

Kaiapoi Marine Precinct

Marine Berth Licence Terms and Conditions

1. Licence

- 1.1. The Licensor grants a Licence to the Licensee to occupy the Berth during the Term in accordance with the terms and conditions of this Agreement, and the Licensee accepts the licence on these terms.
- 1.2. Extension or renewal of this Agreement is at the sole and absolute discretion of the Licensor.
- 1.3. Nothing in this Agreement creates a lease, tenancy, ownership or rights to Marine Precinct Property owned, managed, or operated by the Licensor, nor any bailment by the Licensee to the Licensor in respect of the Vessel or its contents.
- 1.4. The Licensor may agree to early termination of this Agreement at the request of the Licensee. Early termination shall be at the discretion of the Licensor.
- 1.5. The Licensee agrees to comply with all relevant Statutes, Policies, Rules, Regulations and Bylaws applying to the Kaiapoi Marine Precinct, Kaiapoi River and Kaiapoi Town Centre.
- 1.6. This Agreement is personal to the Licensee and the Licensee cannot transfer, assign, or sublet or sub-licence this Agreement, or any of the Licensee's rights under this Agreement, except with the prior written agreement of the Licensor.
- 1.7. Where the Licensee is a company or a trust, any individuals signing for or on the Licensee's behalf are also personally liable. The Licensee is responsible for the Vessel at all times and is liable for all fees, charges and compliance issues in relation to this Agreement.

This Agreement consists of:

- a) The Marine Berth Licence;
- b) The Kaiapoi Marine Precinct Terms and Conditions;
- c) The Kaiapoi Marine Precinct Public Guidelines; and
- d) The Other Marine Control Documents;

as amended from time to time in accordance with this Agreement. In the event of a conflict between any of these documents the document higher in the list prevails. In the event of a conflict within any of these documents the Licensor shall specify which clause prevails for that purpose.

- 1.8. From time to time the Licensor may, to the maximum extent permitted by law consistent with the existence of a contract, amend this Agreement by written notification to the Licensee. This includes, without limitation, amending any of:
 - a) The Kaiapoi Marine Precinct Terms and Conditions;

- b) The Kaiapoi Marine Precinct Public Guidelines; or
 - c) Other Marine Control Documents;
- 1.9. and such amendment shall take effect ten (10) days after the written notice period. For the purpose of this clause amendment of any of the above documents on the Licensor's website (current address www.waimakariri.govt.nz / the Kaiapoi Marine Precinct information page/s) shall constitute written notification.
- 1.10. The Licensee can only use the Berth for the purpose (i.e. private or commercial) specified in this Agreement. The purpose cannot be altered without the prior written agreement of the Licensor.
- 1.11. The Licensee's access to their Berth is subject to exclusion at those times when the Licensor imposes a Lease Break for periods of maintenance or repair on the Berth or supporting infrastructure, or during periods of Emergency as determined or declared by the Licensor, (see clause 2).
- 1.12. The Licensee acknowledges that because the Licence grants a right to berth within a specified larger area but that the precise location of the Berth is not fixed there may be times when the Licensee is temporarily unable to access or use the Berth. The Licensor shall have no liability, and the Licensee shall make no claims in respect of, any inaccessibility, except as expressly provided for under this Agreement.
- 1.13. All Licensee registered vessels need to display an identification number as issued by the Licensor in connection with this Agreement or an identifiable boat name, visible via boat signwriting. The Licensor may produce the identification number on a sticker, registration plate and/or other suitable material or accept a boat name displayed through vessel signwriting in substitution of a registration plate/sticker. The identification number or name must be displayed on the Vessel above the waterline at all times while berthed.
- 1.14. The Licence is restricted to the Vessel specified in this Agreement. The Licensee cannot berth an alternative vessel in their Berth or substitute the Vessel named in the Marine Berth Licence for an alternative one, except with the prior written agreement of the Licensor.
- 1.15. The Term shall commence on the Start Date and specified time and remain in effect until the End Date and specified time, subject to the grant of any renewal or extension by the Licensor or prior expiry or termination of this Agreement.
- 1.16. At the Licensee's request the Licensor may at the Licensor's discretion grant a renewal of the Licence or an extension to the Term. Any renewal or extension shall be notified to the Licensee in writing, and the terms of this Agreement shall apply with any necessary modifications to the renewed Agreement or extended Term as applicable.
- 1.17. Where the Licensee has continued with the consent or agreement of the Licensor to occupy the Berth (but not pursuant to an extension or renewal), that shall constitute a holding over by the Licensee on a month to month basis which can be terminated by either party with ten (10) days written notice. The terms of this Agreement shall apply with any necessary modifications to the holding over.
- 1.18. If the Licensee fails to remove their vessel from the Berth by the End Date and specified time the Licensor may exercise the rights under clause 5.11, 5.12, or 25.3 as applicable.
- 1.19. If at any time the Licensor's current mooring restriction exemption issued by Environment Canterbury pursuant to the Canterbury Regional Council Navigation Safety Bylaw 2016 should expire or be revoked or withdrawn or otherwise cease to apply and not (in the opinion of the Licensor in its sole and absolute discretion)

