

MARINA BERTH LICENCE

LICENCE TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** The following words and phrases have these meanings in this Licence unless a contrary intention appears:

Berth means the Berth specified in the Particulars, and includes any mooring in the Marina and any boat parking place at the Marina (whether or not on a boat trailer);

Boat means the boat described in the Particulars and includes the substituted boat referred to in clause 7.6 and any boat trailer;

Expiry Date includes the expiry date of all Renewal Terms (if this Licence is renewed);

Licence means this marina berth licence;

Licence Year means the period of the Initial Term and the period of each subsequent Renewal Term;

Licensee means any person named as Licensee in the Particulars, and includes any person on the Marina or Boat at the Licensee's request or invitation and any person for whom the Licensor is responsible or under the Licensee's control or direction;

licensee means any other licensee who has been granted a marina berth licence by the Licensor to use the Marina and includes a replacement licensee referred to in clause 4.4;

Marina means Seaview Marina (and includes any part of Seaview Marina and any land within Seaview Marina) being Lots 1 and 2 DP 303938 and Section 1 SO 38286;

Marina Rules means the rules for users and licensees relating to the use of the Seaview Marina adopted by the Licensor, and as varied or amended by the Licensor at any time;

Review Date means 1 July of each Licence Year;

Term means the Initial Term and includes all Renewal Terms (if this Licence is renewed).

1.2 **Interpretation:** In this Licence, unless inconsistent with the context:

Calendar month: references to "month" or "monthly" mean calendar month or calendar monthly;

Defined terms and phrases: terms and phrases used in this Licence have the meanings defined in this clause 1 or as specified in the Particulars;

Negative obligations: an obligation not to do anything includes an obligation not to suffer, consent, permit or cause that thing to be done;

Notices: all notices to be given under this Licence must be in writing and delivered or posted in accordance with clause 13;

Person: references to a person or persons include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities;

Vesting authority or powers: any authority or powers of the Licensor under this Licence can also be exercised by Hutt City Council, Wellington Regional Council or any company, body or individual

to whom authority and powers may be delegated or assigned by the Licensor, Hutt City Council or Wellington Regional Council;

Written consent: all consents, confirmations and approvals required under this Licence are only valid if given in writing.

2. GRANT OF LICENCE

Marina Berth Licence: The Licensor grants to the Licensee and the Licensee accepts:

- (a) this Licence for the right to use and occupy the berth set out in the Particulars for the term of the Licence at the Licence Fee and subject to the terms and conditions of this Licence;
- (b) the right to pass and repass from the Marina entrance to the Berth;
- (c) the right to enter the Marina from land to access the Boat and the Marina's water, toilet and power facilities 24 hours a day, 7 days a week (except in an emergency when the Licensor may need to refuse entry);
- (d) the right to use those Marina facilities available for licensees subject to the Licensor's conditions (as generally prescribed from time to time); and
- (e) the right to use the Licensor's management services for the Marina which are available from 8am to 5pm on weekdays and 8.30am to 12 midday on Saturdays.

2.2 Licence not lease: The Licensee acknowledges that:

- (a) this Licence is personal to the Licensee and the Licensee's rights under this Licence are personal rights only; and
- (b) granting this Licence does not create a lease of the Berth or give the Licensee any rights of exclusive possession of the Berth.

2.3 Special arrangements: If the Licensee needs more regular use of the Marina facilities than as generally prescribed by the Licensor, then the Licensee must make special arrangements with the Licensor (in the Licensor's sole discretion) and the Licensor may charge the Licensee an amount additional to the Licence Fee to cover the costs of that use.

3. LICENCE FEE AND REVIEW OF LICENCE FEE

3.1 Licence Fee: The initial Licence Fee is specified in the Particulars.

3.2 Payment of Licence Fee: The Licensee must pay the Licence Fee in full without deduction or set-off on the Licence Fee Payment Dates in accordance with invoices supplied by the Licensor. The Licensee may pay the Licence Fee at more frequent intervals by arrangement with the Licensor.

3.3 Review of Licence Fee: The Licensor may annually review the Licence Fee and may amend the fee payable under this agreement following that review. An amendment to the Licence Fee must be notified to Licensees no later than two months prior to the date on which the change of the Licence Fee will come into effect.

