



BERTH & TRAILER PARK RENTAL LICENCE TERMS & CONDITIONS

1. BERTH / TRAILER PARK RENTAL

1.1 Marina Management grants a licence to the Berth Occupier (as named in the Berth & Trailer Park Rental Licence) a licence to occupy the berth or trailer park specified for the period stated and at the rate stated.

1.2 The Berth Occupier agrees to accept this licence subject to the following terms and conditions.

2. THE FULL LICENCE AGREEMENT

2.1 The full agreement and terms of the licence between Marina Management and the Berth Occupier are contained within the:

(b) Berth & Trailer Park Rental Licence; and

(c) Berth & Trailer Park Rental Licence Terms and Conditions; and

(d) Liveaboard Rules as set out in the Liveaboard Application form (if applicable) and as varied from time to time; and

(e) Any other document published or administered by Marina Management, including any Marina Rules displayed at the Marina and the full is collectively referred to as the Licence.

2.2 Marina Management reserves the right to amend the terms and conditions of the Licence upon giving one month's notice

to users and Berth Occupiers and may amend the Marina Rules and the Liveaboard Rules at any time.

3. TERM OF LICENCE

3.1 The Licence commences on the start date stated in the Berth & Trailer Park Rental Licence and remains in effect until the end of the fixed rental period set out in the Berth & Trailer Park Rental Licence or until otherwise terminated by either party giving the required notice as set out in the Berth & Trailer Park Rental Licence form, or pursuant to clause 19.

4. RENT, OTHER PAYMENTS AND CONSEQUENCES OF NON-PAYMENT

4.1 The Berth Occupier agrees to pay the rental, Liveaboard surcharges and any other charges for the berth to Marina Management monthly in advance on the first business day of each month and otherwise upon demand, at the rates set out in the Berth & Trailer Park Rental Licence and the Liveaboard Application form or as may be amended from time to time. Marina Management may alter the rental rate or the Liveaboard surcharge by the giving of one month's written notice of the revised rental or surcharge and may do so annually. The Berth Occupier may not deduct or set off any sum against the rental payable.

4.2 Power consumed by the Berth Occupier will be monitored and charged for monthly.

4.3 Power charges may be adjusted by Marina Management by giving 30 days notice.

4.4 All payments are to be paid by the Berth Occupier by direct debit.

4.5 Default interest at a rate of 10% will be charged for rental or any surcharges which remain unpaid 10 working days from the due date (calculated from the due date to the actual date of payment).

4.6 Where the Berth Occupier does not pay the rental or other charges payable or does not comply with the conditions in this Licence, Marina Management reserves the right to restrict access to the Marina and to the Berth Occupier's vessel (including by revoking electronic entry gate access). In such a case, Marina Management will allow access to the vessel once a fortnight at a time and date convenient to Marina Management to allow the vessel to be maintained in good order. The Berth Occupier must be accompanied by a Marina staff member on those occasions.

5. JURISDICTION

5.1 When a Berth Occupier enters the Marina premises the Berth Occupier and those persons accompanying the Berth Occupier are subject to the rules, terms and conditions outlined in clause 2 above.



5.2 When a pleasure craft owned or under the control of the Berth Occupier enters the Marina then the vessel and its occupants are subject to the jurisdiction, terms and conditions outlined in clause 2 above.

6. **OCCUPATION OF BERTH**

6.1 The Berth Occupier shall only use the berth for pleasure boating purposes and not for any commercial or other use or purpose unless Marina Management at its sole discretion has approved such a use. Commercial use must be pre-approved by Marina Management and may be subject to further terms and conditions.

6.2 Berth Occupiers must advise Marina Management if the berth will be unoccupied for any extended period, including if a vehicle is to be left.

6.3 Staying overnight on your vessel is only permitted once in a calendar week and must not be for more than three consecutive nights (to a maximum of six nights in one calendar month).

6.4 Berth Occupiers must not live on the vessel while moored in the Marina or permit anyone else to do so without first completing an application to live aboard, obtaining the approval of Marina Management to do so, and making payment of any additional Liveaboard charges.

6.5 Berth Occupiers will be considered as “living aboard” if people are staying overnight on the vessel for more than three consecutive nights in a calendar week (to a maximum of six nights in one calendar month) while the vessel is moored in the Marina.