be satisfactorily replaced, the Licensor may by written notice to the Licensee bring forward the End Date to a date and time specified by the Licensor, being a date not less than seven days after the date of the notice and the Licence Fee and outgoings will be payable to the amended End Date with any payments in advance apportioned by the Licensor and, subject to any set-off claimed, any overpayment shall be refunded to the Licensee as soon as practicable.

- 1.20. The Licensor has the right to amend or waive any of these terms and conditions at its sole discretion.

2. Licence Break

- 2.1. The Licensor has sole discretion to apply a Licence Break of such period as the Licensor in its sole discretion specifies, after giving the Licensee thirty (30) days' notice for routine maintenance or repairs, or, twenty four (24) hours' notice for emergency maintenance or repairs to Kaiapoi Marine Precinct assets, facilities or the river environment.
- 2.2. No Licence fees shall be payable for the Licence Break period. The Licensee shall be entitled to a credit of any Licence fees paid in advance of the Licence Break period for the Licence Break period.
- 2.3. The Licensor is not liable for any financial or other compensation to the Licensee under these circumstances except, and save only for, the credit under clause 2.2.
- 2.4. The Licensee may return to their Berth at the conclusion of the Lease Break.

3. Sub-let Berth

- 3.1. The Licensee may agree to sub-let the Berth to, or through the agency of, the Licensor during periods of absence of more than seven (7) days. Sub-letting arrangements will be managed by the Licensor in accordance with Licensee exit and return dates, as agreed upon and negotiated between the Licensor and Licensee. Sub-letting rental income will be shared equally (50/50) between the Licensee and the Licensor.
- 3.2. The Licensee shall not sub-let their Berth during periods of absence unless the sub-letting arrangements are managed by the Licensor and have been consented to by the Licensor.
- 3.3. The Licensor will be responsible for removing vessels if a visitor fails to vacate an authorised sub-let berth before the return of the Licensee. Any expenses related to the removal of the visitor's vessel, or the provision of a temporary berthing arrangement for the Licensee, will be at the Licensor's expense. The Licensee must not remove vessels occupying under an authorised sub-let without the prior written agreement of the Licensor.
- 3.4. The sub-letting of the Berth shall be at the sole and absolute discretion of the Licensor and the Licensor is under no obligation to sub-let or allow sub-letting.
- 3.5. All sub-letting shall be at the sole risk and responsibility of the Licensee. The Licensor shall not have any responsibility or liability by reason of being involved in any sub-letting and to the maximum extent permitted by law excludes any responsibility or liability including, without limitation, in negligence.
- 3.6. Subletting shall not reduce or affect the Licensee's liability under this Agreement including, without limitation, for the payment of Licence fees.

4. Marina Management and Supervisor

- 4.1. The Licensor manages and controls the operation of Council assets and facilities within the Kaiapoi Marine Precinct through duly authorised employees of the Waimakariri District Council, or its authorised contractors or agents (Authorised Personnel).

- 4.2. The Licensee must obey directions from the Licensor and its Authorised Personnel, in relation to Licensor assets and facilities.
- 4.3. The first point of contact for all enquiries should be the Licensor via the contact details listed on the Marine Berth Licence.

