Port Nikau Investments Joint Venture
Marine Precinct Terms and Conditions

The provision of marine services and facilities by Port Nikau Investments Joint Venture or its appointed Manager ('Port Nikau') will be upon the following terms and conditions.

Any Vessel owner, berth Licence holder or their appointed Boat Master, or commercial operator accessing vessels berthed at Port Nikau ('the User') transacting such business or entering Port Nikau's premises agrees to and will be bound by these terms.

1. Services available at Port Nikau

a) Port Nikau may provide berthage for the User's vessel. Berthage will be subject to the absolute right of Port Nikau to require a vessel berthed at any wharf to be moved or relocated to another berth at Port Nikau, or to vacate the allocated berth and to moor in the stream or harbour as directed and any such requirement will be carried out by the User.

b) Port Nikau will use its best endeavours to provide a berth for the User's vessel on a date convenient to the User's sailing schedules, but Port Nikau will be under no liability for the consequences direct or indirect, if for any reason Port Nikau is unable to provide berthage as requested by the User.

c) Port Nikau may provide power and water on some berths. Charges apply.

d) Port Nikau has a diesel facility available at Mains 2. Port Nikau reserves the right to restrict access to other fuel suppliers. Fuel may only be delivered to vessels by arrangement with Port Nikau. A bunker fee may apply – refer to fuel supplier.

e) Port Nikau reserves the right to interrupt supply of services for maintenance and/or unpaid fees.

f) Services may not be supplied to any User who is in breach of these terms and conditions, including breach of the agreed Payment Terms.

g) Port Nikau may provide access to the facilities for Commercial Operators who require access to vessels. Such access will be payable by the Commercial Operators.

2. Charges and fees

a) Unless otherwise agreed in writing, the charges for berthage and marine services will be in accordance with Port Nikau's Schedule of Fees in force at the time of actual provision of the services. Particulars of such Price Schedule are available upon request.

3. Users Liability

a) The User will be liable for loss or damage caused to the Port Nikau's property where such loss or damage is caused by the negligence of the User, its employees, visitors, agents, or subcontractors.

b) The User will ensure that its employees, visitors, agents, or subcontractors are aware of these terms and will abide by them. Contractors must be pre-approved and inducted prior to accessing Port Nikau.

c) The User will be liable for all expenses incurred by Port Nikau in storing, moving, or berthing the Vessel and any costs relating thereto.

d) The User will comply with its duties and obligations under all relevant statutes, bylaws, local authority and other regulations or plans including but not limited to the Health & Safety in Employment Act 1992, the Maritime Transport Act 1994, the Resource Management Act 1991, the Marine Pollution Act 1974 and District or Regional Council Plans to the extent applicable to that User.

e) If at any time the User or Port Nikau becomes aware that the User is in breach, or is likely to be in breach, of any such duty or obligation, the party who detects a breach or possible breach will immediately notify the other party and the User will follow all directions to avoid, remedy, or mitigate any such breach or possible breach.

f) All hot work must be completed to NZ Standards and requires a Hot Work Permit. Hot work may only be completed with the Manager's approval and on designated berths.

g) Port Nikau will not have any duty to supervise, check, or issue directions to the User, and the User is solely responsible for ensuring that relevant laws are complied with.

h) The User will keep the berth area and premises neat, clean and tidy and free from any rubbish or flammable substances and will store any flammable substances (except where a User is a fuel supplier in the process of delivering fuel), pollutants or hazardous materials in accordance with best practice. If the area is left untidy or rubbish is left on the wharf the User will incur charges to remove.

i) The User will berth, operate, and maintain the Vessel in a seaworthy condition and responsible manner, and will not do or permit anything to be done by a guest, employee, crew, or agent who, in the opinion of Port Nikau may be or become a nuisance or disturbance or cause damage to Port Nikau's facilities or other Users and their vessels.

j) The User will ensure the vessel can move under the vessel's own power except during refit for such a time as is approved by Port Nikau in writing.

k) The User will not carry out any commercial enterprise at the berth except as permitted by Port Nikau.

