

**The MARINA BERTH RENTAL AGREEMENT**

The Berth Licence Holder ("the Licensee") hereby grants permission to the berth renter named in the schedule ("the Renter") to occupy the berth ("the Berth") nominated in the schedule for the period stated and at the rental rate therein stated under the following terms and conditions, and

The Renter agrees to accept the sublease to occupy the berth nominated in the schedule for the period stated and at the rental rate therein stated under the following terms and conditions, and

Bayswater Marina Limited ("the Licensor") agrees to permit the Licensee to sublet the berth in accordance with clause 12.0 of the Berth Licence ("the Licence").

**COMMENCEMENT**

1. This Agreement commences upon the commencement date stated in the schedule and thereafter remains in effect until terminated by either party giving one month's written notice to the other.

**BOND**

2. The Renter agrees to pay the Bond set out in the schedule, to the Licensor immediately upon completion of this agreement. Provided that the Renter has complied with the terms and conditions contained within this agreement, the bond shall be refunded to the Renter on the termination of this agreement.

**RENT**

3. The Renter agrees to pay the rental of the berth to the Licensor monthly in advance on the first business day of each month and upon demand, at the rate set out in the schedule or as may be amended from time to time. The Licensor may alter the rental rate by the giving of one months' written notice of the revised rental rate.

**RESTRICTION ON USE**

4. The Renter shall not use the berth other than for berthing the boat nominated in schedule 1 whilst the said boat is used for recreational boating purposes. The berth shall not be used to berth commercial fishing boats, boats carrying passengers for hire, work boats, commercial freight carriers or for any other commercial or industrial purposes.

**RENTER NOT TO SUBLET**

5. Renter shall not be permitted to sublet or to authorise the use of the berth by any other vessel, unless by approval of Bayswater Marina Limited

**BYLAWS INSTRUCTIONS AND RULES**

6. The Renter agrees to comply with all the obligations of the License (except for the payment of fees) under the Licensee's Marina Berth Licence, a copy of which is available for inspection by the Renter, including, but not limited to the marina rules as set out herein.

**LICENSOR NOR LICENSEE TO BE LIABLE**

7. Neither the Licensor nor the Licensee shall be liable, and accept no responsibility, for loss or damage to boats, craft, third party property or persons using the same within the confines of, or near to the Marina, nor for the adequacy or otherwise of the Marina, or of any Berth, or any other part of the facilities of the marina, and neither the Licensor nor the Licensee shall be liable to the Renter or any person for the loss or damage to property, or death, or personal injury incurred or suffered within the Marina, however the same occurs, and whether or not attributable to the acts or defaults of the Licensor, or it's servants, agents, contractors or otherwise howsoever.

**RENTER'S INDEMNITY**

8. The Renter, in addition, shall indemnify the Licensor and the Licensee against any loss, expense, legal liability, claims and costs incurred by the Licensor, the Licensee and the Head Licensor (if applicable) arising as a result of the Renter's acts or omissions, or the acts or omissions of others to which the renter has contributed, or the acts or omissions of any persons invited into the Marina by the Renter.

**RENTER TO INSURE**

9. The Renter shall at all times keep all boats, crafts and any other property owned or brought into the Marina by the Renter and/or invitees of the Renter fully insured whilst within the confines of, or near to the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of god, and all other usual maritime risks.

**DEFAULT**

10. In the event of the Renter making default in the observance or performance of any obligation on the Renter's part expressed or implied herein, and such default remaining unsatisfied after 7 days from the date of written notification specifying the default complained of, the Licensor may thereupon, and without the need for any further notice, forthwith cancel and terminate this agreement, and require that the vessel shall be removed from the Marina forthwith. Provided that if the default complained of shall be the non payment of the berth rental in accordance with clause 3 hereof, then the provisions of the following clauses shall apply.

11. Failure to Pay Due Fees and Charges

- 11.1. Failure to pay the Renter's rental or any other moneys payable under this Rental Agreement shall be a breach of the Renter's obligations under this Rental Agreement. Notwithstanding any other remedy which Licensor may have, the Renter shall be liable to pay the Licensor interest at the default rate of **20% per annum** from the date the payment is due until such time as the payment is actually made.
- 11.2. In addition, the Licensor shall be entitled to recover damages for any other loss arising from any such breach. All costs incurred by the Licensor in recovering any debt owing to it (including all costs, fees, charges, legal fees and solicitor costs on a solicitor client basis, transport, storage, and the cost of disposal of vessels) become a cost due from the Renter to Licensor.
- 11.3. The right to interest and damages shall continue as provided for in this clause notwithstanding any surrender or revocation of the Renter's Rental Agreement. All such costs and charges shall be in addition to any other rights and remedies which the Licensor might have.
- 11.4. The acceptance by the Licensor of any arrears of the Renter's debt or other moneys payable under this Rental Agreement shall not constitute a waiver of the Renter's continuing obligation to pay the Renter's annual fees or other payments or fees due and owing.