5. Vessel Requirements

- 5.1. The Licensee must comply with all vessel requirements as set out below.
- 5.2. All Vessels must secure and display a current electrical warrant of fitness (EWOFF) and ensure all electrical leads are tagged and tested, if accessing shore power. Testing tags must be clearly visible and attached to any corresponding leads at the shore point of power supply. Leads must be in one piece and not contain joining elements. WOF's must be positioned on the Vessel so they are visible from the shore.
- 5.3. Vessels must be presentable, tidy, in a state of good repair and working order, and pass any safety test imposed by the Licensor.
- 5.4. All fitting and mooring lines must be of suitable strength, condition and type to adequately secure the Vessel to the berth or mooring via the cleats provided.
- 5.5. Vessel halyards, lines and rigging must be secure.
- 5.6. All parts of the Vessel must be contained within the dimensions of the designated berthing area as outlined within the Marine Berth Licence.
- 5.7. Vessels must comply with all applicable Statutes, Policies, Rules, Regulations and Bylaws imposed by any relevant regulatory or territorial or other competent authority.
- 5.8. Live-aboard vessels must be self-contained for all water and wastewater requirements and contain suitable black/grey water holding tanks with active sealing devices that remain activated while the Vessel is moored. Self-contained Vessels may temporarily utilise the potable water taps and black/grey water pump-out facilities provided by the Licensor while berthed in the Kaiapoi Marine Precinct.
- 5.9. Vessel hulls must be kept clean of marine pests and conspicuous bio-fouling.
- 5.10. The Licensor can issue a notice of repair to the Licensee if a Vessel is deemed in breach of the vessel requirements (being the requirements set out in clauses 5.2 to 5.9 above). Failure to comply with a notice of repair within the timeframe specified by the Licensor shall constitute a breach entitling the Licensor to terminate this Agreement.
- 5.11. Vessels occupying berths without a Licence or permission by the Licensor (and this includes, without limitation, vessels owned or controlled by the Licensee which are not the vessel specified for this Agreement), may be forcibly removed from the Kaiapoi Marine Precinct at the Licensee's expense and sole risk. The Licensor shall not have any responsibility or liability in connection with such removal and to the maximum extent permitted by law excludes any responsibility or liability including, without limitation, in negligence.
- 5.12. Vessels that are abandoned, or are a potential nuisance or are considered unseaworthy by the Licensor or any other relevant authority, may be forcibly removed from the Kaiapoi Marine Precinct at the Licensee's expense and sole risk. The Licensor shall not have any responsibility or liability in connection with such removal and to the maximum extent permitted by law excludes any responsibility or liability including, without limitation, in negligence.

6. Marina and Berth

- 6.1. The Licensee cannot attach any materials to Licensor owned or operated Kaiapoi Marine Precinct structures without the prior written agreement of the Licensor.
- 6.2. The Licensee cannot berth at Licensor berths other than the Berth without the prior written agreement of the Licensor. The exception to this rule is casual berthing in the designated Casual Berth Area.
- 6.3. The Licensee must inform the Licensor if they intend to leave the Berth unoccupied for more than seven (7) days.
- 6.4. The Licensee must berth their Vessel at all times with the bow facing upstream, unless otherwise agreed by the Licensor in writing.

7. Signage

- 7.1. Signage allowances are limited to signwriting on Vessels only unless prior written approval has been given by the Licensor. Vessel signwriting must be non-offensive and appropriate to the size of the Vessel and boating activity.

8. Rubbish

- 8.1. Vessel owners must not dispose of their household waste in public rubbish bins.
- 8.2. Vessel owners are responsible for the removal of their own rubbish from the Kaiapoi Marine Precinct.

9. Live Aboard

- 9.1. No person shall live aboard any Vessel unless a live aboard permission to do so has been granted by the Licensor or the short term exception applies under clause 9.4. Living aboard includes staying over-night even if the Vessel is not a primary place of abode.
- 9.2. Applications to live aboard a Vessel for more than 14 days/nights will be considered on a case-by-case basis by the Licensor, and any permission granted shall be subject to any terms stipulated by the Licensor and in any event also subject to internal staff review no less often than monthly. The Licensor has the sole discretion to approve, renew or continue, amend, discontinue, or deny live aboard applications whether on initial application or on review.
- 9.3. Live aboard applications shall be for a specified number of individuals and no other person beside those permitted under a live aboard permission may live aboard except under the short term visitor exception.
- 9.4. The Licensee or its officers, their dependents and one (1) additional guest, up to a maximum of two (2) people, may temporarily live aboard the Licensee's Vessel for a maximum of fourteen (14) consecutive days and nights, provided the Vessel is self-contained for all power, water, rubbish and wastewater requirements. This is the short term visitor exception to the prohibition on living aboard. Any application for additional guests must be made to the Licensor and will be issued at the Licensor's sole discretion. Repeated use of the short term visitor exception may at the Licensor's discretion be determined to be in breach of the prohibition on living aboard.
- 9.5. Any charging by the Licensee of any person for living aboard is prohibited, unless otherwise approved by the Licensor in writing, and the short term visitor exception is not available where any such charging occurs.
- 9.6. The Licensor reserves the right to inspect live aboard vessels should the Licensor suspect that any of the live aboard rules or related vessel requirements are being breached. The Licensee must give the Licensor or its Authorised Personnel immediate access to the Vessel upon request.

- 9.7. Live aboard activity must not impact the boardwalk, Kaiapoi Wharf, floating dock or shore/reserves areas, which must be kept clear of personal or commercial items at all times.
- 9.8. Laundry lines and items must not be visibly hung on vessels.
- 9.9. Charcoal fires aboard vessels are not permitted.
- 9.10. No materials are to be deposited overboard.

10. Alcohol

- 10.1. Private alcohol consumption within the Kaiapoi Marine Precinct is only permitted within the boundaries of private or commercial vessels. Public alcohol consumption is permitted on commercial vessels or at land based establishments with valid alcohol licences.