7. **MAXIMUM DIMENSIONS OF VESSEL AND MOORING REQUIREMENTS**

7.1 The Berth Occupier shall at no time allow any part of any vessel using or moored in the berth (including spars, bowsprits, anchors davits and tenders or any other thing affixed to the vessel) to exceed the published or nominal dimensions of the berth. For avoidance of doubt, the published or nominal dimensions are less than the physical dimensions of the berth and indicate the maximum dimension of an occupying vessel.

7.2 For further guidance, refer to the diagram and explanation on the Marina’s website and displayed at the Marina office.

7.3 The Berth Occupier must ensure the vessel is correctly moored in accordance with the mooring guidelines on the Marina’s website and displayed at the Marina office.

8. **CHANGE IN NOMINATED VESSEL OR BERTH**

8.1 Prior to making any changes to either the vessel or berth nominated in the Berth & Trailer Park Rental Licence Application, the Berth Occupier shall ensure that:

- (a) The vessel fits the dimensions of the berth as listed on the Berth & Trailer Park Rental Licence Application; and
- (b) Marina Management agrees to the change before it occurs. A new Berth & Trailer Park Rental Licence Application form must be completed and signed by the Berth Occupier prior to the change occurring.

8.2 If the vessel is sold by the Berth Occupier, Marina Management may allow continued occupation of the relevant berth by the purchaser of the vessel, but subject at all times to the purchaser otherwise meeting the Marina’s usual approval requirements and also the Purchaser entering into a new Berth & Trailer Park Licence. Marina Management reserves the right to decline to issue a new Berth & Trailer Park Licence to any purchaser of a vessel for any reason whatsoever at its sole discretion.

8.3 If, following the sale of the vessel by the Berth Occupier, Marina Management declines to issue a new Berth & Trailer Park Licence to the purchaser, the vessel must be removed from the Marina within 5 working days of notification to the Berth Occupier, notification



by email and/or text to the Berth Occupier's last notified cellphone number.

- 8.4 The Berth Occupier remains responsible for all charges in relation to the berth and the vessel until a sale and purchase agreement for the vessel has been provided to Marina Management, a new Berth & Trailer Park Agreement has been signed by the purchaser, or the vessel has been removed (if Marina Management declines to issue a new Berth & Trailer Park Licence).

9. VISITORS TO THE MARINA

- 9.1 The Berth Occupier shall ensure that:
- (a) All of its invitees comply with the terms of this licence; and
 - (b) Any children under the age of 14 and for whom the Berth Occupier or its visitors are responsible are accompanied by an adult.

10. SUBLETTING OR ASSIGNMENT OF BERTH

- 10.1 This licence is not assignable.
- 10.2 Any subletting of the Berth during the term of this licence must be managed by Marina Management on terms agreed with Marina Management. Marina Management has the right to sublet any berth during an extended absence, in accordance with any subletting policy.

11. POWER AND OTHER SHORE SERVICES

- 11.1 The Berth Occupier shall ensure that the use of any power, water, sewage, pump or

other shore service, complies with all of the relevant regulations and rules governing the supply or discharge of power, water, sewage or other shore services.

- 11.2 Each marina berth has a power pedestal connection and vessels must have an Electrical Warrant of Fitness in order to be plugged permanently into the power outlet. Leads must be tested and tagged within the last 12 months. The Berth Occupier shall provide Marina Management with a copy of the EWof upon each renewal and evidence that shore power cords have been tested and tagged safe within the last 12 months.

- 11.3 Power use will be separately metered and must be paid for by the Berth Occupier (clause 4.2 and 4.3).

12. WATER SPACE AND ACCESS RIGHTS

- 12.1 This Licence permits the Berth Occupier to use only the allocated water space of the berth and not any additional surrounding space when mooring. Smaller floating craft and accessories must be stored in a way that avoids damage to the craft, accessories or Marina infrastructure.

- 12.2 In common with others, the Berth Occupier has the right to tie up to the allocated berth structures and has the right of access in, and the use of, the common waterways and pathways of the Marina area subject to such rules as to access and during such hours as Marina Management may

specify for the safety security and preservation of good order.

- 12.3 Subject to clause 4.6, in common with others, the Berth Occupier has the right to enter the Marina from land and to access the jetty and berth, and the Marina's water, toilet and power facilities 24 hours a day, 7 days a week (except in an emergency).
- 12.4 Marina Management reserves the right to limit access to the car park, piers, and causeway area of the Marina in emergencies (including pandemic related restrictions), for repair and for special events.