**REVOCATION & TERMINATION**

12. Breach of Rental Agreement

- 12.1. In the event of a breach by the Renter or any failure by the Renter to pay any of the fees and charges due and owing under this Agreement, or of the terms and conditions of this Rental Agreement or any of the schedules attached to this Rental Agreement the Licensor may terminate and revoke this Rental Agreement.
- 12.2. Before terminating or revoking a Rental Agreement the Licensor shall issue a written 'Notice of Revocation' to the Renter of its intention to terminate and revoke the Rental Agreement and the reason. The Licensor shall give the Renter 14 days from the date of the notice to remedy that default.
- 12.3. Licensor shall serve a Notice of Revocation upon the Renter either personally or by delivering or sending the notice to the last known address or place of residence or business of the Renter.
- 12.4. Where the default is not remedied, the Rental Agreement shall be revoked and terminated. Upon termination of a Rental Agreement the Renter shall, within 7 days of the date of the termination remove any vessel occupying the Berth or mooring.
- 12.5. In signing this agreement the Renter agrees that the Licensor may take, at the cost of the Renter, all steps necessary to move any vessel remaining in use or occupation of the berth or mooring. In particular, the Licensor shall, prior to exercising its power under this clause, give a written "Notice to Remove" to the Renter that the Licensor will, within 7 days of the date of such notice, remove any vessel which remains in use or occupation of the berth or mooring contrary to the terms of this Rental Agreement. Following termination of this Rental Agreement the Renter shall pay the Licensor for storage of the vessel while it is in the possession of the Licensor.
- 12.6. Except in the case of gross negligence or any wilful improper action on the part of Licensor, no person shall be entitled to be paid or claim any compensation or damages of any kind in respect of such revocation of a Rental Agreement. Any action taken by the Licensor as a result of such revocation and all costs incurred by the Licensor and all overdue payments will become due as a debt to the Licensor from the Renter.
- 12.7. If any monies are owing to the Licensor, or a party related to the Licensor, by the Renter for work or services provided including rent, travel lift, jetty, wharf, removal costs or hard stand charges, in addition to the Licensor's other remedies at law including the right to exercise a possessory lien over the vessel, the Licensor shall have the contractual right to seize the boat and shall, from the date of such seizure, have the right to retain the vessel in its possession until all outstanding moneys payable to the Licensor by the Renter have been paid in full.

13. Removal of Vessel

If the Renter fails to remove such vessel the Licensor may take all steps necessary to do so and all costs incurred by the Licensor in so doing including any costs relating to storage and disposal shall become due as a debt from the Renter. The Licensor may in removing the vessel take reasonable steps to break into the vessel or force entry to the vessel without being liable for any damage whatsoever to the vessel.

14. Sale of Vessel

- 14.1. Where the Renter fails to pay all outstanding costs, fees and charges to the Licensor or the Renter fails to remove such vessel after termination then the Licensor may offer the vessel and contents for sale by public auction or tender, and apply such of the proceeds of any resultant sale:
  - i) Firstly in satisfaction of the Renters outstanding debt;
  - ii) Secondly in respect of the Licensors expenses incurred in the removal and storage including administrative expenses and the cost of providing custodians;
  - iii) Thirdly in or towards satisfaction of any other debits or liabilities owed by the Renter to the Licensor;
  - iv) Any sum left over shall be paid to the Renter.
- 14.2. The Renter hereby irrevocably appoints the Licensor to be the attorney of the Renter to execute all documents and do all things as may be necessary to give effect to such sale by way of settling the Renters debt to the Licensor.

15. Forfeiture of Moneys

- 15.1. The Renter shall have no rights to any compensation or claim of any kind against the Licensor arising from a vessel sale pursuant to the terms of this agreement.
- 15.2. In the event that the proceeds of the sale are not sufficient to pay the cost of sale, and/or to satisfy fully such debts or liabilities, the Renter shall remain personally liable to the Licensor for the amount which remains unsatisfied.
- 15.3. Should the Licensor suffer any loss whatsoever as a result of the sale then the Renter shall indemnify the Licensor as to that loss. The Renter hereby agrees to indemnify the Licensor against any liability incurred by the Licensor to any third party whose property shall have been sold by the Licensor in the mistaken belief held in good faith (which shall be presumed unless the contrary can be proved) that such property belonged to the Renter.

16. Ongoing Liability

The Rental Agreement holder including any Body Corporate, sole trader, partnership or organisation, will be responsible to continue to pay any rental fees incurred regardless of whether the vessel is moored at the berth, until the Rental Agreement is revoked or surrendered as confirmed by the Licensor in writing.

17. Previous Breaches

The Licensor's decision to exercise its rights under this Rental Agreement shall be without prejudice to the rights of the Licensor against the Renter in respect of any antecedent breach of any of the provisions of this Rental Agreement.

18. Further Indemnity

The Renter agrees to indemnify and hold harmless the Licensor from all claims, suits and demands made by any person or entity in respect of the boat or any chattels seized and sold pursuant to this contract.

**DEFINED TERM**

19. The expression "Marina" wherever used herein includes the Marina waters, the floating structures, fingers and jetties, all Marina foreshore areas, administration and service areas under the control or administration of the Licensor and/or the Marina operator.

**NEW ZEALAND LAW TO APPLY**

20. The law to which this agreement is subject is New Zealand law.