11. Swimming and Fishing

- 11.1. Fishing and swimming is prohibited off the Riverview Pontoon, except during special timeframes or events as determined by the Licensor.

12. Pets

- 12.1. Pets are permitted aboard only with the prior written agreement of the Licensor.
- 12.2. Dogs must be kept on leads at all times while in the Kaiapoi Marine Precinct, and all dogs must be registered as necessary.
- 12.3. Any pet related animal faecal matter deposited in public areas must be removed immediately by the Licensee.

13. Facilities

- 13.1. The Licensee agrees to use Kaiapoi Marine Precinct assets and facilities in accordance with the purpose they were designed for, and in adherence with any rules or regulations imposed by the Licensor.
- 13.2. The Licensee is liable for any damage to Kaiapoi Marine Precinct assets, facilities or the environment as a result of misuse.

14. Car Parking and Fuel Stations

- 14.1. Car parking options for the Kaiapoi Marine Precinct are listed on the Kaiapoi Marine Precinct information page accessed from the Waimakariri District Council's website. The Licensee agrees to comply with all car parking conditions as may apply from time to time.
- 14.2. Self-service fuel docks and pumps are not available at the Kaiapoi Marine Precinct. Vessels must be refilled from a portable fuel container or refuelling tanker vehicles supplied by the Licensee in accordance with all laws, and rules and regulations regarding hazardous substances and spills, as may apply from time to time, and in such a way as to not impede or damage any vehicle access ways.

15. Storage

- 15.1. Private or commercial storage facilities are not available at the Kaiapoi Marine Precinct.

16. Environment and Maintenance

- 16.1. The Licensee shall not pollute the Kaiapoi Marine Precinct or discharge into Kaiapoi Marine Precinct waters or the Kaiapoi River any noxious or hazardous substance or waste.
- 16.2. The Licensee shall not discharge black (sewage) or grey water or any other polluting liquids or materials into the Kaiapoi Marine Precinct waters or the Kaiapoi River.

- 16.3. The Licensee understands that other discharges into Kaiapoi Marine Precinct waters are only permitted where they meet with regional regulatory or territorial authority water discharge standards for the Kaiapoi River.
- 16.4. Anti-fouling of vessels is not permitted in the Kaiapoi Marine Precinct.
- 16.5. The cleaning, gutting or filleting of fish is not permitted in the Kaiapoi Marine Precinct unless at designated fish stations (as signposted) or on board private or commercial vessels. The Licensee must clean up after themselves and not leave any organic and/or other material at the designated fish stations when not in use.
- 16.6. The Licensee agrees to comply with the Licensor's Vessel Owner Maintenance Guidelines and understands that only limited maintenance activities are permitted at the Kaiapoi Wharf.
- 16.7. Hull painting (excluding signwriting) is not permitted in the Kaiapoi Marine Precinct.
- 16.8. Above the water line cleaning of the Vessel by hand is permitted provided the Licensee uses minimum amounts of marine specific, environmentally sensitive, biodegradable and phosphate-free marine products that meet Environment Canterbury's standards for discharges in the Kaiapoi River.
- 16.9. Minor vessel engine repairs are permitted provided the repairs comply with zoning noise rules in the District Plan and clause 17.4, and do not pose a contamination threat to the Kaiapoi River or a health and safety risk to members of the public.
- 16.10. Minor to moderate on-board structure repairs or renovations are permitted provided the work complies with relevant regulations and does not pose a noise nuisance and contamination threat to the Kaiapoi River, or a health and safety risk to members of the public.
- 16.11. The Licensor may prevent access to the Kaiapoi Marine Precinct to vessels deemed an environmental risk hazard.

17. Noise and Lighting

- 17.1. The Licensee shall securely fasten all ropes, rigging, halyards and lines to their vessel so they don't create a noise nuisance while berthed.
- 17.2. Within the Kaiapoi Marine Precinct the Licensee shall comply with all rules for noise in the Kaiapoi business zone 1 areas as outlined in the District Plan. Noise shall not exceed 50dBA L10 between 7am to 7pm Monday to Saturday and 9am to 7pm on Sundays and Public Holidays; 70dBA L10 daily 10pm to 7am the following day, and; 40dBA L10 for any other times.
- 17.3. Within the Kaiapoi Marine Precinct the Licensee shall comply with all rules for glare in the Kaiapoi town centre business zone 1 areas as outlined in the District Plan. Artificial lighting shall not exceed 20 lux (horizontal and vertical); spill into the sky or sea in a way which might distract or interfere with air or sea navigation lights; or spill onto any road in a way that might distract traffic.
- 17.4. Audible and at duration static motor or generator running is not permitted within the Kaiapoi Marine Precinct between the hours of 11pm and 7am Monday to Sunday, unless otherwise approved in writing by the Licensor.