13. CONTRACTOR ACCESS

- 13.1 The Berth Occupier is responsible for ensuring that any contractor invited into the Marina complex has in accordance with the Marina's Health and Safety Policy completed a contractor induction and is currently a compliant contractor as determined by Marina Management.
- 13.2 The Berth Occupier must ensure, and accepts responsibility to ensure, that any contractor or tradesperson invited into the Marina complex for the purpose of carrying out work on the Berth Occupier's vessel holds sufficient insurance to satisfy the insurance requirements of Marina Management.
- 13.3 Parking at the Marina for contractors is subject to availability.



14. BEHAVIOUR AT THE MARINA AND RULES

14.1 Marina Management may make and vary rules for the Marina from time to time. Notice of the Marina's rules will be displayed in various places at the Marina and at the Marina's office and are effective immediately upon display.

14.2 The Berth Occupier and their guests shall at all times comply with the directions of Marina Management, the Marina Rules and any laws, bylaws and good marine practice.

14.3 All Marina users must conduct themselves in a lawful and reasonable manner towards Marina Management and staff and show consideration for other users of the Marina. Marina Management has zero tolerance for violence, threatening behaviour or deliberate damage to property within the Marina.

14.4 The Berth Occupier and their guests must not use or interfere with property belonging to other Marina users or to the Marina (unless designated for communal use).

15. DAMAGE TO MARINA PROPERTY, INDEMNITY AND SECURITY

15.1 The Berth Occupier will be liable for all damage to Marina Property including docks, structures, pilings or property in the Marina and or vessels and persons using the Marina arising from any act or omission, neglect or default by the Berth Occupier or its

agents, servants, contractors, employees or invitees relating to the use, storage, of the vessel.

15.2 The Berth Occupier shall indemnify Marina Management against any loss, expense, legal liability, claims and costs incurred by Marina Management arising as a result of the Berth Occupier's act or omissions, or from the acts or omissions of others to which the Berth Occupier has contributed or the acts or omissions of any person invited into the Marina by the Berth Occupier (including any contractor retained by the Berth Occupier in respect of any activities of the contractor carried out at the Marina for the Berth Occupier).

15.3 The Berth Occupier also indemnifies Marina Management against all costs and expenses (including legal costs on a solicitor/client basis) incurred by Marina Management in taking action to demand and/or recover any part of the rental or other money payable by the Berth Occupier under this Licence.

15.4 To better secure the payment of any sum owing under this licence, including under the indemnities given in 15.1 to 15.3, in the event of default or failure to pay, the Berth Occupier grants a security to the Marina under the Personal Property Securities Act 1999 over all of the Berth Occupier's present and after acquired property.

16. NO LIABILITY OF MARINA MANAGEMENT

16.1 Marina users including Berth Occupiers use the Marina and berth their vessel at the Marina at their own risk.

16.2 The terms of this Licence are not in any way intended by either party to create a bailment and the Berth Occupier understands that Marina Management accepts no responsibility for the care of any vessel and its contents.

16.3 To the extent permitted by law, Seaview Marina Limited is not under any circumstances responsible or liable for any loss or damage to the vessel; or any loss or damage to other property in or about the Marina (belonging to or in the possession of the Berth Occupier or any other person), whether the loss is attributable to storm or natural disaster, or to acts of other Marina users or the public.

17. INSURANCE

17.1 The Berth Occupier shall throughout the term of this Licence keep all of the Berth Occupier's vessel(s), equipment and other property in the Marina fully insured against loss or damage by any reason and/or other usual maritime risks including storm and natural disaster.

17.2 The Berth Occupier shall maintain public liability insurance with a minimum cover of \$5,000,000. Such insurance shall include an express provision indemnifying the Marina against all costs, losses or liabilities arising in the event that the vessel is declared a



wreck or requires salvage, including but not limited to circumstances involving the sinking of the vessel.

- 17.3 The Berth Occupier shall provide Marina Management with copies of the policies together with a certificate of currency for such policies each year upon renewal.

18. **RIGHT OF LIEN**

- 18.1 The Berth Occupier acknowledges Marina Management has the right to a lien over the vessel in respect of all the Berth Occupier's financial obligations and payments under this Licence and Marina Management may seize or secure the vessel until the Berth Occupier makes payment in full.

