these terms are defined in the PPSA).

7. HEALTH AND SAFETY

7.1 It is the Customer's responsibility to ensure, so far as reasonably practicable, the health and safety of:

- (a) workers who work for the Customer, while the workers are at work at the Facility in the Customer's business or undertaking arising from or related to this Contract;
- (b) workers whose activities in carrying out work are influenced or directed by the Customer, while the workers are at the Facility and are carrying out the work arising from or related to this Contract; and
- (c) other persons who are at the Facility for a lawful purpose,

and ensure that such persons are not put at risk from the Customer's conduct arising or related to the terms of this Contract.

7.2 To comply with this clause 7, the Customer will comply with the Company Information and the requirements of the HSWA, including any regulations, codes and guidance made under the HSWA.

7.3 The Customer will also, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other PCBUs (as defined in the HSWA) who have a duty in relation to the same matter.

7.4 The Customer recognises that the Company does not monitor the activities and/or work conducted on the Boat by the Customer, and is relying on the Customer's expertise in respect of the health and safety aspects of the activities and/or work conducted on the Boat. Although the Company will comply with its obligations under the HSWA, it is relying on this clause 7 and the Customer's reporting obligations to ensure the health and safety of workers and other persons. In recognition of this, the Customer will apply best industry practice to ensure the safety of all workers and other persons at all times. As part of the consultation, co-operation and co-ordination between the Customer and the Company, the Company will advise the Customer of all known risks to health and safety of which it is aware and which it is not reasonably practicable to eliminate. The Customer will advise what risk control measures it has or will implement to minimise any risks to health and safety, and review and revise these measures as necessary to ensure a healthy and safe workplace is maintained.

7.5 The Company has the right to inspect the Customer's documentation related to health and safety in connection with this Contract, monitor the Customer's activities and carry out a safety audit from time to time during the Term.

7.6 The Customer will record and report incidents, accidents and near misses, analyse injury and near miss data and notify WorkSafe New Zealand if an accident is deemed as a notifiable incident under the HSWA within the applicable notification timeframe.

7.7 The Customer indemnifies and holds harmless the Company in respect of all and any actions, proceedings, claims, suits or demands against, or Losses incurred by, the Company arising directly or indirectly from a breach of the HSWA by the Customer, to the extent permissible under the law.

8. RELOCATION

8.1 Nothing in this Contract restricts the Company from and the Company reserves the right to relocate the Boat to any area of the Hardstand on either a temporary or permanent basis.

8.2 The Company will not be liable to pay any compensation to the Customer in respect of any vacation or relocation pursuant to this clause 8.

8.3 Without limiting the foregoing, the Company may at any time require the Customer, any Contractor and all the Customer's Representatives to temporarily vacate the Hardstand, the Boat, and any other area within the Facility if it considers it reasonable to do so to ensure the safety and security of persons and property (including, by way of example only, where the Boatlifter is in operation for another vessel in close proximity to the Boat).

8.4 The Company (in its sole discretion) reserves the right to either terminate this Contract, or impose and/or change conditions in respect of the Customer's right to use the Hardstand, if:

- (a) the Facility (or any part of it) becomes unsuitable or unsafe for use; or
- (b) reasonably necessary for any other reason in the Company's opinion.

8.5 If the Company terminates this Contract under clause 8.4, the Company will refund to the Customer a proportion of any moneys paid in advance. The amount of any such refund will be calculated by the Company (acting reasonably, and having regard to the Services actually provided and the period of use or access that the Customer had to the Hardstand prior to the termination) and the Customer agrees to abide by the Company's decision.

8.6 No compensation shall be payable by the Company in respect of any termination of this Agreement, or the imposition or change of conditions in connection with use of the Hardstand under clause 8.4.

9. HAZARDOUS SUBSTANCES

9.1 Except with the Company's prior written consent, the Customer must not use or allow the Facility to be used for the use, transfer, handling, movement, carriage, placement or storage of any Hazardous Substance.

9.2 The Customer must comply with all applicable laws, industry standards (including any matter referred to in the Company Information) for the use, transfer, handling, movement, carriage, placement or storage of Hazardous Substances.

10. ENVIRONMENTAL OBLIGATIONS

10.1 The Customer must not cause or permit any Contamination to the Facility or to any surrounding area.

10.2 Without limiting the Company's rights and remedies in relation to any Contamination, the Customer must immediately upon becoming aware of any Contamination give written notice to the Company with particulars of each such occurrence and then:

- (a) promptly provide such further information as the Company may reasonably require; and
- (b) upon lawful request from the Company or a competent authority at the Customer's own expense clean-up and rectify any Contamination; and
- (c) comply with any lawful direction issued by the Company or a competent authority in connection with any Contamination and its consequences, including as to the time to carry out any such direction.