18. Speed, Navigation and Manoeuvrability

- 18.1. The Licensee agrees to comply with the Navigation Safety Bylaw 2016 and Controls in relation to vessel speed limits, navigation and manoeuvrability in the Kaiapoi Marine Precinct.

19. Commercial Activities

- 19.1. The Licensee cannot solicit for business within the Kaiapoi Marine Precinct except with the prior written agreement of the Licensor.

20. Visitors

- 20.1. The Licensee may receive casual day visits from family or friends aboard the berthed Vessel in accordance with vessel capacity limits and any live aboard rules that the Licensor may from time to time create and amend.
- 20.2. The Licensee is responsible for ensuring all personal invitees comply with the terms and conditions of this Agreement and the Kaiapoi Marine Precinct Public Guidelines.
- 20.3. All users of the Kaiapoi Marine Precinct including members of the public and Vessel owners must comply with the Kaiapoi Marine Precinct Public Guidelines.
- 20.4. The Licensee is responsible and liable for all acts, omissions, and statements of personal invitees.

21. Contractors

- 21.1. All Licensee or Licensor secured contractors operating in the Kaiapoi Marine Precinct must comply with all applicable Statutes, Policies, Rules, Regulations and Bylaws imposed by a regional regulatory or local territorial authority or any other competent authority.
- 21.2. The Licensee is responsible for ensuring all contractors engaged by the Licensee or present at the Licensee's request comply with the terms and conditions of this Agreement, the Kaiapoi Marine Precinct Public Guidelines and the Vessel Owner Maintenance Guidelines.
- 21.3. The Licensee is responsible and liable for all acts, omissions, and statements of contractors.

22. Etiquette

- 22.1. The Licensee must not engage in illegal, offensive, obnoxious or nuisance conduct within the Kaiapoi Marine Precinct.
- 22.2. The Licensee agrees to operate their vessel and activities in a way that ensures the safe and peaceful enjoyment of the Kaiapoi Marine Precinct for all users.
- 22.3. The Licensee agrees to treat other Kaiapoi Marine Precinct users with courtesy and respect.

23. Fees, Outgoings and Costs

- 23.1. The Licensee agrees to pay all Licence fees in accordance with the advance billing cycle and payment dates specified in the Marine Berth Licence, and any absent specification then as specified by the Licensor.
- 23.2. The Licensee agrees to pay for any other charges, together with GST (if any), in addition to Licence fees that may be applicable during the term of this Agreement according to the Licensor's nominated timeframes.
- 23.3. The Licensor may propose a variation to the Licence fees and other charges by not less than thirty (30) days written notice to the Licensee. The Licensee shall within ten (10) days (time being of the essence) of the date of the Licensor's notice advise in writing if it does not accept the proposed variation. Failure by the Licensee to respond within the prescribed timeframe shall be deemed acceptance of and agreement to the proposed variation. The new Licence fee and other charges shall apply from the date thirty (30) days after the date of the Licensor's notice.
- 23.4. The Licensor may terminate this Agreement, by giving the Licensee ten (10) days' notice or notice to the end of their current billing period (whatever is

deemed appropriate and fair by the Licensor) if the Licensee advises in writing within the prescribed timeframe that it does not accept the variation. The Licensor is not liable to the Licensee for any claims of financial compensation which may arise as a result of these circumstances including, without limitation, termination.

- 23.5. The Licensee acknowledges and agrees that the Licensee is liable to the Licensor for any costs (including legal fees on an indemnity basis), together with GST (if any), that arises in connection with a Licensee breach of this Agreement and the Licensor's efforts to enforce this Agreement or (where applicable) remedy the breach.
- 23.6. The Licensee agrees to pay all Outgoings as invoiced or requested in writing by the Licensor from time to time. All of the above clauses 23.1 to 23.5 apply with any necessary modifications to the payment of the Outgoings. Outgoings include live aboard and commercial levies, and, at a future date may include additional power usage charges.

24. Payments

- 24.1. The Licensee agrees to the Licensor's direct debit or other payment plan, where applicable fees and charges will be debited in advance automatically from the Licensee's nominated bank account in accordance with the applicable billing cycle and payment date/s.
- 24.2. A direct debit or other form (where applicable) will be circulated to the Licensee, and this must be completed and returned to the Licensor at their request.
- 24.3. Late or missed payments in arrears of more than five (5) working days may be subject to default interest at the Default Rate. Any default interest applied will be calculated on a daily accruing compounding basis from the due date until the date of payment (and including both before and after any judgment).
- 24.4. If any payments are in arrears of more than twenty (20) days, this shall constitute breach of this Agreement for which the Licensor may, without prejudice or limitation to any other clause, terminate this Agreement.
- 24.5. Should failure to meet the terms of trade (berth rental) result in debt recovery and/or legal proceedings, any costs whatsoever incurred in the collection of the debt including debt collector's fees and commissions and legal costs, charges and expenses on a solicitor and own client basis will be added to the account and will be payable by the Licensee.