3.4 Reviewed Licence Fee final and binding: Subject to any reviews by the licensor of the licence fee in accordance with subclause 3.3, the amount of the reviewed Licence Fee set by the Licensor as at

the relevant Review Date is final and binding and the Licensee must pay that reviewed Licence Fee on (and with effect from) the relevant Review Date.

4. TERM AND RENEWAL OF LICENCE

4.1 **Initial Term:** The Initial Term of this Licence is specified in the Particulars.

4.2 **Renewal of Licence:** The Licensor must renew this Licence annually at the end of the Initial Term if

- (a) the Licensee is not in breach of this Licence; and
- (b) the Licensor has not exercised its rights under this Licence to terminate this Licence.

4.3 **Renewed Licence terms:** The renewed Licence will be on the same terms as this Licence.

5. LICENSEE'S MARINA USE OBLIGATIONS

5.1 **Licensee's obligations:** The Licensee must at all times:

- (a) comply with the Marina Rules and all signs relating to particular Marina Rules;
- (b) if the licensee connects to the marina power pedestal the lead must be certified for marine use and only one appliance may be plugged into that lead. If the vessel is wired for 230v the vessel must have a current electrical warrant of fitness.
- (c) comply with all directions given by the Licensor's authorised employees and contractors and the Harbourmaster;
- (d) comply with all relevant laws and Hutt City Council and Wellington Regional Council bylaws and with all special instructions issued by the Licensor for the efficient, safe and harmonious use of the Marina and Marina facilities by all persons entitled to use them;
- (e) moor the Boat securely as directed by the Licensor and secure the Boat properly and safely in accordance with best recreational boating practices;
- (f) ensure all halyards, lines, ropes, rigging and sheets on the Boat while berthed in the Marina are secured to the standard of securing set by the Licensor so they do not make any noise;
- (g) keep the Boat in a good state of repair and rectify all damage that occurs to the Boat at the first opportunity;
- (h) display clearly on the Boat the name of the Boat and the annual licence label issued by the Licensor;
- (i) notify the Licensor if the Licensee changes its address or the Boat;
- (j) keep and maintain suitable fire fighting apparatus on the Boat and take all reasonable steps to minimise fire hazard;
- (k) use fire fighting equipment supplied by the Licensor only for the purpose of fighting fires;
- (l) use the Boat's toilet facilities only if the Boat is fitted with effective septic disposal tanks so no sewage enters Marina waters;

- (m) take immediate and appropriate steps in the circumstances to rectify an accidental entry of effluent, rubbish or other pollutant into Marina waters, and advise the appropriate delegated person or body of the accidental entry and all action taken to rectify it;
- (n) use the Berth only for berthing the Boat for recreational boating purposes and not for activities involving financial gain or for commercial or any other use; and
- (o) generally observe the standards and practices reasonably expected of a competent, responsible and considerate licensee of a marina berth.

5.2 Further Licensee obligations: The Licensee must not, at any time:

- (a) do anything to prejudice the security of the Marina or any boats in the Marina;
- (b) moor, sail or manoeuvre any boat so as to create a danger or impediment or obstacle or inconvenience to any other Marina licensees or users;
- (c) obstruct any waterway or walkway;
- (d) allow any of the Licensee's property, gear or equipment to be stored on the Marina (including the Marina walkways, fingers or foreshore) without the Licensor's consent;
- (e) alter or modify the Berth or adjacent structures or make any additions without the Licensor's consent;
- (f) damage the Marina or any property in the Marina belonging to the Licensor, other licensees or Marina users or anybody else;
- (g) allow any effluent or rubbish or other pollutant to enter Marina waters;
- (h) bring any dangerous or flammable products into the Marina (but the Licensee may carry small quantities of fuel in small safe containers as reasonably required);
- (i) allow any boat to use the Berth without the Licensor's consent (and as provided in this Licence);
- (j) allow any boat to use the Berth that has dimensions exceeding the permitted dimensions (including spars, equipment or appurtenances of any kind) set by the Licensor (in the Licensor's sole discretion);
- (k) live on the Boat while moored in the Marina ("live on the boat" means to sleep overnight on the Boat for more than 3 consecutive nights);
- (l) consume alcoholic beverages in the Marina except on private boats or on licensed premises;
- (m) allow children under 12 who are the Licensee's responsibility to enter the Marina unless accompanied by an adult;
- (n) swim, dive or engage in any other underwater activities in the Marina; and
- (o) allow any dog that is the Licensee's responsibility to be in the Marina (or land adjacent to the Marina under the Licensor's control) unless the dog is on a lead.

