

SERVICES AGREEMENT

The Operator agrees to provide the Services to the Client on the terms set out in this Schedule of Particulars, the General Terms and Conditions, the Vessel Works Marine Hub Rules, the Operator Information, and any other documents expressly referred to herein (together the "**Agreement**"). Any capitalised terms in the Schedule of Particulars have the meaning set out in the Glossary attached to the General Terms and Conditions.

SCHEDULE OF PARTICULARS

1. CLIENT CONTACT DETAILS

Client / Company Full Name ("Client"):	
Address (Postal):	
Address (Physical):	
Contact person:	
Phone:	
Mobile:	
Email:	

Guarantor: Where a company/trust name has been entered as the Client, Vessel Works requires that a natural person guarantee the obligations of the company/trust to Vessel Works, in accordance with clause 9 of the General Terms and Conditions.

The Client is the Owner of the Nominated Vessel: Yes / No (refer to clause 3.1 of the General Terms and Conditions)

If Yes, move to Section 2.

If No, provide Guarantor's details below

(see clause 9 of the General Terms and Conditions)

Details of Guarantor	
Name:	
Address (Postal):	
Address (Physical):	
Email:	
Mobile:	

2. OPERATOR CONTACT DETAILS

Name:	Tauranga City Council T/A Vessel Works
Addresses:	6 Hikuwai Place (formally Den Place), Tauranga, North Island
Email:	info@vesselworks.co.nz
Phone:	+64 7 577 7270

3. DETAILS OF NOMINATED VESSEL

Vessel Name:							
Type:	FV / Yacht / Launch/ Multi Hull			Design:			
Model:				Construction Type:			
Dimensions:	OAL:		Beam:		Draft:		Mast Head Height:
Weight (metric tonnes):							
Primary purpose of Nominated Vessel:	Recreational / Commercial			Specify:			
Registered:	Yes / No		Registration #:				
Country of registration:			NZ Temporary Import (TIE)?		Yes / No		

4. TERM

4.1 The Term of this Agreement shall be Ongoing (as defined in clause 1.1(a) of the General Terms and Conditions) unless otherwise stipulated herein.

(* 10 Business Days' notice of termination is required to terminate an Ongoing Term. See clause 1.1(a) of the General Terms and Conditions.)

5. SERVICES AND RATES

5.1 For lifting and hardstand services the Client will be provided with an estimate for work. This estimate must be approved by the Client before any work is started.

5.2 A full schedule of services and rates is available online at www.vesselworks.co.nz. The Client agrees to pay the published rates as they are updated.

6. INSURANCE DETAILS

Insurance cover is mandatory,

	Protection and Indemnity (P&I) Not less than \$5,000,000.00	Public Liability Not less than \$2,000,000.00
Has the following insurance been provided to Vessel Works.	Yes/No	Yes/No

7. CONTRACTOR WORKS

Will Contractor Works be performed on the Nominated Vessel at the Designated Hardstand Area or the Berth? Yes / No

If yes, the Nominated Vessel must complete a schedule of works and demonstrate that works are being undertaken. Failure to do so, may result in the termination of the Agreement.

If you do not yet have a schedule of works please provide a detailed description of the proposed Contractor Works:

No	Task to be completed	Proposed Contractor	Contractor Inducted Y/N
1.			
2.			
3.			
4.			

5.			
6.			

8. SECURITY

8.1 A bond may be required at the discretion of the Vessel Works Director. If a bond is required it will be invoiced prior to service and stipulated below. The bond amount will be credited to the final invoice.

8.2 Office Use Only:

Bond amount: \$_____ Payment Date: _____ (see clause 8 of the General Terms and Conditions)

9. ACKNOWLEDGEMENT AND SIGNING

By signing below the Client and the Guarantor each confirm that it has read and understands the attached General Terms and Conditions and that it undertakes to observe, perform and be bound by all the terms and conditions of this Agreement. The Client further confirms that, where it is not the Owner of the Nominated Vessel, the warranties set out in clause 3.1 of the General Terms and Conditions are true and correct.

Signed by the Operator:		Date:	
Name:		Position:	
Signed by Client:		Date:	
Name:		Position:	
Signed by Guarantor:		Date:	
Name:		Position:	

GENERAL TERMS AND CONDITIONS

For definitions of terms used in this Agreement please refer to the Glossary at the end of these General Terms and Conditions.

1. TERM

- 1.1 This Agreement shall commence on the Commencement Date and end on the earlier of:
- (a) if the Term is "Ongoing", the date that it is terminated by either party giving the other party 10 Business Days' notice; and
 - (b) the date that it is terminated in accordance with its terms.
- 1.2 If any Services are provided after the Expiry Date, then the terms of this Agreement shall apply to the provision of such Services, provided that the Operator can then terminate this Agreement by giving 5 Business Days written notice.

