

# BROOKLANDS TMT PARTNERSHIP

Trading as Brooklands Boating Club - BBC

PO Box 2, Clevedon, 2248, New Zealand

P + 64 274 752832 or +64 21 655984

E: [enquiries@bbclub.co.nz](mailto:enquiries@bbclub.co.nz)

## RENTAL TERMS AND CONDITIONS

### 1. RENTAL AGREEMENT

1.1 The BBC grants a licence to the Customer to occupy the Berth or location during the term of the Agreement on the terms and conditions of the Agreement, and the Customer agrees to accept the same.

1.2 Nothing in the Agreement shall create a lease, a tenancy or any other property rights in the Berth or location.

1.3 If there is any inconsistency between the provisions of these terms and conditions, the Rental agreement and/or the Club Rules, the provisions of the Rental agreement shall prevail.

### 2. TERM

2.1 Subject to clause 2.2, the Agreement shall commence on the Commencement Date and remain in effect until the Termination Date, unless terminated earlier under clause 14.

2.2 Without prejudice to the BBC's rights, if the BBC permits the Customer to remain in occupation of the Berth beyond the Termination Date, the occupation shall be on a monthly holding over arrangement at the Licence Fee then payable calculated on a daily basis, terminable by either party giving four (4) weeks' notice and otherwise on the same terms and conditions of the Agreement.

### 3. LICENCE FEE

3.1 The Customer agrees to pay the Licence Fee to the BBC in advance in monthly instalments (unless agreed otherwise to pay annually) as invoiced by the BBC (in a perpetual manner) with the first instalment being payable on the Commencement Date (time being of the essence). The obligation to pay the Licence Fee is an essential term of the Agreement.

3.2 The BBC may, in its sole and absolute discretion propose a new Licence Fee by giving the Customer not less than one (1) month's written notice (**Review Notice**).

### 4. OUTGOINGS N/A

### 5. PURPOSE OF OCCUPATION AND RISK

5.1 The Customer shall only use the Berth or location for pleasure boating purposes or storage and not for any commercial or other use or purpose unless the BBC at its sole discretion has approved such use in writing. Fees for commercial operations need to be agreed in writing with the BBC.

5.2 The Customer shall berth the Vessel in the Berth or location entirely at its own risk. The BBC shall not, whether directly or indirectly, nor shall its agents, employees or contractors, be liable in negligence or otherwise for any damage to or theft or loss of the Vessel or any tackle, goods, gear, machinery or other property while the Vessel is berthed or located in or around the BBC, no matter how or from what cause such loss or damage may arise or occur.

5.3 The Customer acknowledges and agrees that, to the fullest extent permitted by law, the BBC makes no warranty whatsoever as to the condition of the Haul-Out, pontoons, buildings, piles, walkways, gangways, ramps, driveways, hardstand mooring gear and any other facilities that comprise the BBC and the Berth or location, and the Customer agrees that it will use those facilities solely at its own risk.

### 6. DIMENSIONS OF VESSEL

6.1 As a continuing warranty during the term of this Agreement, the Customer warrants that the dimensions of the Vessel as specified in the Rental agreement is true and correct and further undertakes not to allow any part of the Vessel (including spars, bowsprits, anchors, davits and tenders/dinghys or any other thing affixed to the Vessel) to exceed such dimensions during the term of the Agreement.

6.2 The Customer undertakes to keep the BBC fully informed of any changes to the Vessel or any material changes thereto.

### 7. VISITORS TO THE BBC

7.1 The Customer shall ensure that:

7.1.1 All of agents, servants, contractors, employees or invitees comply with the terms of the Agreement and all relevant bylaws, rules, regulations and legislation; and

7.1.2 Any children under the age of 12 and for whom the Customer or its visitors are responsible, are accompanied by a person over the age of 18.

7.2 The Customer is responsible for ensuring that any contractor invited into the BBC complies with all rules and regulations including the Environmental Management Plan (EMP).

7.3 The Customer must ensure and accepts responsibility to ensure that any contractor or tradesman invited into the BBC for the purpose of carrying out work on the nominated Vessel in the Berth or location holds sufficient insurance to satisfy the insurance requirements of the BBC.

### 8. SUBLETTING OF BERTH or Location

8.1 Any subletting of the Berth during the term of the Agreement must be managed by the BBC on terms and conditions as stipulated by the BBC at its sole and absolute discretion.

### 9. WATER SPACE AND ACCESS RIGHTS

9.1 The Agreement relates only to the exclusive use of the allocated Berth or location. In common with others, the Customer shall have the right to tie up to the pontoon structure (excluding work berths) and should have the right of access in, and the use of, the common structures and land of the BBC subject to the Club Rules and any other rules as to access.

### 10. RESTRICTED ACTIVITIES

10.2 No staying overnight shall be permitted on the pile moorings or location at any time, and no living on-board shall be permitted in the Berth or location at any time. For clarification, staying overnight for more than one (1) night a week shall constitute living on-board.