6. LICENSEE'S FINANCIAL OBLIGATIONS

- 6.1 **Licensee's costs:** The Licensee must (in addition to making all other payments required under this Licence) pay the Licence Fee as required in clause 3.2 (the Licensee is reminded that non-payment of the Licence Fee may result in termination of this Licence).
- 6.2 **Default interest:** If the Licensee does not pay the Licence Fee or any other money owing under this Licence for 14 days after the due date for payment, then the Licensee is in breach of this Licence and must pay interest on the money owing on demand at a default interest rate of 10% per annum from (and including) the due date for payment to the actual date of payment.
- 6.3 **Licensor's right of lien:** The Licensee acknowledges the Licensor has the right of lien against the Boat in respect of all the Licensee's outstanding financial obligations and payments under this Licence and the Licensor may seize or secure the Boat until the Licensor makes payment in full.

7. LIMITATIONS ON LICENCE RIGHTS

- 7.1 **Payment and performance:** This Licence is subject to the Licensee paying all amounts due under this Licence by the due date and performing all the Licensee's obligations under this Licence.
- 7.2 **Assignment, etc:** The Licensee must not:
- (a) assign or agree to assign this Licence or any rights granted under this Licence;
 - (b) (subject to clause 7.4) sub-licence or agree to sub-licence this Licence or any rights granted under this Licence; or
 - (c) grant or agree to grant any security interest (as defined in the Personal Property Securities Act 1999) in this Licence or any rights granted under this Licence.
- 7.3 **Change in shareholding:** Any change or rearrangement of the beneficial ownership of the principal shareholding of the Licensee or the Licensee's holding company, or any change in the Licensee's shareholding altering the effective control of the Licensee, will be treated as an assignment of this Licence in breach of clause 7.2.
- 7.4 **Temporary Berth Vacancy (including for lay-up, repair and cruising):** If the Licensee knows the Berth will be vacant for more than 2 consecutive months, then the Licensee must notify the Licensor to this effect as soon as practicable. The Licensor (or the Licensor's agent) may, in the Licensor's sole discretion, sub-licence the vacant Berth for any period of the notified vacancy, in which case:
- (a) the Licensor will charge the sublicensee for the pro rata amount of the Licence Fee for each period of vacancy;
 - (b) the Licensor will refund the Licensee for the pro rata amount of the Licence Fee recovered from the sublicensee for each period of vacancy; and
 - (b) the Licensee must pay the Licensor on demand (and in addition to the Licence Fee) an amount equivalent to 25% of the Licence Fee for each period of sublicensing for the Licensor's management and administrative costs of sublicensing the Berth during each period of vacancy.