25. Breaches, Termination and Surrender

- 25.1. This Licensor may terminate this Agreement for any breach by the Licensee which is incapable of remedy, or incapable of remedy within ten (10) days, or being capable of remedy within ten (10) days is not remedied by the Licensee within the period of ten (10) days or such longer period as the Licensor by written notice requiring remedy may specify.
- 25.2. If this Agreement is terminated for any reason the Licensee must remove their Vessel from the Berth and Kaiapoi Marine Precinct within 24 hours from period of termination notification, or in accordance with any longer timeframe as stipulated by the Licensor.
- 25.3. If the Licensee fails to remove their Vessel within the allocated timeframe, the Licensor may forcibly remove the Vessel and move it to another marina or berthing location at the sole expense and risk of the Licensee.
- 25.4. Failure of the Licensor to enforce any part of this Agreement, does not in any way limit the Licensor's future right to enforce any part of this Agreement.
- 25.5. On termination of this Agreement:
- a) all amounts accruing shall be come immediately due and payable;

- b) any accrued rights and obligations at the date of termination shall survive;
- c) all clauses which by their nature are intended to survive termination shall continue –this includes, without limitation, clauses 1.3, 1.7, 3.5, 3.6, 5.11, 5.12, 13.2, 16, 20.2 to 20.4, 23.5, 23.6, 28, 29, 32, and 36.

26. *Disputes and Complaints*

- 26.1. The Licensee may if they require to lodge a complaint regarding any aspect of the Kaiapoi Marine Precinct direct such complaint to the Licensor at the Licensor contact details outlined in the Marine Berth Licence.
- 26.2. The Licensor will endeavour to acknowledge complaints within a 48 hour notice period during business hours (Monday – Friday).
- 26.3. The Licensor reserves the sole right to determine whether complaints should be escalated to the Kaiapoi-Tuahwi Community Board or Councillors for consideration.

27. *Health and Safety*

- 27.1. The Licensor may install and operate CCTV surveillance cameras in the Kaiapoi Marine Precinct to provide protection and security for assets and facilities owned and operated by the Licensor.
- 27.2. Nothing can be left in the Kaiapoi Marine Precinct that presents an obstruction or health and safety risk to navigation channels or Kaiapoi Marine Precinct shore located pedestrian or vehicle thoroughfares.
- 27.3. The Licensee has read and understood the Licensor’s Public Guidelines for the Kaiapoi Marine Precinct and agrees to comply with the conditions imposed by the Licensor or any other relevant regulatory or territorial authority.
- 27.4. Any Licensee operating commercial vessel related activities in the Kaiapoi Marine Precinct agree to comply with the Health and Safety at Work Act 2015 and their related PCBU (Person Conducting a Business or Undertaking) responsibilities.
- 27.5. The Licensee agrees to notify the Licensor of any dangerous conditions, situations, damage or defects that exist or may arise within the Kaiapoi Marine Precinct of which the Licensee is or becomes aware.
- 27.6. Vessels and their associated activity must not be a nuisance or cause harm to the general public and other authorised or licensed users of the Kaiapoi Marine Precinct.

28. *Risk, Liability and Reinstatement*

- 28.1. The Licensor is not responsible for the care and protection of Licensee property within the Kaiapoi Marine Precinct.
- 28.2. The Licensee is responsible for the care and protection of their own property within the Kaiapoi Marine Precinct. The Licensee agrees to berth their Vessel entirely at their own risk at all times within the Kaiapoi Marine Precinct.
- 28.3. Without limiting clause 28.4, the Licensee will be responsible for all damage to Licensor assets and facilities as a result of any default, misuse and neglect, act of omission or malicious intent of the Licensee or their invitees including without limitation external contractors and personal invitees.
- 28.4. The Licensee agrees to indemnify the Licensor against all actions, demands, claims, damages, costs, expenses and losses for which the Licensor may become liable as a result of any actions of the Licensee, invitees of the Licensee or external contractors hired by the Licensee.
- 28.5. Neither the Licensor, nor any of its employees, agents, officers, or contractors,

shall be liable (including, without limitation, in negligence) for any:

- a) Damage to, or theft or loss from, the Vessel, or for any damage to, or theft or loss of, any contents situated on or around the Vessel, while the Vessel is in the Kaiapoi Marine Precinct, howsoever occurring including, but without limiting the generality of the foregoing, loss or damage caused by the removal of the Vessel by any person not authorised by the Licensee to remove it, whether such removal was permitted by the Licensor or not;
- b) Damage to, or theft or loss of, any other property belonging to the Licensor or any invitee of the Licensor, which property is within the Kaiapoi Marine Precinct; or
- c) Injury, loss, or damage sustained or suffered by the Licensee, or any invitee of the Licensee or any other person in the Kaiapoi Marine Precinct howsoever such loss, damage, or injury, may occur.