2. EXCLUSIVE LICENCE

- 2.1 Subject to the Operator's rights under this Agreement, the Client has a non-transferable licence to:
- (a) occupy each of the Designated Hardstand Area and the Berth (as applicable) during the relevant agreed periods on an exclusive basis solely in connection with the provision of the relevant Services and the performance of Contractor Works in respect of the Nominated Vessel; and
 - (b) access and use Marine Hub facilities as permitted by the Operator from time to time.
- 2.2 The Client acknowledges and agrees that it has no right of exclusive occupation or use of any other part of the Marine Hub at any time.
- 2.3 The Client and its Representatives must not, and the Client shall procure that any Contractor and its Representatives do not, enter or access any other parts of the Marine Hub that are designated to, or occupied by, another client of the Marine Hub or any other areas within the Marine Hub designated by the Operator as a restricted area.
- 2.4 The licence granted under this Agreement is subject always to the Operator's right to enter the Designated Hardstand Area or Berth (as applicable) at any time pursuant to clauses 5.1(f) and 0 of the General Terms and Conditions.
- 2.5 The Operator makes no representation or warranty regarding the availability, adequacy, safety or suitability of the Marine Hub, the Designated Hardstand Area, the Berth or the Structures (as applicable) for any use or intended use. If the Operator or its Representatives provide any additional information to the Client or its Representatives during the Term, the Operator makes no representation or warranty regarding any such additional information.

3. ENTRY BY CLIENT AS AGENT OR PROJECT MANAGER

- 3.1 If the Client is not the Owner of the Nominated Vessel, the Client warrants on a continuing basis and undertakes to the Operator that:
- (a) it is entitled to enter into and perform its obligations under this Agreement as the authorised agent of the Owner;
 - (b) all Services and Contractor Works will be carried out with the full knowledge and consent of the Owner; and
 - (c) the terms of this Agreement are legally binding, and are enforceable by the Operator, against the Client and the Owner, including clause 0 (regarding restrictions on dealing with the Nominated Vessel during the Term) and clause 10 (regarding the Operator's rights of seizure and sale of the Nominated Vessel).
- 3.2 The Client shall, if requested, provide the Operator with evidence reasonably satisfactory to the Operator that the warranties set out in clause 3.1 are true and accurate. A signed letter from the Owner confirming the matters set out in clause 3.1 would satisfy these requirements. However, the Operator is entitled to rely on the warranties given by the Client under clause 3.1 and nothing in this clause shall be construed as compelling the Operator to make any inquiries of the Client or the Owner in respect of such warranties.
- 3.3 The Client indemnifies and holds harmless the Operator in respect of all and any actions, proceedings, claims, suits or demands against, or Losses incurred by, the Operator arising from a breach of any of the warranties or undertakings in clause 3.1.

4. PROVISION OF SERVICES

- 4.1 The Operator shall perform the Services in respect of the Nominated Vessel in accordance with the terms of this Agreement. In providing the Services, the Operator shall:
- (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).
- 4.2 The Operator shall use reasonable endeavours to perform the Services in accordance with the dates and timelines set out in the Schedule of Particulars, but shall not be liable to the Client or to any other person for any delay or any failure to do so.
- 4.3 The Operator will promptly notify the Client of any changes to the Marine Hub Rules or any Operator Information.
- 4.4 After the Services have been performed or this Agreement has been terminated or has expired, the Operator shall be entitled to deliver the Nominated Vessel to, or in accordance with the instructions of, the Client or any person expressly authorised by the Client. For the avoidance of doubt, nothing in this Agreement requires the Operator to pilot, handle or manoeuvre the Nominated Vessel in the Berth or the wider marine area.

5. OBLIGATIONS OF CLIENT

- 5.1 The Client will:
- (a) be responsible for safely delivering the Nominated Vessel to the Marine Hub slipway and receiving the Nominated Vessel from the slipway upon its return to the water, and will ensure that the Nominated Vessel is adequately crewed for such purposes;
 - (b) ensure that the Operator is made fully aware of all features of the Nominated Vessel (including underwater or structural features) that may be relevant to the placement of strops and the operation of the Travel Lift, or the positioning and placement of any equipment used to stand the Nominated Vessel on the Hardstand.
 - (c) provide the Operator with all other information required to ensure the Operator is able to safely and securely perform the Services having regard to (among other things) the specific nature and structure of the Nominated Vessel;
 - (d) promptly respond to all requests for information made by the Operator in relation to the Services and the Contractor Works;
 - (e) promptly comply with all requirements and directions of the Operator in relation to the provision of the Services and the performance of any Contractor Works; and
 - (f) provide reasonable cooperation and access to the Nominated Vessel to enable the Operator to perform the Services and to verify the Client's (and any Contractor's) compliance with the terms of this Agreement.