10.3 The Customer acknowledges that activities within the Facility may produce noise, visual and other effects which are expected and accepted in the Facility but which could cause complaints and objections if the activities took place in a residential area or non-marine environment. The Customer shall not complain or object (as an affected occupier or landowner or otherwise) to any authority in respect of any activity that is permitted under the District Plan, authorised by a resource consent, or permitted under an existing use right.

11. COMPANY'S RIGHT OF ACCESS

11.1 The Company may at all reasonable times enter and, if necessary, remain in the Hardstand to:

- (a) examine and view the condition and state of repair of the Boatlifter and or the Facility (as applicable);
- (b) carry out any alterations, repairs, redecoration or cleaning of the Facility that the Company may think necessary or desirable to do, or which the Company may be required to do to comply with any legal requirement;
- (c) carry out structural work, or other work to the Facility or to any adjoining premises, or work in respect of installing or carrying out alterations, repairs or maintenance on other systems or services in the Facility;
- (d) exercise its rights under this Contract; and
- (e) otherwise verify the Customer's (and its Contractors') compliance with this Contract.

12. RISK AND INSURANCE

12.1 The Customer acknowledges and agrees that:

- (a) This Contract is not in any way intended by either party to create a bailment, and the Customer understands that the Company accepts no responsibility for the care or protection of the Boat or its contents; and
- (b) the Boat (and all chattels in, on or fixed to the Boat or stored at the Facility) shall not be deemed to be in the possession or custody of the Company unless and until the Company exercises its rights of seizure and sale under clauses 6.12 to 6.14 (inclusive).

12.2 Accordingly, the Boat shall remain entirely at the risk of the Customer during the Term.

12.3 The Customer must provide the Company with certificates of currency evidencing that the Customer holds and maintains in respect of the Boat the insurance policies specified in item 3 of the Key Terms, including:

- (a) suitable hull and machinery insurance of an appropriate value (having regard to the nature and value of the Boat and the Contractor Works proposed by the Customer); and
- (b) public liability insurance of not less than \$5 million, or such higher amount as may be specified by the Company from time to time (having regard to the nature and value of the Boat and the Contractor Works proposed by the Customer).

12.4 The Customer shall ensure that every Contractor (including the Customer itself, where it is a Contractor) obtains and maintains at all times during the Term:

- (a) Ship repairer's liability insurance of not less than \$5 million;
- (b) Statutory liability insurance of not less than \$2 million; and
- (c) Any other insurance cover required under the Company Contractor approval policies.

12.5 The Customer must provide the Company with a certificate of currency of each insurance policy required to be held under this clause 12 as a pre-condition of any Services being provided.