19. **DEFAULT AND TERMINATION FOR BREACH**

- 19.1 Failure to adhere to the terms of this Licence (as defined in clause 2) may result in termination of this Licence, revocation of the Berth Occupier's access rights to the Marina and/or a claim being made against the Berth Occupier.
- 19.2 If the Berth Occupier fails to pay the rental, Liveaboard surcharges or any other charges due under this licence or otherwise defaults on any of the terms and conditions herein, Marina Management may at its sole discretion issue the Berth Occupier with a default notice. Such notice will be given in the manner set out in clause 23.

19.3 If the breach as detailed in the default notice is not remedied within 10 working days of the giving of the default notice (or if such breach is not capable of being remedied) then this Licence may, at the discretion of Marina Management, be terminated immediately PROVIDED THAT the Berth Occupier shall remain liable for payment of rental fees and any other charges until the vessel is removed from the Marina. A termination notice shall be delivered as set out in clause 23 and is effective immediately upon delivery as set out in clause 23, or upon such later date as is set out in the termination notice.

- 19.4 On the termination of this Licence, the Berth Occupier shall within 20 working days of termination remove the vessel and all goods and effects of the Berth Occupier from the Marina and in default of the Berth Occupier so doing within, Marina Management without further notice shall be entitled to (but has no obligation to) seize the vessel occupying the berth and sell it and / or dispose of the vessel.

19.5 Marina Management may at its total discretion either secure the vessel in its berth or alternatively remove the vessel to another berth or to the hardstand.

- 19.6 Pursuant to clause 19.4, the vessel may be offered for sale by public auction or private contract. Marina Management may apply such of the proceeds of any resulting sale first in

satisfaction of Marina Management's expenses incurred in the removal, storage and sale (including administrative expenses and the cost of providing custodians), secondly in or towards satisfaction of any debts or liabilities owed by the Berth Occupier to the Marina plus 10% of those combined sums, and thirdly the remaining proceeds will be paid to the Berth Occupier. If the vessel is unable to be sold any disposal or destruction costs will be added to the Berth Occupier's debt or liability owed to the Marina.

- 19.7 The Berth Occupier hereby irrevocably appoints Marina Management to be the attorney of the Berth Occupier to execute all documents and to do all things as are necessary to give effect to such sale under this clause.

20. **ABANDONED, UNSEAWORTHY OR ILL-REPAIRED VESSELS OR VEHICLES**

- 20.1 The Berth Occupier shall keep any vessel occupying the berth in good serviceable condition and repair (including the hull of the vessel) and so as not to obstruct, interfere with or endanger the environment or other vessels navigating or berthed in the Marina.

- 20.2 Should the Berth Occupier fail to comply with clause 20.1, Marina Management may serve a notice on the Berth Occupier requiring the Berth Occupier to remedy specified areas in default within a reasonable period of time.



20.3 If the Berth Occupier fails to comply with a notice issued under clause 20.2 within the time specified, Marina Management may at its total discretion invoke the default and termination procedure as outlined in clause 19.

20.4 All motor vehicles parked at the Marina must have a current registration and warrant of fitness and must be in roadworthy condition.

20.5 Any vehicle not meeting the requirements of 20.4 may be towed from the Marina (at the registered owner's cost) following reasonable efforts by Marina Management to contact the owner of the vehicle.

21. EMERGENCY MANAGEMENT

21.1 Marina Management reserves the right to use the berth in the case of an emergency and also to require the Berth Occupier to vacate the berth if necessary, to allow urgent repairs to be carried out. In such circumstances the Marina Manager may with best endeavours, but shall not be obliged to, provide an alternative berth or mooring.

21.2 In emergencies, Marina Management reserves the right to take whatever steps are required to ensure the integrity of the Marina facility. Marina Management's judgment in this respect is at its sole discretion.

22. MARINA MANAGEMENT'S RIGHTS CONCERNING THE VESSEL

22.1 Marina Management may

enter the vessel (by break in if necessary), or move the vessel, to try to secure or prevent loss or damage to the vessel, the Marina infrastructure or to the environment.

22.2 Marina Management may move the vessel if it is necessary for work to be done (or for any other reasonable purpose) so long as Marina Management provides an alternative berth of similar dimensions as the berth for the Berth Occupier's use while the vessel is moved. Marina Management may also move the vessel (including onto the hardstand at the Marina) if the vessel is damaged and work needs to be done on the vessel quickly and may undertake or arrange for the work to be done so long as that work is immediately necessary in the circumstances. Such work will be at the Berth Occupier's cost.