- 5.2 The Client will not sell, transfer or otherwise dispose of (or permit the sale, transfer or disposal of) the Nominated Vessel during the Term without the prior written approval of the Operator, which shall not be unreasonably withheld delayed, provided that all Charges owed to the Operator are paid in full prior to the sale or transfer date and the new Owner undertakes to be bound by the terms of this Agreement or a new Agreement is put in place between the Operator and the new Owner. If the Nominated Vessel is sold, transferred or disposed of during the Term without the approval of the Operator, the Client shall remain liable for all Charges and this Agreement shall continue to apply unless and until all Charges owed to the Operator at the relevant time are paid in full and the new Owner undertakes to be bound by the terms of this Agreement or a new Agreement is put in place between the Operator and the new Owner.
- 5.3 The Client must (and must ensure that its Representatives and Contractors and its Representatives) strictly comply with the Marine Hub Rules and all other terms of this Agreement (and any amendment thereto).
- 5.4 The Client will not, and will procure that its Representatives and Contractors do not:
- (a) do or permit to be done anything that causes a nuisance or disturbance to the Operator or any other client of the Marine Hub; or
 - (b) undertake any activity on or in relation to the Marine Hub that encroaches on, or adversely affects either the Operator, the Marine Hub, or any owner or occupier of land adjacent to, or nearby, the Marine Hub.
- 5.5 The Client shall comply with:
- (a) all applicable Laws; and
 - (b) all relevant requirements of the Operator (including as specified in the Operator Information) in connection with the provision by the Operator of the Services and any Ancillary Services. (For the avoidance of doubt, the Operator may require the Client to pay the Ancillary Service Costs to the Operator.)
- 5.6 The Client warrants that any information it provides to the Operator in connection with this Agreement will be true, accurate and complete and acknowledges and agrees that all such information will be relied on by the Operator.
- 6. CONTRACTOR WORKS**
- 6.1 Contractor Works may be performed on the Nominated Vessel by a Contractor while the Nominated Vessel is located at the Designated Hardstand Area or the Berth.
- 6.2 Before any Contractor Works are performed, the Client must provide the Operator with a "Contractor Works Plan", which sets out:
- (a) a description of the Contractor Works to be performed, 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 Client's health and safety plans and a description of how the Client intends to otherwise comply with its obligations set out in clause 0 (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 Operator from time to time (whether before or after the Contractor Works Plan is provided to the Operator).
- 6.3 No Contractor may perform any Contractor Works unless that Contractor has first been approved by the Operator as an accredited Contractor. The Operator may grant or withhold or revoke its approval of a Contractor for the purposes of this clause, or may impose conditions on such approval, in its absolute discretion. A list of accredited Contractors is available on request from the Operator.
- 6.4 Contractor Works may only be performed during the hours specified in the Marine Hub Rules from time to time, unless expressly agreed otherwise with the Operator.
- 6.5 Without limiting anything else in this Agreement, the Client shall be liable to the Operator and to other users of the Marine Hub for the acts and omissions of all Contractors.
- 6.6 The Client shall ensure that each Contractor is aware of the Client's obligations under this Agreement and that each Contractor does nothing (or does not fail to do anything) that would cause the Client to be in breach of its obligations under this Agreement, or that would cause the Operator to be in breach of the terms of any licence, consent, permit held by the Operator or any other Law.
- 6.7 The Client shall keep the Operator informed as to the progress of the Contractor Works and notify the Operator 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 Travel Lift).
- 7. CHARGES AND ANCILLARY SERVICE COSTS**
- 7.1 The Charges shall be calculated on the basis of the Rates for Services provided (or to be provided). If the Client is late for or cancels any scheduled operation of the Travel Lift without giving 48 hours prior notice to the Operator, the Client shall remain liable to pay the Charges for that scheduled operation and any replacement scheduled operation.
- 7.2 The Rates may be varied from time to time by the Operator posting updated Rates on the vesselworks.co.nz website, provided that no increase in Rates during the Term shall be effective without the Operator first giving the Client at least 10 Business Days' written notice of the updated Rates.
- 7.3 Unless stated otherwise, all Rates and Charges are expressed on a GST exclusive basis and the Client shall pay GST in addition to the Rates and Charges.
- 7.4 The Client must pay the Charges promptly and in full on the due date for payment. Subject to clause 7.5, all Charges are due for payment on the earlier of the 20th day of the month following the date of the invoice OR the date that the Nominated Vessel is scheduled to be removed from the Designated Hardstand Area or released from the Berth (as applicable) following the completion of the Services or the earlier termination of this Agreement. For the avoidance of doubt, unless and until the Operator has received full payment of all Charges, the Operator is not required to remove a Nominated Vessel from the Designated Hardstand Area and return it to the water, and the Client is not permitted to remove the Nominated Vessel from the Berth.
- 7.5 The Operator reserves the right to require a Client to pay Charges in advance or to require payment of a deposit prior to the provision of any Services to the Client. In such circumstances, the due date for payment shall be the date the Client receives a valid tax invoice for the relevant amount.
- 7.6 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 Operator and the Client.
- 7.7 The Operator may (without prejudice to its other rights and remedies) require that the Client pay default interest at the rate of 2% 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.
- 7.8 Without limiting clause 10 (lien) or clause 19 (termination), if any Charges are not paid by the due date for payment, the Operator shall be entitled to suspend any Services not yet provided.
- 7.9 The Client agrees to pay the Ancillary Service Costs to the Operator upon demand by the Operator. Payment of the Ancillary 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.

8. BOND

- 8.1 The Client shall pay the Bond to the Operator on the date specified in the Schedule of Particulars, or if no such date has been entered, on the Commencement Date. The method of payment of the Bond will be at the Operator's sole discretion. The Bond will be held by the Operator in its bond-holding account. Any interest earned will be for the credit of the Operator.
- 8.2 As soon as is practicable after the Expiry Date or upon vacation of the Berth by the Client (whichever is the later) the Operator will refund the Bond, less any payments outstanding to the Operator or any third party supplier of goods and services to the Client under this Agreement (including without limitation for any Charges or Ancillary Service Costs owed, and/or the cost of, or incidental to, the repairing or fixing of any damage to any part of the Berth or the Structures caused by the Client or the Vessel (including to any other vessel, pontoon, ramp or other object)). The assessment of whether such repair work is required will be made solely by the Operator.
- 8.3 Interest will be charged at the rate of 2% 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.
- 8.4 The Operator reserves the right to require the payment of a Bond amount if no Bond has been stated in the Schedule of Particulars or to otherwise increase the amount of the Bond and to require payment of that additional amount, at any time during the Term in its sole discretion.