28.6. The Licensee is responsible for covering all costs in relation to the reinstatement of any Licensor assets or facilities damaged or destroyed by the Licensee or any of its invitees.

29. Insurance

29.1. All property (including vessels) owned by the Licensee and brought into, or close to, the Kaiapoi Marine Precinct must be fully insured by the Licensee against loss or damage by explosions, fire, theft, burglary, accidental damage, adverse weather conditions, natural disasters and acts of God.

29.2. Licensee's operating vessel(s) within the Kaiapoi Marine Precinct shall secure public liability insurance of a minimum one million dollars (\$1,000,000) as protection against any third party claims of loss or damage resulting from the actions of the Licensee or their invitees.

29.3. The Licensee agrees to maintain levels of insurance at the required level and to provide evidence of all insurance to the Licensor prior to the Start Date and at any other times as requested by the Licensor.

29.4. The Licensee will not undertake any action that may affect or jeopardise any insurance policy in relation to the Kaiapoi Marine Precinct held in place by the Licensor, or any property and public liability insurance held in place by the Licensee.

30. Emergencies

30.1. The Licensor has the right to undertake any and all necessary steps or actions to ensure the safety of the Kaiapoi Marine Precinct and the integrity of all assets and facilities owned by the Licensor. This may include working with the relevant emergency response services or the office of the Harbourmaster at Environment Canterbury.

30.2. The Licensor reserves the right to use all Licensor owned and operated berths or moorings within the Kaiapoi Marine Precinct in the lead up to or during an Emergency. The Licensee agrees to vacate any assigned berth (including the Berth) or the Kaiapoi Marine Precinct before, during, or after an Emergency as directed by the Licensor.

30.3. The Licensor is not obligated to provide the Licensee with a new or alternative berthing or mooring location within the Kaiapoi Marine Precinct or elsewhere should the Licensee be asked to vacate the Kaiapoi Marine Precinct in an Emergency.

30.4. The Licensor is not liable for financial compensation to the Licensee should the

Licensee be asked to vacate the Kaiapoi Marine Precinct in an Emergency.

- 30.5. The Licensor may enter the Licensee's Vessel and move the Vessel to another location, should an Emergency arise and the Licensor is unable to locate or contact the Licensee, regardless of the extent of the Licensor's efforts.

31. Relocation

- 31.1. The Licensor reserves the right to require the Licensee to relocate their Vessel to another location during periods of maintenance.
- 31.2. The Licensor is not liable for financial compensation to the Licensee should the Licensee be asked to vacate their Berth or the Kaiapoi Marine Precinct due to scheduled maintenance.

32. Force Majeure

- 32.1. The Licensor will not be liable to the Licensee for any claim of loss or damage relating to any event beyond the control of either party, such as a natural disaster, significant inclement weather event, explosion, industrial action or act of God.

33. Privacy

- 33.1. The Licensor may, at any times, take photos or videos of the Kaiapoi Marine Precinct for use in promotional or other materials. Should the Licensee object to images of their boat being used in such circumstances, then they must advise the Licensor. The Licensor will make reasonable endeavours to avoid their inclusion in photographs or videos, but makes no guarantee of this given the ancillary nature of these type of inclusions.
- 33.2. The Licensee grants the Licensor the right to disclose information about the Licensee to the New Zealand marina governing body or other marine regulatory organisations.
- 33.3. The Licensee authorises the Licensor to obtain and collect any relevant information about the Licensee from any person (including credit reference agencies) and to use this information and any information about the Licensee already held by the Licensor for purposes associated with this Agreement. The Licensee has the right to access personal information (within the meaning of the Privacy Act 1993) held by the Licensor and to request correction of any errors in that information.

34. Notices

- 34.1. The Licensee confirms that the Licensee contact details on the Marine Berth Licence are current, and agrees to update the Licensor immediately if the Licensee contact details change.

35. Governing Law

- 35.1. This Agreement is subject to and interpreted according to New Zealand law.