- 7.5 **Substitute boat:** The Licensee may give notice to the Licensor advising of the Licensee's intention to substitute the Boat with a different boat, in which case this Licence will continue in respect of the substitute boat so long as the Licensee continues to own and use the substitute boat in compliance with this Licence and the substitute boat does not infringe the permitted dimensions referred to in clause 5.2(j).
- 7.6 **Licensee obligations continue:** The Licensee's obligations under this Licence continue whether or not the Berth is occupied.
- 7.7 **Preference to Licensee's family:** Even though this Licence is personal to the Licensee and will terminate on the death of a sole Licensee, following the death of the Licensee any member of the Licensee's immediate family may apply in writing (but only one application may be made by the immediate family) to the Licensor to grant them a new licence for the Berth of the Boat. If the Licensor decides (in its sole discretion) to grant a new licence for the Berth, then the Licensor must give preference to the application received under this clause 7.7. The Licence Fee for the new licence will be as set by the Licensor and the new Licence will otherwise be on the same terms as this Licence.
- 7.8 **Continuous use of Marina Berth:** Subject to clause 7.4, the Licensee must use his or her best endeavours to use the Berth continuously so the facilities in the Marina and boat harbour are used to the maximum to meet the overall berth needs in the Marina area.
- 7.9 **Non-use of Berth for extended periods:** If the Licensee stops using the Berth for a single period of more than 6 months (for extended cruising, while a new boat is being built or purchased, or for any other reason) and wants to retain this Licence during that period, then the Licensee must apply in writing to the Licensor to temporarily stop using the Berth during that period but without terminating this Licence. The Licensor may, in its sole discretion, allow this Licence to continue for any period the Licensor thinks fit in the circumstances (but with no reduction of the Licence Fee unless clause 7.4 applies).
- 7.10 **Non-use of Berth for extended periods without consent:** If the Licensee:
- (a) stops using the Berth for a single period of 6 months or more; and
 - (b) has not applied to the Licensor under clause 7.9 to temporarily stop using the Berth (or if clause 7.4 does not apply);
- then the Licensor may terminate this Licence at any time after the first 6 months of non-use by giving the Licensee 21 days notice and this Licence will terminate on the expiry of that 21 day period (but without prejudice to any of the Licensor's rights accrued up to the date of termination). All financial and other obligations accrued to the Licensee until the date of termination will continue until met and the Licensor will refund the Licensee any unexpired portion of the Licence Fee that has been paid (after deducting any amounts owing by the Licensee as at the date of termination).

8. LICENSOR'S POWERS CONCERNING THE BOAT

- 8.1 **Licensor's rights to enter, move or work on the Boat:** The Licensor may:
- (a) enter the Boat (by break in if necessary) to try to secure or prevent loss or damage to the Boat;

- (b) move the Boat in an emergency;
- (c) move the Boat if:
 - (i) necessary to allow work to be done (or for any other reasonable purpose) so long as the Licensor provides an alternative berth of similar dimensions as the Berth for the Licensee's use while the Boat is moved; or
 - (ii) the Boat is damaged and work needs to be done on the Boat quickly, and undertake or arrange for the work to be done so long as that work is immediately necessary in the circumstances.

8.2 **Licensor not liable:** In exercising the Licensor's rights under clause 8.1, the Licensor:

- (a) is entitled to recover from the Licensee all costs incurred by the Licensor and the Licensee must pay those costs on demand; and
- (b) is not liable for any loss or damage to the Boat or the Licensee's property.

9. LICENSOR'S RIGHTS TO VARY LICENCE TERMS

9.1 **Notice to vary Licence terms:** the Licensor may vary the terms of this Licence after giving 3 months notice to the Licensee:

- (a) for any purpose (in the Licensor's sole discretion) relating to the future development, re-development or good management of the Marina; or
- (b) to change the Berth, jetty or mooring.

10. NO LIABILITY OF LICENSOR

10.1 **Licensor not responsible:** To the extent permitted by law, the Licensor is not under any circumstances responsible or liable for:

- (a) any loss of or damage to the Boat; or
- (b) any loss of or damage to other property in or about the Marina (belonging to or in the possession of the Licensee or any other person);

whether attributable to the Licensor's (or the Licensor's employees', contractors' or agents') negligence or wrongful act, or through any fault or defect in the Licensor's property or any other reason.

11. INDEMNITY

11.1 **Indemnity by Licensee:** The Licensee indemnifies the Licensor against:

- (a) all costs (including legal costs) and expenses incurred by the Licensor in taking action to demand and/or recover any part of the Licence Fee or other money payable by the Licensee under this Licence; and
- (b) all actions, proceedings, costs (including legal costs), expenses, claims, demands, damages, losses and liabilities of any kind suffered or incurred by the Licensor as a result of the

Licensee's act or neglect or the Licensee's breach of, or failure to comply with, the Licensee's obligations under this Licence.