9. GUARANTEE

- 9.1 In consideration of the Operator agreeing to provide the Services to the Client, and at the request of the Client, the Guarantor (if any) unconditionally and irrevocably:
- (a) guarantees to the Operator the due and punctual performance and observance by the Client of each of the Client's obligations under this Agreement and the performance of all and each of the covenants, agreements, declarations and conditions relating to the Client expressed in this Agreement ("Guaranteed Obligations"); and
 - (b) indemnifies the Operator against all Losses suffered or incurred by the Operator that arise directly out of any breach of non-observance by the Client of any of the Guaranteed Obligations.
- 9.2 The Guarantor's Obligations under clause 9.1 are principal obligations and not obligations merely as a surety and no indulgence, granting of time, variation, waiver, or forbearance to sue on the part of the Operator, nor the bankruptcy, insolvency or liquidation of the Client, shall in any way relieve the Guarantor from liability under this Agreement.
- 9.3 The Operator's rights under this clause 9 are cumulative and not exclusive of any rights available to the Operator at law, in equity or by statute and remain in full force and effect until the Client discharges all of its obligations under this Agreement.
- 9.4 The Operator reserves the right to require a Guarantor provide the guarantee and indemnity under this clause 9 at any time during the Term in its sole discretion.

10. LIEN

- 10.1 If any Charges are not paid by the due date for payment, the Operator shall be entitled to seize the Nominated Vessel and shall, from the date of seizure, have a general lien upon, and the right to retain and have exclusive possession of the Nominated Vessel until all Charges payable by the Client to the Operator under this Agreement (including any costs incurred by the Operator in recovering the unpaid amount or exercising its rights under this lien) have been paid in full. The Operator must promptly provide written notice to the Client of such seizure.
- 10.2 For so long as the Operator retains the Nominated Vessel under this clause 10, the Operator may restrict access to the Nominated Vessel in its sole and absolute discretion (including restricting access for the Client, its Representatives or any Contractor), and the Operator shall not be liable to any person in respect of such restrictions.
- 10.3 If any Charges remain unpaid for a period of 21 days after the Operator has given notice to the Client of seizure of the Nominated Vessel, the Operator shall be entitled to do one or both of the following:
- (a) subject to the Operator first giving notice to the Client of its intention to do so, remove the Nominated Vessel from the Marine Hub and store it at another location (and the Operator shall not be liable to any person for any damage caused to the Nominated Vessel during such removal provided that the Operator has used reasonable skill and care in relocating the Nominated Vessel); and/or
 - (b) subject to the Operator first giving notice of its intention to do so to the Client and the Owner (if the Client is not the Owner), sell the Nominated Vessel by public auction or private treaty, together with any chattels situated on or in the Nominated Vessel.
- 10.4 For the avoidance of doubt, if the Operator exercises any of its rights under this clause 10, the Client shall continue to be liable for and shall pay all Charges relating to the continued storage of the Nominated Vessel at the Marine Hub (or at another location) or otherwise incurred until such time as the Nominated Vessel is either sold to a third party under clause 10.3(b) or possession is given back to the Client by the Operator following payment of all outstanding Charges.
- 10.5 The proceeds of any sales under clause 10.3(b) shall be applied as follows:
- (a) firstly, towards the costs incurred by the Operator of such seizure and sale (including any costs incurred in recovering the unpaid amount or exercising its rights under this lien and of any removal and relocation of the Nominated Vessel);
 - (b) secondly, the payment of all other Charges payable by the Client to the Operator; and
 - (c) lastly, the payment of the balance (if any) to the Client.
- 10.6 If the proceeds of sale are insufficient to satisfy all amounts owed by the Client to the Operator, the Operator may proceed to recover the balance owing from the Client.
- 10.7 The Client indemnifies and holds harmless the Operator in respect of all and any actions, proceedings, claims, suits and demands against, or Losses incurred by, made by the Operator arising directly or indirectly from the exercise of the Operator's rights under this clause 10.
- 10.8 The Client acknowledges and agrees that the Operator's rights under this clause 10 constitute a security interest in the Nominated Vessel for the purposes of the Personal Property Securities Act 1999 ("PPSA"). The Client will do (and will procure that the Owner does) all things reasonably requested by the Operator for the Operator to perfect its security interest in the Nominated Vessel. The Client waives any right it may have to receive a copy of the financing statement, verification statement or financing change statement relating to the Nominated Vessel (as these terms are defined in the PPSA).