l) For the term of their stay the user will carry appropriate minimum $5,000,000 marine hull liability insurance for the Vessel and Public Liability insurance to a minimum value of $5,000,000 and make proof of such insurance available if requested by Port Nikau. Users are advised to inform their insurance company if their vessel is on the hardstand.

m) Port Nikau is party to the Whangarei Marine Biosecurity Charter (September 2013) available from the Northland Regional Council www.nrc.govt.nz All marine facilities at Port Nikau are monitored for marine pests. However, vessel owners are responsible for protecting their vessels from marine pests through regular hull maintenance and inspection. Port Nikau will not be held liable for marine pest infestations of vessels using its facilities.

n) Port Nikau will take all reasonable care to avoid situations where one vessel may cause damage to another at the wharf. However, vessel owners are responsible for protecting their vessels from damage caused by proximity to other vessels. Port Nikau takes no responsibility for vessel damage due to appendages or hull of the vessel protruding further than the marina fingers or piles in the marina.

4. Water Space, Access, and Use of Facilities

a) These Terms and Conditions relate only to the allocated water space of the berth and any wharf space of land area specified. In common with others, the User shall have a right of making fast to the allocated Berth structures and access and use rights of the structure of the wharf.

b) The User shall not alter or modify the Berth or adjacent structures. Any addition or alteration, such as fendering and dinghy supports, shall first be approved by the Owner and fitted by an installer approved by the Owner.

5. Living on board

a) Permanent Liveaboards are only permitted in Port Nikau Marina with the approval of Marina Management.

b) 'Liveaboard' means to sleep overnight on your vessel for more than fourteen consecutive nights while it is moored in the Marina.

c) Any permission to 'Liveaboard' will not be granted on a permanent basis and will always be subject to the Marina Manager's right to terminate such permission on notice at its sole discretion.

d) The Liveaboard status is only available to the vessel owner and their immediate family legally occupying any berth. An occupant renting or leasing the vessel cannot liveaboard.

e) Liveaboard approvals will be reviewed annually.

f) Liveaboard approval is personal and is not transferable to other persons.

g) The vessel must be maintained in a good and safe condition. The Marina Manager may not accept a vessel that is regarded as being in poor condition. The vessel must be operational and able to be moved under its own power.

h) The vessel must be maintained in a tidy condition. (e.g., no laundry or pot plants visible in the rigging etc.)

i) If applicable, a copy of the vessel's Gas Safety Certificate must be given to the Marina Office.

j) An Effluent Disposal Plan must be approved before any person is permitted to live on board. Effluent may not be disposed of in the marina waters or surrounding land.

k) Pier walkways must always be kept clear of rubbish and obstacles. Bicycles and scooters are not to be stood against Power or Fire pedestals. Dinghies may not be left on fingers or piers. Do not modify piers without prior approval of the Marina Manager.

l) No animals allowed except by written agreement with the Marina Manager.

m) Any motor vehicle associated with the Liveaboard must be warranted and always registered. Vehicles not required for daily use are to be parked as directed by the Marina Manager. Vehicles are not to be used for storage of goods.

n) Marina Management may vary the Liveaboard rules by written notice to berth occupiers.

6. Effluent

Discharge of sewerage from vessels into the Marina is not allowed. Vessels fitted with a toilet must have a functioning black water holding tank that can be discharged into the land-based pump out facility situated at Pier B. If there is no holding tank on board or it cannot be discharged into a land-based facility, then the vessel's toilet outflow will be sealed by Marina staff to prevent use while in the Marina. In this case, shore toilets must be used.