13. LIABILITY AND INDEMNITY

- 13.1 Subject to clauses 13.2 to 13.5, the Company will be liable to the Customer for loss or damage to the Boat caused by:
- (a) the negligent or reckless use of the Boatlifter by the Company or its Representatives; or
 - (b) the malfunction or breakdown of the Boatlifter (except where clause 17.1 (relating to Force Majeure) applies); or
 - (c) a failure of the Company to comply with clause 3.1 in using the Boatlifter or placing the Boat on the Hardstand, and the Company shall not otherwise be liable to the Customer, or a Contractor (or their respective Representatives) or any other person for any Loss whatsoever suffered by any of those persons (or any other person) under or in connection with this Contract.
- 13.2 The Company's maximum liability to the Customer or a Contractor (and their respective Representatives) for Loss (in contract, tort (including negligence), equity, statute or otherwise) in any way connected with the Services or this Contract is the greater of:
- (a) the amount available to be paid out under any relevant insurance held by the Company up to a maximum of \$5,000,000; or
 - (b) three times the value of the Charges payable for the Services (excluding disbursements and GST).
- 13.3 Notwithstanding anything else in this Contract, the Company is not liable to the Customer or a Contractor (or their respective Representatives), or to any other person in any circumstances:
- (a) for any remote, consequential or indirect Loss, including but not limited to loss of hire, loss of profit, loss of use, loss of opportunity, or additional costs of use (including costs of acquiring a replacement vessel (either temporarily or permanently) or engaging an alternative service provider); or
 - (b) for any Loss of any kind arising from any delay (for any reason) in the provision of any Services by the Company under this Contract.
- 13.4 The liability of the Company under clause 13.1 and 13.3 is limited to the extent that the Customer has contributed (whether by way of act, omission, default, contributory negligence or otherwise) to the circumstances giving rise to such liability.
- 13.5 The Customer acknowledges and agrees that if the Customer or the Customer's Representatives are using the Facility for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 (the "CGA") and sections 9, 12A, 13, or 14(1) of the Fair Trading Act 1986 (the "FTA") will not apply to such use. However, nothing in this Contract will affect any rights that the Customer or the Customer's Representatives who are 'consumers' for the purposes of the CGA or who are not 'in trade' for the purposes of the FTA, may have under those acts, and this Contract is to be modified to the extent necessary to give effect to that intention.
- 13.6 The Customer shall use the Facility at its own risk in all respects. Other than as provided under clause 13.1 and 13.3, the Company has no liability to the Customer, a Contractor (or their respective Representatives) or to any other person for any Loss whatsoever suffered by the Customer or any Representative in respect of the Facility.
- 13.7 The Customer acknowledges and agrees that it will be fully responsible and liable to the Company for all acts or omissions of the Customer's Representatives and all acts and omissions of each Contractor and its Representatives, on the basis that all acts or omissions of any of the Customer's Representatives, Contractors or Contractor's Representatives will be deemed to be acts or omissions of the Customer under this Contract.
- 13.8 The Customer indemnifies and holds harmless the Company against Loss caused by the Customer's acts, omissions or conduct in the course of using the Facility, and against any Loss caused by any Representatives of the Customer or a Contractor (or their Representatives), including but not limited to:
- (a) loss or damage to the property of the Company (excluding fair wear and tear);
 - (b) claims in respect of personal injury or death or loss of or damage to any property;
 - (c) claims by any person against the Company in respect of loss of use, interruption or delay;
 - (d) costs incurred by the Company in defending such claims or being investigated or subject to other proceedings in relation to any such claims; and
 - (e) the Company's loss, damage or expense of any kind whatever and however arising in connection with any Hazardous Substance or Contamination.

14. TERMINATION

- 14.1 The Company may immediately terminate this Contract by giving written notice:
- (a) if the Customer becomes insolvent, or is made subject to an application for winding up, or resolves to wind up voluntarily (other than for the purposes of a solvent reconstruction), or has a receiver (or similar functionary) appointed in respect of any of its assets, or ceases to carry on business or enters into a composition or arrangement with its creditors generally;
 - (b) pursuant to clause 8.4; or
 - (c) where it is not satisfied that the requirements of clause 7 are being met (regarding health and safety).
- 14.2 The Company may terminate this Contract by giving five days' notice in writing to the Customer if:
- (a) the Customer commits any breach of its obligations under this Contract which is capable of remedy and fails to remedy such breach within twenty days after receiving written notice specifying the breach and requiring it to be remedied; or
 - (b) the Customer commits any breach of its obligations under this Contract which is not capable of remedy.
- 14.3 Upon termination of this Contract:
- (a) all Charges payable by the Customer to the Company shall become immediately due and payable and the Customer shall immediately pay such Charges (provided that if any amounts remain unpaid by the due date, the Company shall be entitled to exercise its rights of seizure and sale under clause 6.12 to 6.14); and
 - (b) the Customer shall otherwise do all things necessary to facilitate the prompt removal of the Boat from the Facility.

15. COSTS:

15.1 The Customer must pay the Company's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Company's rights, remedies and powers under this Contract and the Boat Maintenance Facility Rules.

16. PRIVACY OF INFORMATION:

16.1 The Customer consents to the Company collecting, retaining and using any information about the Customer provided by the Customer:

- (a) to confirm, update and enhance the Company's records;
- (b) to establish the Customer's identity;
- (c) to make a company search;
- (d) for general statistical analysis; and
- (e) to assess the Customer's creditworthiness.

16.2 The Customer agrees that the Company may at any time request information from any person that the Company considers necessary or desirable to enable it to decide whether to extend or provide credit to the Customer. The Customer shall authorise any person or company holding information about the Customer to provide the Company with such information as the Company may require about the creditworthiness of the Customer. The Customer agrees that this clause 16.2 shall provide sufficient authorisation for such entity to disclose the information to the Company. Notwithstanding the foregoing, if the Company requests the Customer to do so, the Customer shall provide a separate written authorisation to the person or company from whom the Company seeks such information.