11. HEALTH AND SAFETY

- 11.1 It is the Client's responsibility to ensure, so far as reasonably practicable, the health and safety of:
- (a) workers who work for the Client, while the workers are at work at the Marine Hub in the Client's business or undertaking arising from or related to the terms of this Agreement;
 - (b) workers whose activities in carrying out work are influenced or directed by the Client, while the workers are at the Marine Hub and are carrying out the work arising from or related to the terms of this Agreement;
 - (c) other persons who are at the Marine Hub for a lawful purpose,
- and ensure that such persons are not put at risk from the Client's conduct arising or related to the terms of this Agreement.
- 11.2 To comply with this clause, the Client will comply with the Operator Information and the requirements of the HSWA, including any regulations, codes and guidance made under the HSWA.
- 11.3 The Client 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.
- 11.4 The Client recognises that the Operator does not monitor the activities and/or work conducted on the Nominated Vessel by the Client, and is relying on the Client's expertise in respect of the health and safety aspects of the activities and/or work conducted on the Nominated Vessel. Though the Operator will comply with its obligations under the HSWA, it is relying on this clause and the Client's reporting obligations to ensure the health and safety of workers and other persons. In recognition of this, the Client 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 Client and the Operator, the Operator will advise the Client of all known risks to health and safety of which it is aware and for which it is not reasonably practicable to eliminate. The Client 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.
- 11.5 The Operator has the right to inspect the Client's documentation related to health and safety in connection with this Agreement, monitor the Client's activities and carry out a safety audit from time to time during the term of this Agreement.
- 11.6 The Client 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.
- 11.7 The Client indemnifies and holds harmless the Operator in respect of all and any actions, proceedings, claims, suits or demands against, or Losses incurred by, the Operator arising directly or indirectly from a breach of the HSWA by the Client, to the extent permissible under the Law.
- 11.8 The Client acknowledges and agrees that the Operator shall be entitled to access the Nominated Vessel, the Designated Hardstand Area and/or the Berth, without notice, and carry out any actions which, in the Operator's reasonable opinion, are deemed necessary to minimise and/or prevent damage or risk to people or property in the event of an emergency. The Client indemnifies and holds harmless the Operator in respect of all and any actions, proceedings, claims, suits or demands against, or Losses incurred by, the Operator arising directly or indirectly as a result of the Operator acting pursuant to this clause.

12. RELOCATION

- 12.1 The Operator reserves the right to relocate the Nominated Vessel to another Designated Hardstand Area or to another Berth (as applicable) on either a temporary or permanent basis:
- (a) to allow repairs or maintenance to be carried out at the Marine Hub;
 - (b) to use the original Designated Hardstand Area or Berth in cases of emergency; or
 - (c) to permit construction, reconstruction, alteration, alternation or any development within the Marine Hub or to facilitate or accommodate any other alteration to the layout of the Hardstand Area or the Berth area or the Marine Hub.
- 12.2 Should the Client occupy another Designated Hardstand Area or Berth as a result of this clause, the terms of this Agreement shall be deemed to apply for the duration of that occupation at that alternative Designated Hardstand Area or Berth.
- 12.3 The Operator will not be liable to pay any compensation to the Client in respect of any vacation or relocation pursuant to this clause.
- 12.4 Without limiting the foregoing, the Operator may at any time require the Client, the Contractor and all the Client's Representatives to temporarily vacate the Designated Hardstand Area, the Berth, the Nominated Vessel, and any other area within the Marine Hub 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 Travel Lift is in operation for another vessel in close proximity to the Nominated Vessel).
- 12.5 The Operator (in its sole discretion) reserves the right to either terminate this Agreement, or impose and/or change conditions in respect of the Client's right to use the Designated Hardstand Area or Berth, if:
- (a) the Marine Hub (or any part of it) becomes unsuitable or unsafe for use; or
 - (b) reasonably necessary for any other reason in the Operator's opinion.
- 12.6 If the Operator terminates this Agreement under clause 12.5, the Operator will refund to the Client a proportion of any moneys paid in advance. The amount of any such refund will be calculated by the Operator (acting reasonably, and having regard to the Services actually provided and the period of use or access that the Client had to the Designated Hardstand Area or Berth prior to the termination) and the Client agrees to abide by the Operator's decision.
- 12.7 No compensation shall be payable by the Operator in respect of any termination of this Agreement, or the imposition or change of conditions in connection with use of the Designated Hardstand Area or Berth under clause 12.5.

13. HAZARDOUS SUBSTANCES

- 13.1 Except with the Operator's prior written consent, the Client must not use or allow the Marine Hub to be used for the use, transfer, handling, movement, carriage, placement or storage of any Hazardous Substance.
- 13.2 The Client must comply with all applicable Laws, industry standards (including any matter referred to in the Operator Information) for the use, transfer, handling, movement, carriage, placement or storage of Hazardous Substances.

14. ENVIRONMENTAL OBLIGATIONS / RMA

- 14.1 The Client must not cause or permit any Contamination to the Marine Hub or to any surrounding area.
- 14.2 Without limiting the Operator's rights and remedies in relation to any Contamination, the Client must immediately upon becoming aware of any Contamination give written notice to the Operator with particulars of each such occurrence and then:
- (a) promptly provide such further information as the Operator may reasonably require; and
 - (b) upon lawful request from the Operator or a competent authority at the Client's own expense clean-up and rectify any Contamination; and
 - (c) comply with any lawful direction issued by the Operator or a competent authority in connection with any Contamination and its consequences including as to the time to carry out any such direction.
- 14.3 The Client acknowledges that activities within the Marine Hub may produce noise, visual and other effects which are expected and accepted in the Marine Hub but which could cause complaints and objections if the activities took place in a residential area or non-marine environment. The Client 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.

15. OPERATOR'S RIGHT OF ACCESS

- 15.1 The Operator may at all reasonable times enter and, if necessary, remain in the Designated Hardstand Area and the Berth (as applicable) to:
- (a) examine and view the condition and state of repair of the Structures, the Designated Hardstand Area and/or the Berth (as applicable);
 - (b) carry out any alterations, repairs, redecoration or cleaning of the Structures, the Designated Hardstand Area and/or the Berth (as applicable) that the Operator may think necessary or desirable to do, or which the Operator may be required to do to comply with any legal requirement; and
 - (c) carry out structural work, or other work to the Structures, the Designated Hardstand Area and/or the Berth (as applicable) 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 Marine Hub;
 - (d) exercise its rights under this Agreement; and
 - (e) otherwise verify the Client's (and its Contractors') compliance with the terms of this Agreement.