23. NOTICES

23.1 All notices to be given under this Licence will be given to the Berth Occupier's last known email and / or postal addresses, and it is the obligation of the Berth Occupier to inform Marina Management of a change of address.

23.2 Notices given to the Marina by post must be sent to PO Box 33230, Petone, Lower Hutt or may be hand delivered to the Marina office and given to a staff member. Notices may also be sent by email to admin@seaviewmarina.co.nz.

23.3 All notices given under this Licence will be treated as

delivered and received:

- (a) Immediately upon sending by email; or
 - (b) Immediately upon personal delivery to the Berth Occupier; or
 - (c) 3 working days from the date of posting (if sent by mail).
- 23.4 Marina Management may also give general notices to users of the Marina by fixing notices in or around the Marina. The Berth Occupier will be considered as having been properly notified of these matters when notice is given in this manner.

24. DISPUTE RESOLUTION

- 24.1 Except where urgent interlocutory or injunctive relief is sought:
- (a) Marina Management and the Berth Occupier ("the parties") may not commence any Court proceedings relating to a dispute under this Licence unless they have complied with clauses 24.1(b) to 24.1(c) inclusive.
 - (b) A party to this Licence claiming that a dispute has arisen must, within 20 working days of the dispute arising, give written notice to the other party specifying the nature of the dispute.
 - (c) Once such notice has been given, the parties must first endeavour to resolve the dispute using informal dispute resolution procedures, including mediation.
 - (d) In the event that the parties cannot resolve the dispute through informal dispute resolution procedures then unless the dispute falls within



the jurisdiction of the Disputes Tribunal, the matter will be determined in the District Court.

25. HARDSTAND / HAUL OUT CONCESSIONS

25.1 Marina Management will provide the Berth Occupier with hardstand and haul out concessions as compared to external clients. These concessions will be at the discretion of Marina Management.

26. PETS

26.1 Pets and owners must comply with the Marina's Pet Code of Conduct. Pet approval may be revoked if your pet becomes a nuisance (including excessive noise or barking), or if Marina Management has animal welfare concerns that are not addressed to Marina Management's satisfaction. Marina Management reserves the right to require that your pet be removed from the Marina in such circumstances.

DEFINITIONS

"Berth" means the berth/trailer park in the Marina described in the Berth & Trailer Park Rental Licence Application form, or the preceding Marina Berth or Trailer Park Licence.

"Berth & Trailer Park Rental Licence" includes both the Berth & Trailer Park Licence Application form completed and signed by the Berth Occupier or (in the case of an old licence arrangement where no application form was used) the Marina Berth Licence document entered into between the Berth Occupier and Marina Management.

"Berth Occupier" means the person(s) or entity named in the Berth & Trailer Park Rental Licence Application form or (in the case of an old licence arrangement where no application form was used) the person(s) or entity named as Licensee in the Marina Berth Licence document entered into between the Licensee and Marina Management.

"Start Date" means the date specified in the Berth & Trailer Park Rental Licence Application form.

"Facilities" means the foreshore areas, parking areas, causeway, driveways, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, the Marina.

"Marina" means the marina facility at Seaview Marina, Lower Hutt in which the Berth Occupier is keeping a vessel and includes the Marina's Structures, access ways, all Facilities and services.

"Marina Management" means Seaview Marina Limited, which owns and runs the Marina business, its successors and assigns, and includes its Chief Executive.

"Marina Rules" means the rules established by Marina Management and those updated and displayed by Marina Management from time to time, including on the Marina's website.

"Liveaboard" has the meaning in clause 6.4.

"Vessel" means the vessel specified in the Berth Rental & Trailer Park Licence Application form or any other vessel nominated by the Berth Occupier by notice in writing to, and accepted by Marina Management.

"Services" means power, water and any other services provided for the benefit of the Berth Occupier in the Marina.

"Structures" means the breakwater, fingers, jetties, fuelling jetty, loading jetty, piles and other structures constructed or placed on or in the Marina.

"Termination Date" means the date specified in the Berth Rental & Trailer Park Licence Application form, or a date specified in a notice to terminate this Licence giving the required written notice period as described in the Berth Rental & Trailer Park Licence Application form.

"Working Day" has the same definition as in the Interpretation Act 1999.