16.3 The Customer consents to the Company disclosing information relating to the Customer to:

- (a) a credit reference agency where it may be accessed by other financial institutions to assist assessment of any application for credit made to the Company and for occasional debt tracing and fraud prevention;
- (b) any Representative of the Company;
- (c) any person to whom the Company proposes to transfer any of its rights and/or duties under this Contract;
- (d) any person providing security in relation to the Customer's obligations under this Contract;
- (e) any third party to which the Customer owes monies, or is alleged to owe monies, in connection with the Boat; and
- (f) as otherwise required or permitted by law or any regulatory authority.

17. GENERAL:

17.1 Notwithstanding anything else in this Contract, the Company is not liable for any delay or failure in the performance of any obligation under this Contract if such delay or failure arises in whole or in part from Force Majeure. If affected by Force Majeure, the Company shall use reasonable endeavours to give the Customer notice without delay and shall take all reasonable steps to minimise the delay or failure of performance. The Customer shall release the Company from all actions, suits or claims arising directly or indirectly as a consequence of Force Majeure.

17.2 The Company shall be entitled, from time to time, to deliver up the Boat stored in accordance with this Contract to any person producing this Contract or offering such other evidence of ownership authority to receive the Boat as the Company may, in its sole discretion, deem satisfactory.

17.3 Each notice required to be given to the Customer (excluding any direction or communication of an operational nature by the Company to the Customer or to the Customer's Representatives) shall be in writing and delivered personally or sent by post or email to the address specified in item 1 of the Key Terms. A notice is deemed to be received: (a) if delivered personally, when delivered; (b) if posted, three Business Days after posting or in the case of international post, seven Business Days after it is posted; or (c) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 17.3), provided that no automatically generated 'out of office' response from the addressee is received. Any notice received or deemed received after 5.00pm or on a day which is not a working day will be deemed not to have been received until the next working day.

17.4 All indemnities and limitations of liability in this Contract shall have full force and effect in all circumstances and notwithstanding any act, omission or breach of this Contract by the Company or by any Representative of the Company.

17.5 The Company may vary this Contract (or any document comprising this Contract) by written notice to the Customer, from time to time, as may be necessary or desirable provided that no such variation shall unreasonably derogate from the rights of the Customer under this Contract (except where such variation is required by the Company to comply with any obligations at law).

17.6 The Customer shall not assign or transfer any part of this Contract without the written consent of the Company (which consent may be withheld in its sole discretion). A change in the effective control of the Customer is deemed to be an assignment. The Company may at its sole discretion (including if required by law or any governmental direction) assign, transfer or novate any or all of its rights and obligations under this Contract to any person.

17.7 This Contract is the entire agreement of the parties and supersedes all prior agreements and representations between the parties relating to the matters dealt with in this Contract.

17.8 Each party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Contract.

17.9 The parties are independent contractors, and this Contract does not create any partnership, agency or employment relationship, or relationship of a landlord and tenant, between them.

17.10 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by this Contract or at law.

- 17.11 If any provision of this Contract is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable, unless this would materially change the intended effect of this Contract.
- 17.12 Following termination or expiry of this Agreement clauses 6, 12, 13, 14.3, 15, 16 and 17, together with any other provisions that are by their nature intended to survive, will remain in effect.
- 17.13 A waiver of a right under this Contract is ineffective unless it is in writing.
- 17.14 This Contract may be executed in any number of counterparts (including scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.
- 17.15 This Contract is governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.

18. DEFINITIONS:

18.1 In these Terms and Conditions:

"**Additional Services**" means all services, utilities and amenities supplied to, or used by, the Customer during the Term in connection with or incidental to the Customer's use and occupation of the Hardstand, or in relation to the Boat, which are ancillary to the Services, including, but not limited to, power, water, sewerage, quarantine, use of equipment, waste disposal and rubbish collection.

"**Additional Service Costs**" means the aggregate cost of all Additional Services, calculated at the rates specified by the Company to the Customer, from time to time, plus GST.

"**Approved Contractor**" means a Contractor that has completed the Company's registration and induction process and that has been approved by the Company as being accredited to perform Contractor Works in the Facility.

"**Boat**" means the vessel identified on the front page of the Contract.

"**Boatlifter**" means the machinery and associated equipment for the transportation of boats to and from the water and around the Hardstand.

"**Boatramp**" means the concrete structure from which the Boatlifter operates to lift boats into and out of the water.

"**Boat Maintenance Facility Rules**" means the Company's rules, policies and operational guidelines in respect of the boat maintenance facility.