### 11. LIABILITY

11.1 The Customer indemnifies and will keep indemnified the BBC against all actions, suits, claims, debts, obligations and other liabilities (whether direct, indirect or consequential) arising out of the Agreement or of any act or omission of the Customer or its servants, agents, employees, invitees, contractors or licensees and the Customer agrees to compensate, recompense, pay, indemnify and hold indemnified the BBC against loss or damage to the Berth or the Club Assets or any of the facilities forming part of the BBC or any vessels moored or remaining therein or to any other person or property caused or resulting from the acts or omissions of the Customer or its servants, agents, contractors, employees, invitees or licensees.

11.2 The BBC shall not be liable and accepts no responsibility for consequential loss, loss or damage to boats, craft, third party property or persons using the same within the confines of, or near to the BBC and the BBC shall not be liable to the Customer or any person for any loss or damage to property, or death or personal injury incurred or suffered within the confines of the BBC however the same occurs and whether or not such happening is attributable to the acts, defaults or negligence of the BBC or its servants, agents, contractors, employees, invitees or licensees.

11.3 The Customer will be responsible for all damage to the BBC including structures, pilings or property in the BBC and or vessels and persons using the BBC arising from any act or omission, neglect or default by the Customer or its agents, servants, contractors, employees or invitees relating to the use, storage, of the Vessel.

### 12. INSURANCE

12.1 The Customer shall throughout the term of the Agreement keep the Vessel, equipment and other property owned by the Customer in the BBC fully insured against loss or damage by any reason and/or other usual maritime risks. At an absolute minimum, all customers are to hold "third party" insurance.

12.2 The Customer shall provide the BBC with copies of the policies effected pursuant to this clause together with a 'certificate of currency' for such policies.

### 13. PAYMENTS AND DEFAULT INTEREST

13.1 All monies due under the Agreement are to be paid by the Customer using direct debit. To this end, the Customer agrees to complete and return a direct debit form to the BBC within three (2) Working Days of being requested by the BBC to do so.

13.2 Where any part of the Licence Fee, Outgoings or other monies due under the Agreement remains outstanding for more than three (5) Working Days from the due date noted in the relevant invoice, the BBC may at its discretion charge default interest. Default interest will accrue at the Default Rate (calculated on a daily basis) on the outstanding amount from the due date until the date of payment (inclusive).

### 14. TERMINATION ON DEFAULT

14.1 If the Customer fails to pay any part of the Licence Fee, Outgoings or other monies due under the Agreement or otherwise defaults on any of the terms and conditions of the Agreement, the BBC may at its sole and absolute discretion issue the Customer a notice of default setting out the nature of the default and how it can be rectified (**Default Notice**). In particular, the Default Notice shall note the total outstanding monies including any interest at the Default Rate. The Default Notice is to be sent to the Customer's address noted on the Rental agreement [as updated in writing to the BBC from time to time]. To this end, the Customer warrants that its address noted on the Rental agreement [or last advised in writing] is correct for the

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purposes of service. Where the customer has an email address, then the parties also agree that this is an acceptable form of notice.

14.2 If the default as detailed in the Default Notice is not remedied within five (5) Working Days of the Customer's receipt of the Default Notice (or other time period specified in the notice) then the Agreement shall, at the sole and absolute discretion of the BBC, be terminable immediately provided that the Customer shall remain liable for payment of all Licence Fees, Outgoings (if applicable) and other monies owing to the BBC under the Agreement, and any costs incurred by the BBC from the date of termination of the Agreement until the Vessel is removed from the BBC (**Outstanding Costs**). Such costs can include third party recovery costs and legal costs associated with such recovery.

14.3 Where there are Outstanding Costs, the BBC shall be entitled to a lien over the Vessel to secure the payment of the Outstanding Costs and any other costs and charges incurred by the BBC on account of the Customer's default under the Agreement and termination of the Agreement. The BBC may, in its sole and absolute discretion, either secure the Vessel in the Berth/location or alternatively remove the Vessel to another berth/location or hardstand. To this end, the Customer acknowledges and agrees to the grant of a lien over the Vessel for this purpose.

## 15. CLAIMS PROCEDURE

15.1 If the Agreement is terminated under clause 14.2 and the Customer has failed to pay the Outstanding Costs within five (5) Working Days of termination of the Agreement, the BBC may, in its sole and absolute discretion, serve a notice of claim (**Notice of Claim**) on the Customer by posting the same to the Customer's given address and affixing the Notice of Claim in a prominent position to the Vessel requiring the Customer to pay the Outstanding Costs and to remove the Vessel (including all goods and effects of the Customer) from the BBC within five (5) Working Days.

15.2 If the Customer fails to comply with the Notice of Claim, the BBC may (but without any obligation to do so), without further notice to the Customer, seize the Vessel and offer the Vessel for sale by public auction or private contract and apply such of the proceeds of any resulting sale first in satisfaction of the BBC's expenses incurred in the removal, storage and sale of the Vessel (including administrative expenses and the cost of providing custodians), secondly in or towards satisfaction of all Outstanding Costs and any other debts or liabilities owed by the Customer to the BBC, and thirdly to the Customer.

15.3 The Customer hereby irrevocably appoints the BBC to be the attorney of the Customer to execute all documents and to do all things as are necessary to give effect to the BBC's rights under the Agreement, including this clause 15 (Vessel sale) and clause 14.3 (securing/moving the Vessel).