16. RISK AND INSURANCE

- 16.1 The Client acknowledges and agrees that:
- (a) the terms and conditions of this Agreement are not in any way intended by either party to create a bailment, and the Client understands that the Operator accepts no responsibility for the care or protection of the Nominated Vessel or its contents; and
 - (b) the Nominated Vessel placed at the Designated Hardstand Area or the Berth (and all chattels in, on or fixed to the Nominated Vessel or stored at the Marine Hub) shall not be deemed to be in the possession or custody of the Operator unless and until the Operator exercises its rights of seizure and sale under clause 10. Accordingly, the Nominated Vessel shall remain entirely at the risk of the Client during the Term.
- 16.2 The Client must provide or, where the Owner of the Nominated Vessel is not the Client, procure the Owner of the Nominated Vessel to provide to the Operator certificates of currency evidencing that the Owner holds and maintains in respect of the Nominated Vessel:
- (a) suitable hull and machinery insurance of an appropriate value (having regard to the nature and value of the Nominated Vessel and the Contractor Works proposed by the Client); and
 - (b) protection and indemnity insurance of not less than \$5 million, or such higher amount as may be specified by the Operator from time to time value (having regard to the nature and value of the Nominated Vessel and the Contractor Works proposed by the Client).
 - (c) public liability insurance of not less than \$2 million covering both the Nominated Vessel and crew (required for commercially owned vessels).
- 16.3 The Client shall ensure that every Contractor (including the Client 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 Operator's Contractor accreditation policies.
- 16.4 The Client must provide the Operator with a certificate of currency of each insurance policy required to be held under this clause 16 as a pre-condition of any Services being provided.
- 16.5 The Operator acknowledges that as at the date of this Agreement it holds mariner operator and ship repairer's liability insurance of not less than \$10 million.

17. LIABILITY OF OPERATOR

- 17.1 Subject to clauses 17.2 to 17.5, the Operator shall be liable to the Client for loss or damage to the Nominated Vessel caused by:
- (a) the negligent or reckless use of the Travel Lift by the Operator or its Representatives; or
 - (b) the malfunction of the Travel Lift; or
 - (c) a failure of the Operator to comply with clause 4.1 in using the Travel Lift or placing the Nominated Vessel on the Hardstand,
- and the Operator shall not otherwise be liable to the Client or to the Owner, 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 Agreement.
- 17.2 The Operator's maximum liability to the Client, the Owner or a Contractor (and their respective Representatives) for damages or losses (in contract, tort (including negligence), equity, statute or otherwise) in any way connected with the Services or this Agreement is the greater of:
- (a) the amount available to be paid out under any relevant insurance held by the Operator up to a maximum of \$5,000,000; or
 - (b) three times the value of the Charges payable for the Services to be provided under this Agreement as set out in the Schedule of Particulars or otherwise agreed in writing (excluding disbursements and GST).
- 17.3 Notwithstanding anything else in this Agreement, the Operator is not liable to the Client, the Owner, 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 Operator under this Agreement.
- 17.4 The liability of the Operator under this clause 17 is limited to the extent that the Client has contributed (whether by way of act, omission, default, contributory negligence or otherwise) to the circumstances giving rise to such liability.
- 17.5 The Client acknowledges and agrees that if the Client or the Client's Representatives are using the Marine Hub 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 Agreement will affect any rights that the Client or the Client'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 these General Terms and Conditions are to be modified to the extent necessary to give effect to that intention.
- 17.6 The Client acknowledges that the Operator cannot prevent third parties from photographing the Nominated Vessel. The Client further acknowledges and agrees that, unless it expressly requires the Operator, in writing, not to do so, the Operator and its employees and agents may take and use video footage and photography of the Nominated Vessel for advertising and marketing purposes.

18. LIABILITY OF CLIENT

- 18.1 The Client shall use the Marine Hub at its own risk in all respects. Other than as provided under clause 17, the Operator has no liability to the Client, the Owner, a Contractor (or their respective Representatives) or to any other person for any Loss whatsoever suffered by the Client or any Representative in respect of the Marine Hub.
- 18.2 The Client acknowledges and agrees that it will be fully responsible and liable to the Operator for all acts or omissions of the Client'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 Client's Representatives, Contractors or Contractor's Representatives will be deemed to be acts or omissions of the Client under this Agreement.
- 18.3 The Client indemnifies and holds harmless the Operator against Loss caused by the Client's acts, omissions or conduct in the course of use of the Marine Hub, and against any Loss caused by any Representatives of the Client, or by the Owner or a Contractor (or their Representatives), including but not limited to:
- (a) loss or damage to the property of the Operator (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 Operator in respect of loss of use, interruption or delay;
 - (d) costs incurred by the Operator in defending such claims or being investigated or subject to other proceedings in relation to any such claims; and
 - (e) the Operator's loss, damage or expense of any kind whatever and however arising in connection with any Hazardous Substance or Contamination.