7. Shore Power

a) Vessels requiring a permanent connection to shore power must supply a current electrical warrant of fitness (EWOF) in accordance with the New Zealand Electrical Code of Practice AS/NZS 3004.2

b) The user must ensure that any vessel using the facilities has been fitted with a Galvanic Isolator.

c) A temporary power supply cord may be used but can only be connected to a maximum of one portable electrical appliance. The vessel may not be left unattended if the electrical supply is active.

d) The following conditions must be met to ensure compliance with the Electrical Regulations AS/NZS 3760
   i) A visual tag is affixed to the supply cord, showing it passed the test, along with the date of the test and date of the next required test.
   ii) All components of the supply lead shall be appropriate for the demands placed upon it.
   iii) The supply power cable shall one continuous length and be a heavy-duty tough rubber sheathed cable.
   iv) The supply cable should be arranged;
      (1) to permit normal movement of the vessel at its berth
      (2) Securely to avoid damage
      (3) To minimise accidental disconnection or leave a trip hazard.
      (4) Without excess cable coiled up – spread the coil inside the vessel to avoid heating and melting insulation.

8. Multiple Hazard Area

a) Port Nikau wharves are a multiple hazard area. Users are responsible for the safety of all visitors, employees and contractors associated with their vessel.
b) Users are required to inform Port Nikau of hazards identified or injuries to persons on the wharf.
c) General hazards and safe practices include (but are not limited to):
   i) Wet surfaces and open water access
      (1) Keep away from the edge or use suitable harnessing and a life vest.
      (2) Always work with a buddy
      (3) Inform your supervisor/skipper of your arrival, planned activities and departure time.
      (4) Planned activities must be appropriate to weather conditions.
      (5) Keep work areas clean and clear of slip, trip and fall obstacles.
      (6) Ensure safe access on and off the vessel.
   ii) Marine environment
      (1) Wear appropriate PPE and clothing.
      (2) Never board, lean on, or place items on any vessel or its associated equipment without the skipper's permission.
   iii) Work vehicles
      (1) Be aware of vehicles around you.
      (2) Drivers must check for pedestrian traffic before moving.
   iv) Electrical equipment and tools
      (1) Do not use faulty electrical equipment or tools.
      (2) Do not use electrical equipment or tools that you are not trained to use.
   v) Cranes, lifting equipment and mobile plant.
      (1) Wear appropriate PPE – high visibility clothing, boots, eye protection and hard hats around mobile plant.
      (2) Keep a safe distance away from operating mobile plant.
   vi) Flammable liquids and toxic chemicals
      (1) Do not handle substances unless fully trained and authorised by the skipper.

9. Change of vessel ownership

a) The User shall not transfer ownership of the vessel recorded on this agreement without first obtaining the written consent of Port Nikau, which Port Nikau shall not unreasonably withhold or delay if the following conditions are fulfilled:

   i) the User proves to the reasonable satisfaction of Port Nikau, at its sole discretion, that the proposed transferee (**transferee**) is respectable, responsible, solvent, and able to meet the User's commitments under this Agreement, and that the proposed vessel is appropriate for the Berth. The User shall give Port Nikau any additional information relating to the transferee as is reasonably requested by Port Nikau;

   ii) all Operating Expenses and other moneys for the time being due or payable by the User under this Agreement have been paid and there is no subsisting breach of any of the User's obligations under this Agreement up to the date of Transfer;

   iii) the transferee has signed and agreed to Port Nikau's Marine Precinct Terms and Conditions;

   iv) the transferee has delivered the insurance policies and certificates of currency required under clause 3 (l) of this Agreement to Port Nikau.

10. Termination

a) Port Nikau may immediately terminate the User's right to use a berth or facility if the User fails to pay all charges and other amounts on time and such charges remain unpaid seven days after notification of such non-payment, or if the User breaches any of these terms and conditions or the bylaws, regulations and laws applying, and such breach (if capable of remedy) remains un-remedied after seven days from the date of Port Nikau notifying the User of such breach.

b) If Port Nikau terminates the User's right to use a facility, the User must promptly pay all charges and amounts owing to Port Nikau and remove the vessel from the facility.

c) If the User does not remove the vessel, Port Nikau may, without incurring any liability, remove the vessel and store it in such a place and under such conditions as it sees fit. Port Nikau shall have a lien over the vessel for all costs including but not limited to, impounding, removal, security, storage

and sale of the vessel, and all outstanding charges and other amounts owing by the User to Port Nikau under these terms and conditions. Port Nikau shall not be required to release the vessel until all amounts owing in relation to the vessel have been paid.

d) After expiry of one month from Port Nikau giving notice to the User that Port Nikau has claimed a lien on the vessel, Port Nikau shall be free to sell the vessel and appropriate the proceeds of sale in satisfaction of any amount due to Port Nikau by the User. Any surplus shall be paid to Port Nikau.

e) The User does hereby indemnify Port Nikau from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions, and proceedings suffered by or commenced against Port Nikau which arise out of or in connection with the failure of the User, its agents, subcontractors or employees to comply with the provisions of these terms and conditions.