"**Charges**" means the amounts payable by the Customer under this Contract for the Services (calculated using the Rates), or otherwise, including Additional Service Costs.

"**Commencement Date**" has the meaning set out in item 2 of the Key Terms, or such earlier date that the Company commences providing any of the Services.

"**Company**" means Marsden Maritime Holdings Ltd, or its nominees or assignees, and includes, where appropriate, its Representatives.

"**Company Information**" means all information that is published by the Company from time to time including any information published at marsdencovemarina.co.nz that relates to the Facility and includes:

- (a) policies or codes of conduct applying to the use of the Facility;
- (b) health and safety information;
- (c) all other documents and procedures of the Company that are or may be relevant to the Customer.

"**Contamination**" means the discharge into the air, onto land or into water of any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy or heat which is or might become hazardous, dangerous, radioactive, oxidising, poisonous, infectious, flammable, explosive, noxious, toxic, corrosive, irritating, offensive, or damaging to health of any person or to otherwise cause contamination or that would breach any regulation or Law.

"**Contract**" means the Haul-Out and Hardstand contract between the Company and the Customer.

"**Contractor**" means a person engaged by or on behalf of the Customer to perform Contractor Works, and includes the Customer to the extent that the Customer itself performs any Contractor Works.

"**Contractor Works**" means any works and services to be performed by a Contractor while the Boat is at Hardstand (but excludes any Services to be performed by the Company).

"**Customer**" means the customer identified in item 1 of the Key Terms.

"**Expiry Date**" has the meaning set out in item 2 of the Key Terms, or such other date that the Services have been completed and the Boat has been delivered back to the Customer.

"**Facility**" means the boat maintenance facility at the Marina, including the Boatramp, jetty, Hardstand and all associated amenities located thereon.

"**Force Majeure**" means an event, circumstance or contingency beyond the reasonable control of the Company including but not limited to:

- (a) strike, ban, lockout, riot, civil commotion, industrial action, labour disturbances; accidents to or
- (b) a breakdown or malfunction of machinery (including the Boatlifter), infrastructure, plant or equipment;
- (c) interruption or disruption to the supply of electric, gas, water and telecommunication services;
- (d) earthquake, lightning, flood, fire, adverse sea and weather conditions, fire, natural disaster, drought, storm, flood or other, act of God;
- (e) embargo, blockade, sanctions; terrorism or piracy;
- (f) policies or restrictions of governments; and
- (g) war, military action, act of any governmental or military agency acting under actual or assumed authority;

"**GST**" means goods and services tax, as provided for under the Goods and Services Tax Act 1985.

"**Hardstand**" means all sealed areas situated at or leading to the Company's boatyard and utilised for the storage of boats and masts, for the general manoeuvring of boats, and for the washing, cleaning, spray painting and other repair and

maintenance work of boats.

"**Hazardous Substance**" means any hazardous, dangerous, flammable, explosive, noxious, damaging, toxic, radioactive, oxidising, poisonous or infectious substance including any hazardous substance as defined in the Hazardous Substances and New Organisms Act 1996.

"**HSWA**" means the Health and Safety at Work Act 2015.

"**Loss**" means all damage, loss, liability, penalties, fines, cost and expense and including all legal costs and expenses on a solicitor and own client basis.

"**Marina**" means Marsden Cove Marina.

"**Rates**" means the rates set out in the Key Terms, and if no rates are set out, the rates set out in the Company's schedule of rates in force on the date of this Contract (being available at marsdencovemarina.co.nz or upon request from the Company).

"**Representatives**" means in relation to a person, any employee, agent, contractor (including that contractor's personnel), invitee of that party, or other person under the control of that person, but in the case of the Customer, excludes any Contractor (and personnel of the Contractor).

"**Services**" means the services to be supplied to the Customer by the Company, being those services specified at item 4 of the Key Terms and excluding any Contractor Works.

19. **INTERPRETATION**

In this Contract, unless the context requires otherwise:

- (a) the headings to clauses are inserted for convenience only and shall be ignored in interpreting this Contract;
- (b) the word including and other similar words do not imply any limitation;
- (c) a person includes any company or body of persons (incorporated or not, and whether or not having separate legal personality);
- (d) the plural includes the singular and vice versa;
- (e) references to parties are references to parties to this Contract;
- (f) any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- (g) a reference to a statute includes any legislative instrument or other subordinate legislation made under it and amendments to or replacement of any of them from time to time; and
- (h) a reference to any obligation of the Customer in this Contract is deemed to include a reference requiring the Customer to ensure that the Customer's Representatives comply with that obligation.