19. TERMINATION

- 19.1 The Operator may terminate this Agreement by giving written notice:
- (a) if the Client 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 12.5; or
 - (c) where it is not satisfied that the requirements of clause 0 are being met (regarding health and safety).
- 19.2 The Operator may terminate this Agreement by giving five Business Days' notice in writing if:
- (a) the Client commits any breach of its obligations under this Agreement which is capable of remedy and fails to remedy such breach within twenty Business Days after receiving written notice specifying the breach and requiring it to be remedied; or
 - (b) the Client commits any breach of its obligations under this Agreement which is not capable of remedy.
- 19.3 The Operator may terminate this Agreement by giving 10 Business Days' notice in writing.
- 19.4 Upon termination of this Agreement:
- (a) all Charges payable by the Client to the Operator shall become immediately due and payable and the Client shall immediately pay such Charges (provided that if any amounts remain unpaid by the due date, the Operator shall be entitled to exercise its rights of seizure and sale under clause 10); and
 - (b) the Client shall otherwise do all things necessary to facilitate the prompt removal of the Nominated Vessel from the Marine Hub. In the event the Client fails to do so within 10 Business Days' of notice in writing from the Operator, the Operator shall be entitled to exercise its rights of seizure and sale under clause 10.

20. MANAGEMENT OF MARINE HUB

- 20.1 The Operator may at its discretion appoint a manager to manage and oversee the Marine Hub on behalf of the Operator, in which case:
- (a) the Operator will notify the Client of the identity of the manager;
 - (b) any rights or discretions that the Operator has under this Agreement are exercisable by the Operator or by the manager;
 - (c) any obligations of the Client under this Agreement are obligations that the Client owes to the Operator and also to any manager appointed by the Operator;
 - (d) any indemnity given in favour of the Operator is deemed to be also given in favour of, and enforceable by, the manager; and
 - (e) the Operator and its manager will each be entitled to enforce the provisions of this Agreement.

21. DISPUTE RESOLUTION

- 21.1 **Dispute notice:** If there is a dispute between the parties in relation to this Agreement, either party may give the other party notice of the nature and details of the dispute.
- 21.2 **Negotiation:** Within ten Business Days of receipt of the notice of dispute, senior managers of the parties shall meet and endeavour to resolve the dispute.
- 21.3 **Mediation:** If the dispute is not resolved within twenty Business Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. The mediation will be in Tauranga and conducted under the Mediation Rules of the Resolution Institute ("RI") standard mediation agreement. If the parties do not agree on a mediator or the mediator's fees within five Business Days of receipt of the notice of mediation, the mediator shall be appointed or the fees set by the chair of the Resolution Institute (or his/her nominee) at the request of either party.

22. FORCE MAJEURE

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

23. NOTICES

- 23.1 **Notices:** Each notice under this Agreement (excluding any direction or communication of an operational nature by the Operator to the Client or to the Client's Representatives, but including any notice to the Owner under clause 10.3 in relation to the sale of the Nominated Vessel) shall be in writing and delivered personally or sent by post or email. 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 23), 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 Business Day will be deemed not to have been received until the next Business Day.

24. ACCESS AGREEMENT / PREVAILING TERMS

- 24.1 If the Client is also a party to an Access Agreement, the terms of this Agreement shall prevail in the event of any conflict or inconsistency between the terms of the Access Agreement and this Agreement.

25. GENERAL

- 25.1 **Indemnities:** All indemnities and limitations of liability in this Agreement shall have full force and effect in all circumstances and notwithstanding any act, omission or breach of this Agreement by the Operator or by any Representative of the Operator.
- 25.2 **Amendments:** The Operator may vary this Agreement (or any document comprising this Agreement) by written notice to the Client, from time to time, as may be necessary or desirable provided that no such variation shall unreasonably derogate from the rights of the Client under this Agreement (except where such variation is required the Operator to comply with any obligations at Law).
- 25.3 **Assignment:** The Client shall not assign or transfer any part of this Agreement without the written consent of the Operator (which consent may be withheld in its sole discretion). Change in the effective control of a party is deemed to be an assignment. The Operator 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 Agreement to any person (including any CCO).
- 25.4 **Entire agreement:** This Agreement (together with any Access Agreement to which the Client is a party) 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 Agreement.
- 25.5 **Further assurances:** 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 Agreement.
- 25.6 **Relationship of parties:** The parties are independent contractors, and this Agreement does not create any partnership, agency or employment relationship, or relationship of a landlord and tenant, between them.
- 25.7 **Remedies cumulative:** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by this Agreement or Law.
- 25.8 **Severance:** If any provision of this Agreement 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 Agreement.
- 25.9 **Survival:** Following termination or expiry of this Agreement clauses 10, 16, 0, 24 and 25.1, together with other provisions that are by their nature intended to survive, will remain in effect.
- 25.10 **Waiver:** A waiver of a right under this Agreement is ineffective unless it is in writing.
- 25.11 **Counterparts:** This Agreement may be executed in any number of counterparts (including facsimile or 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.
- 25.12 **Governing law and jurisdiction:** This Agreement is governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.