## 16. ABANDONED, UNSEAWORTHY OR ILL-REPAIRED VESSELS

16.1 The Customer shall keep the Vessel occupying the Berth in seaworthy and good serviceable condition and repair while berthed, attended or unattended, in the BBC, as judged by the BBC in its sole and absolute discretion.

16.2 Should the Customer fail to comply with sub-clause 16.1, the BBC may, serve a notice on the Customer (which shall be deemed to be a Default Notice for the purposes of clause 14) requiring the Customer to remedy specified deficiencies in the Vessel within a reasonable period of time.

16.3 If the Customer fails to comply with a Default Notice issued under clause 16.2 within the time specified, the BBC may at its total discretion invoke the termination procedure as outlined in clause 14 and or the claims procedure as outlined in clause 15.

## 17. EMERGENCY MANAGEMENT

17.1 The BBC reserves the right to use the Berth in the case of an emergency and also to require the Customer to vacate the Berth if necessary to allow urgent repairs to be carried out. In such circumstances the BBC may, but shall not be obliged to, provide an alternative berth or mooring.

17.2 In extreme emergencies, the BBC reserves the right to take whatever steps are required in its sole and absolute discretion to ensure the integrity and safety of the BBC and the people and vessels in the BBC.

## 18. BAILMENT

18.1 The terms and conditions of the Agreement are not in any way intended by either party to create a bailment and the Customer understands that the BBC accepts no responsibility for the care of the Vessel or its contents.

## 19. FORCE MAJEURE

19.1 The BBC shall not be deemed to be in breach of the Agreement or otherwise liable to the Customer by reason of any delay in performance, or non-performance, of any of its obligations under the Agreement to the extent that any such delay or non-performance is due to any event outside the reasonable control of the BBC which has been notified to the Customer.

## 20. COSTS

20.1 The Customer acknowledges and agrees that the Customer shall pay the BBC's legal costs (as between lawyer and client) of and incidental to the enforcement, or attempted enforcement, of the BBC's rights and remedies under the Agreement.

## 21. PRIVACY

21.1 The Customer hereby authorises the BBC to, upon default under the Agreement by the Customer or termination of the Agreement, disclose to any debt collection services any personal information held by the BBC about the Customer.

21.2 The Customer authorises the BBC to obtain and collect any relevant information about the Customer from any person (including credit reference agencies) and to use this information and any information about the Customer already held by the BBC for purposes associated with the Agreement. The Customer has the right to access personal information (within the meaning of the Privacy Act 1993) held by the BBC and to request correction of any errors in that information.

## 22. GUARANTEE (IF APPLICABLE)

22.1 In consideration of the BBC entering into the Agreement at the Guarantor's request the Guarantor guarantees the payment of the Licence Fee, Outgoings and the performance by the Customer of the covenants in the Agreement, and indemnifies the BBC against any monies owed, loss the BBC might suffer should the Agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

22.2 The Guarantor covenants with the BBC that:

22.2.1 As between the Guarantor and the BBC the Guarantor may for all purposes be treated as the Customer and the BBC shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor.

22.2.2 This guarantee and indemnity shall extend to any holding over by the Customer.

22.2.3 This guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the Licence Fee and Outgoings.

## DEFINITIONS

**"Agreement"** means the full agreement between the BBC and the Customer, and includes the Rental Agreement, these Rental Terms and Conditions, the BBC Rules, and any other document published or administered by the BBC or its duly authorised employee or agent for the purpose of managing the BBC.

**"Berth"** means the berth or location at or in the BBC described in the Rental Agreement or as nominated or allocated by the BBC for the vessel or asset from time to time.

**"Commencement Date"** means the commencement date specified in the Rental Agreement.

**"Customer"** means the person or entity named in the Rental agreement.

**"Club Assets"** means any and all assets owned or controlled by the BBC.

**"Default Rate"** means the BBC's bank overdraft interest rate plus a further 5% per annum, calculated daily.

**"GST"** means goods and services tax levied pursuant to the Goods and Services Tax Act 1985 or any alternative tax levied in substitution of that tax.

**"Guarantor"** means, if applicable, the person named in the Rental agreement.

**"Licence Fee"** means the licence fee described in the Rental agreement and updated from time to time and generally published on the BBC website.

**"BBC"** means Brooklands TMT Partnership, trading as the Brooklands Boating Club (BBC) for the purposes of this agreement. It also includes the Berths, all structures, foreshore areas, parking areas, driveways, accessways, services, landscaped areas, toilets, launching ramps, pontoons, piles, and other facilities constructed or placed on, or in, the vicinity which are owned or controlled by the BBC.

**"BBC Rules"** means the rules of the BBC as published and updated by the BBC management from time to time and published on the BBC website.

**"Termination Date"** means the termination date specified in the Rental agreement.

**"Vessel"** means the vessel specified in the Rental agreement.

**"Working Day"** means any day of the week other than: (a) Saturday, Sunday, or any official public holiday for the Auckland region. A working day shall be deemed to commence at 9.00am and terminate at 5.00pm.