36. Personal Liability of individuals signing on the Licensee's behalf

- 36.1. In consideration of the Licensor entering into this Agreement with a company or trust as the Licensee at the request of the individuals signing, the individuals signing guarantee the performance of all Licensee obligations including, without limitation, all payment obligations, and indemnify the Licensor against any monies owed or other loss the Licensor might suffer should this Agreement be lawfully disclaimed or abandoned by any liquidator, receiver, or other person.
- 36.2. The individuals signing covenant and agree with the Licensor that:
- a) They may for all purposes be treated as the Licensee and the Licensor shall be under no obligation to take proceedings against the Licensee

- before taking proceedings against the individual;
- b) The liability of the individuals under this clause 36 extends to any holding over period;
 - c) This clause is for the benefit of and may be enforced by any person for the tie being entitled to receive the Licence fee;
 - d) Their obligations are not released, reduced, or affected by any change to the terms of this Agreement, whether or not such change is notified to them.

37. Definitions and Interpretation

37.1. In this Agreement unless the context otherwise requires:

Agreement - means this agreement for the grant of the Licence as more particularly set out in clause 1.1 and including, without limitation, the documents as amended from time to time as set out in clauses 1.8 and 1.9.

Authorised Personnel – the duly authorised employees of the Waimakariri District Council, or its authorised contractors or agents.

Anti-fouling – means the removal of marine growths and foulings from the hull of a vessel or the application of anti-fouling paint to the hull.

Berth – means the place within the Kaiapoi Marine Precinct where a Vessel is allocated within which it is to be moored.

Casual Berth Area – means the area from time to time designated by the Licensor for casual berthing.

Default Rate - means 18% per annum.

Emergency – means an emergency situation and includes any situation that arises which in the Licensor's opinion poses or causes a significant health and safety risk to Kaiapoi Marine Precinct users including members of the general public, or presents a significant risk to marine precinct assets and facilities owned by the Licensor.

End Date – means the Marine Berth Licence end date named in the Marine Berth Licence, subject to change pursuant to clause 1.19.

GST means tax levied pursuant to the Goods and Services Tax Act 1985 and includes any tax levied in substitution for such tax.

Kaiapoi Marine Precinct - means the Kaiapoi marine precinct area including all assets and facilities owned by the Licensor within the Kaiapoi Marine Precinct.

Kaiapoi Marine Precinct Public Guidelines – means the written instructions that provide guidance to members of the general public and/or other marine precinct users about the required actions for utilising Kaiapoi Marine Precinct facilities, as amended from time to time.

Kaiapoi Marine Precinct Terms and Conditions – means these terms and conditions as amended from time to time.

Licence Break – means the licence break as set out in clause 2.

Licence – means the Licence granted under the Marine Berth Licence and clause 1.1 of the Kaiapoi Marine Precinct Term and Conditions.

Licence Fees – means the licence fees set out in the Marine Berth Licence as amended from time to time in accordance with this Agreement.

Licensee – means the individual or organisation named in the Marine Berth Licence as the Licensee and who is subject to the terms and conditions of this Agreement.

Licensor – means the Waimakariri District Council and its successors and assigns.

Marine Berth Licence – means the Marine Berth Licence document entered into by the Licensor and which contains key terms and details of the Licence.

Marine Precinct Property - means all rights and property connected to the Kaiapoi Marine Precinct or any part of it or thing in it.

Other Marine Control Documents – means any other document from time to time specifically created, approved, adopted, or amended, by the Licensor, and setting out terms to regulate the Kaiapoi Marine Precinct or activities of the sort carried on in the Kaiapoi Marine Precinct.

Outgoings – means the costs of all services supplied to, or used by the Licensee in the Kaiapoi Marine Precinct (including but not limited to, power, water, rubbish collection penalties, and any pump out services, live aboard or commercial levies) during the term of this Agreement at the rates specified by the Licensor from time to time (inclusive of any GST).

Start Date – means the Marine Berth Licence start date named in the Marine Berth Licence.

Term – means the term of this Agreement as set out in the Marine Berth Licence and clause 1.15 of these terms and conditions.

Vessel – means the boat that is named in the Marine Berth Licence as the permitted Vessel.

Vessel Owner Maintenance Guidelines – means the guidelines for Vessel maintenance from time to time specifically created, approved, adopted, or amended, by the Licensor, and setting out terms to regulate the upkeep and maintenance of vessels in the Kaiapoi Marine Precinct.

37.2. In this Agreement unless the context otherwise requires:

- a) references to persons include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons, government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them, in any case whether having separate legal personality or not;
- b) words in the singular shall include the plural and vice versa;
- c) words importing one gender shall include the other genders;
- d) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- e) headings have been inserted for convenience only and shall not affect the construction of this document;
- f) reference to a statute includes all statutes amending, consolidating or replacing the statute referred to;
- g) references to clauses and schedules shall be construed as references to the same in this document;
- h) the covenants expressed or implied in this document on the part of a party shall bind all persons executing this document who form that party and any two or greater number of them jointly and each of them severally.