GLOSSARY AND INTERPRETATION

1. DEFINITIONS

- "**Access Agreement**" means an access agreement in relation to the Marine Hub between the Client (or a related company of the Client), Tauranga City Council and the Marine Hub manager (if any).
- "**Agreement**" means the Schedule of Particulars, the General Terms and Conditions (Parts A and B as applicable), the Marine Hub Rules, the Operator Information, and any other documents referred to herein, and any amendments thereto.
- "**Ancillary Services**" means all services, utilities and amenities supplied to, or used by, the Client during the Term in connection with or incidental to the Client's use and occupation of the Designated Hardstand Area or the Berth (as applicable), or in relation to the Nominated Vessel, which are ancillary to the Services, including, but not limited to, power, water, sewerage, quarantine, use of equipment, waste disposal, rubbish collection and any pump out services.
- "**Ancillary Service Costs**" means the aggregate cost of all Ancillary Services, calculated at the rates specified by the Operator to the Client, from time to time, plus GST.
- "**Berth**" means that berth that is designated by the Operator for the Nominated Vessel during some or all of the Term.
- "**Berth Rental Services**" means the berth rental services reference in section 5 of the Schedule of Particulars.
- "**Business Day**" means a day other than a Saturday or Sunday or a public holiday in Tauranga, New Zealand.
- "**CCO**" means 'council-controlled organisation' as that term is defined in section 6 of the Local Government Act 2002.
- "**Charges**" means the amounts payable by the Client under this Agreement for the Services (calculated using the Rates), or otherwise including Ancillary Service Costs.
- "**Client**" means the person recorded as the Client in the Schedule of Particulars.
- "**Commencement Date**" means the date the Agreement is signed by the Client, or such earlier date that the Operator commences providing any of the Services.
- "**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.
- "**Contractor**" means a person engaged by or on behalf of the Client to perform Contractor Works, and includes the Client to the extent that the Client performs any Contractor Works.
- "**Contractor Works**" means any works and services to be performed by a Contractor while the Nominated Vessel is at the Designated Hardstand or the Berth (but for the avoidance of doubt, excluding any Services to be performed by the Operator).
- "**Designated Hardstand Area**" means that part of the Hardstand Area that is designated by the Operator for the Nominated Vessel during some or all of the Term.
- "**Expiry Date**" means the date this Agreement expires pursuant to clause 1.1, or such other date that the Services have been completed and the Nominated Vessel has been delivered back to the Client.
- "**Force Majeure**" means an event, circumstance or contingency beyond the reasonable control of the Operator including but not limited to strike, ban, lockout, riot, civil commotion, industrial action; accidents to or breakdown of machinery (including the Travel Lift), infrastructure, plant or equipment; interruption or disruption to the supply of electric, gas, water and telecommunication services; earthquake, lightning, flood, adverse sea and weather conditions, fire, natural disaster, drought, storm, flood, act of God, embargo, blockade, sanctions; terrorism or piracy; policies or restrictions of governments.
- "**General Terms and Conditions**" means these general terms and conditions.
- "**GST**" means goods and services tax, as provided for under the Goods and Services Tax Act 1985.
- "**Guarantor**" means a person that agrees to be responsible for the Client's debt or performance under this Agreement pursuant to clause 9 herein.
- "**Hardstand Area**" means the hardstand area of the Marine Hub that is designated for the on-land storage of a vessel.
- "**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.
- "**Law**" includes any rules of common law, equity, statute, regulation, order in council, by-law, ordinance or other subordinate or secondary legislation in force from time to time.

"**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.

"**Marine Hub**" means the Hardstand Area, the slipway/lifting bay and berth facilities and related areas and facilities (including the Structures) located at Mirrielees and Cross Roads, Tauranga, New Zealand.

"**Marine Hub Rules**" means the rules established by the Operator and notified to the Client from time to time in relation to the Marine Hub, and includes any amendment to those rules (the Marine Hub Rules as at the date of this Agreement being attached as Schedule 1).

"**Nominated Vessel**" means the nominated vessel described in section 3 of the Schedule of Particulars.

"**Operator**" means Tauranga City Council trading as Vessel Works (while Tauranga City Council is managing the Marine Hub), its permitted successors and assigns, or any other person or entity designated by Tauranga City Council from time to time as the manager of the Marine Hub and, where applicable, includes the delegates of such person or entity.

"**Operator Information**" means all information that is published by the Operator from time to time (including any information published at vesselworks.co.nz) that relates to the Marine Hub and includes:

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

"**Owner**" means the party or parties in which the legal title to, and the right of exclusive possession of, the Nominated Vessel is vested.

"**Rates**" means the rates set out in the Schedule of Particulars, and if no rates are set out, the rates set out in the Operator's schedule of rates in force on the date of this Agreement (being available at vesselworks.co.nz or upon request from the Operator).

"**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 Client, excludes any Contractor (and personnel of the Contractor).

"**Schedule of Particulars**" means the Schedule of Particulars that sets out the various particulars of this Agreement (including among other things, the parties, the Nominated Vessel, the Services, and the Term).

"**Services**" means the Vessel Lifting and Hardstand Services and the Berth Rental Services, in each case as set out in the Schedule of Particulars.

"**Structures**" means all seawalls, piers, jetties, walkways, wharves, pontoons, piles, fingers, gangways, ramps and all other structures or improvements, fixtures and fittings that may be erected or placed in the Marine Hub at any time during the Term.

"**Term**" means the duration of this Agreement determined in accordance with clause 1.1.

"**Travel Lift**" means the travel lift machine located at the Marine Hub and includes any fork hoist, jinker or marine tender that may be used from time to time in performing the Services.

"**Vessel Lifting and Hardstand Services**" means the vessel lifting and hardstand services referenced in section 5 of the Schedule of Particulars.

2. INTERPRETATION

In this Agreement, unless the context requires otherwise:

- (a) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting this Agreement;
- (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 Agreement;
- (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 Client** in this Agreement is deemed to include a reference requiring the Client to ensure that the Client's Representatives comply with that obligation.