12. TERMINATION

12.1 Termination by Licensor: In addition to the Licensor's right to terminate this Licence under clause 7.10, the Licensor may terminate this Licence by giving the Licensee 21 days notice if the Licensee fails to:

- (a) pay the Licence Fee (or any other money payable under this Licence) on the due date for payment or (if there is no due date) on the date of the Licensor's demand; or
- (b) perform or observe any of the Licensee's other obligations under this Licence;

and the Licensee fails to remedy the non-payment or breach within that 21 day period (but without prejudice to any of the Licensor's rights accrued up to the date of termination).

12.2 Effect of termination by Licensor: On termination of this Licence under clause 12.1:

- (a) all financial and other obligations accrued to the Licensee before or as a result of termination will continue until met;
- (b) the Licensee will immediately remove the Boat from the Berth and the Marina (unless the Licensor has affixed a notice of lien to the Boat concerning any outstanding financial obligations, in which case the Licensee must remove the Boat as soon as all the financial obligations have been satisfied);
- (c) the Licensee must pay the Licensor's casual berthage rates until the Boat is removed from the Berth and the Marina;
- (d) if the Licensee fails to remove the Boat from the Berth and the Marina under this clause 12.2, the Licensor may, without further notice and without incurring any liability, remove the Boat and recover from the Licensee the cost of removal plus 10%;
- (e) if the Licensor removes the Boat under this clause 12.2, the Licensor is entitled to a lien on the Boat for the Licensor's removal and storage costs and charges and for the costs incurred under clause 12.2(g);
- (f) if the Licensee does not claim the Boat by one month after the date of removal, the Licensor may, at any time afterwards:
 - (i) offer the Boat for sale;
 - (ii) appropriate sufficient proceeds of a resultant sale in satisfaction of the Licensor's costs of the sale;and must deliver the balance of the proceeds of the sale to the Licensee; and
- (g) the Licensor may, in its sole discretion, place and maintain on the Boat any number of custodians as the Licensor considers necessary.

12.3 Termination by Licensee: The Licensee may terminate this Licence at any time after the expiry of the Initial Term by giving the Licensor at least 30 days notice and this Licence will terminate on the expiry of that 30 day period (but without prejudice to any of the Licensor's rights accrued up to the

date of termination). All financial and other obligations accrued to the Licensee until the date of termination will continue until met and the Licensor will refund the Licensee any unexpired portion of the Licence Fee (after deducting any amounts owing by the Licensee as at the date of termination);

12.4 Obligations of licensor on receiving notice of termination: In the event that the Licensee gives the Licensor notice of termination in accordance with subclause 12.3, then:

- (a) the Licensor must immediately on receipt of the Licensee's notice use reasonable endeavours to find a replacement licensee; and
- (b) from the time the Licensor grants the replacement licensee a marina berth licence for the Berth, the Licensor must reimburse the Licensee for any unexpired portion of the Licence Fee.

13 NOTICES

13.1 Address and delivery of notices: All notices to be given under this Licence must be given to the notice recipient's last known address. All notices given under this Licence will be treated as delivered and received on personal delivery (if given by personal delivery) and 2 days after being posted (if sent by post).

13.2 General notices: The Licensor may also give notice to the Licensee of any matter affecting the Licensee and other licensees and users of the Marina by fixing notices on or around the Marina. The Licensee will be considered as having been properly notified of these matters when notice is given in this manner.

14 DISPUTE RESOLUTION

14.1 Dispute resolution: Except where urgent interlocutory or injunctive relief is sought:

- (a) The Licensor and Licensee (the parties) may not commence any court or arbitration proceedings relating to a dispute under this licence unless they have complied with paragraphs (b) to (d) (inclusive);
- (b) A party to this licence claiming that a dispute has arisen must, within a reasonable time 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 endeavour to resolve the dispute using informal dispute resolution procedures.
- (d) In the event that the parties cannot resolve the dispute through informal procedures, the matter must be submitted to arbitration in accordance with the Arbitration Act 1996 before a single arbitrator to be agreed to by the parties. In the event that the parties cannot agree on an arbitrator, the President of the NZ Law Society will nominate the arbitrator.

15 HARDSTAND/HAUL OUT CONCESSIONS

The licensor will provide the licensee with hardstand and haul out concessions as compared to external clients. These will be set at the discretion of the SML Board.