11. Security Registration on the Personal Property Securities Register

a) The User acknowledges that clause 5(c) creates a security interest ("Security Interest') (as that term is defined in the Personal Property Securities Act 1999("PPSA")) in the User's vessel.

b) The User will at Port Nikau's request promptly execute any documents, provide all necessary information, and do anything else required by Port Nikau to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA), including executing any variations to this agreement reasonable requested by Port Nikau.

c) The User waives all its rights under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).

d) The User acknowledges and agrees that:
   i) it has received valuable consideration from Port Nikau.
   ii) attachment of the Security Interest to the User's vessel shall in no way be deferred or postponed.
   iii) the Security Interest shall remain in force until Port Nikau confirms that the User has paid all amounts and performed all obligations under these Terms and Conditions; Port Nikau may at any time secure, remove and/or uplift the User's vessel.
   iv) it shall not grant any other security interest, encumbrance, or lien over the User's vessel.
   v) it waives any rights it may have under sections 114(1)(a), 116, 117, 119, 120(2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA; and
   vi) it shall give Port Nikau prior written notice of any proposed change of its name or address.

12. Force Majeure, Natural Disaster, Act of God, War, Pandemic

Port Nikau Joint Venture disclaims all or any liability for any loss whatsoever suffered by the User that is a consequence of any Natural Disaster (which term shall include any weather event where winds exceeding 63 knots for over 6 hours), Flood, Health Pandemic, any other unforeseeable event which is an Act of God, any war or nuclear explosion.

13. Indemnity

a) The user acknowledges that use of the facilities provided by Port Nikau Joint Venture are reasonably fit for purpose within the meaning of the Consumer Guarantees Act 1993 and the Contract and Commercial Law Act 2017.

b) The user does hereby fully indemnify and hold harmless Port Nikau Joint Venture and all its employees, contractors and invitees from and against any and all loss (including any consequential loss, legal costs on a solicitor client basis and other associated costs), suffered by Port Nikau Joint venture and caused by the User.

c) The user will satisfy this indemnity immediately upon any demand made in writing to the last known address of the user.

d) By using the facilities provided by Port Nikau Joint Venture the user acknowledges that the user has inspected and approved the facilities for use by the user.
e) The user confirms they have the expertise and seamanship abilities to safely berth and secure the vessel to the facilities provided and they have not relied on any representations made by Port Nikau and uses the facilities entirely at their own risk.

14. Bylaws, regulations& New Zealand Law

These terms and conditions are subject to New Zealand Law.

15. Notices and contact

a) All notices under these terms will be given by personal delivery, ordinary mail, or electronic mail:
To Port Nikau at Whangarei:
Port Nikau Investments Joint Venture,
325 Port Road, PO Box 1610, Whangarei, NEW ZEALAND
enquiries@portnikau.nz

To the User at:
Any of the User's last known places of business whether in New Zealand or elsewhere or at the address of the User's last known agent in New Zealand, or to the User's vessel and will be deemed to have been received two days after despatch by mail or on the day of despatch by facsimile or on the day of delivery if by personal delivery.

b) Port Nikau must be advised of any change of address, contact details, or ownership of the User or the vessel.

16. VARIATION OF TERMS

These terms may be varied by Port Nikau from time to time. Such variations will be deemed effective and accepted by the User 30 days after they are publicly circulated by Port Nikau (including their insertion on Port Nikau's website) irrespective of whether such notice is received. The User acknowledges that these Terms and Conditions apply to all vessels owned by the User regardless of whether they are named below.