**TAIRUA MARINA BERTH OCCUPANCY AND RENTAL TERMS AND CONDITIONS**

**1. BERTH RENTAL**

1.1 The Marina Management grants a rental licence to the Berth Occupier as named in the Berth Rental Agreement to occupy the berth specified for the period stated and at the rate stated. The Berth Occupier agrees to accept the rental licence under the following terms and conditions.

**2. THE FULL AGREEMENT**

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

2.1.1 Berth license rules

2.1.2 Berth Rental Terms and Conditions

2.1.3 Operational Management plan

2.1.4 any other document published or administered by the Marina Management or its duly authorised employee or agent for the purpose of managing the marina.

**3. COMMENCEMENT**

3.1 The agreement commences upon the start date stated in the Berth Rental Agreement and remains in effect until terminated by either party giving the required notice as stated in the Berth Rental Agreement, or on the expiry date if on a fixed term.

**4. RENT**

4.1 The Berth Occupier agrees to pay the rental of the berth to Marina Management monthly in advance on the first business day of each month and upon demand, at the rental rate set out in the Berth Rental Agreement or as may be amended from time to time. Marina Management may alter the rental rate by the giving of one month’s written notice of the revised rental rate.

4.2 A late payment fee will be charged for rent unpaid after 14 days from due date.

4.3 All payments are to be paid by the Berth Occupier by Direct Debit, Eftpos or cash.

**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 jurisdiction, 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. PURPOSE OF OCCUPATION**

6.1 The Berth Occupier shall use the berth only for pleasure boating purposes and not for any commercial or other use or purpose unless the Marina Management at its sole discretion has approved such a use.

**7. MAXIMUM DIMENSIONS OF BOAT**

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.

**8. CHANGE IN NOMINATED VESSEL**

8.1 The Berth Occupier shall ensure that if the vessel nominated on the Berth Rental Agreement changes that:

(a) The new proposed vessel fits the dimensions of the berth as listed on the Berth Rental Agreement; and

(b) Marina Management is advised of the change in vessel in writing before it occurs.

**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 13 and for whom the Berth Occupier or its visitors are responsible, are accompanied by an adult.

(c) Berths rentals are subject to availability at the time of either making a booking or on arrival at the Marina.

(d) Should any booked berth suddenly be unavailable due to sale of berth to purchaser, management will either move your vessel to another appropriate berth or refund any monies paid if we have nothing available to accommodate your vessel at the time.

**10. SUBLETTING OF BERTH**

10.1 The berthholder shall before entering into any subletting, give prior written notice to Marina Management, providing the full name, address and telephone numbers of the proposed sub-berthholders vessel (which must comply with the maximum dimensions as set out in clause 7)

10.2 It shall be a term of the sub-license that the sub-berthholder shall comply with the terms and conditions of this licence and all references to the berthholder in this licence shall be read as necessary, as references of the sub-berthholder

**11. POWER AND OTHER SHORE SERVICES**

11.1 The Berth Occupier shall ensure that the use of any power, water, sewage pump out, fuel or other shore service, complies with all of the relevant regulations and rules governing the supply or discharge of power, water, sewage pump out, fuel or other shore services.

**12. WATER SPACE AND ACCESS RIGHTS**

12.1 This rental agreement relates only to the allocated water space of the berth. In common with others, the Berth Occupier should have the right to tie up to the allocated berth structures and should have the right of access in, and the use of, the common waterways and pathways of the Marina area, subject to such rules about access and during such hours as the Marina Management may specify for the safety security and preservation of good order.

**13. CONTRACTOR ACCESS**

13.1 The Berth Occupier must ensure that any contractor or tradesman invited into the marina complex for the purpose of carrying out work on the Berth Occupier’s vessel holds sufficient insurance to satisfy clause 16.

13.2 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 Access Application Form.

13.3 The Berth Occupier indemnifies and will keep indemnified the Marina Management against all actions, suits, claims, debts, obligations and other liabilities arising out of the activities of any contractor invited by the Berth Occupier to work on the Berth Occupier’s vessel.

**14. RESTRICTED ACTIVITIES**

14.1 The Berth Occupier shall at all times comply with the rules as outlined in Parts 1 and 2 of this agreement, in addition to any published rules issued by or any special instructions issued by the Marina Management.

14.2 The Marina Management may vary the rules by written notice to the Berth Occupier. If there is any inconsistency between the provisions of these terms and conditions and the Berth Rental Agreement, the provisions of the Berth Rental Agreement shall prevail.

**15 INDEMNITY**

15.1 The Berth Occupier shall indemnify the Marina Management against any loss, expense, legal liability, claims and costs incurred by the Marina Management arising as a result of the Berth Occupier’s acts or omissions, or 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.

**16. INSURANCE**

16.1 The Berth Occupier shall throughout the term of this agreement 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.

16.2 The Berth Occupier shall, if requested by the Marina Management, provide the Marina Management with copies of the policies affected, pursuant to this clause, together with a certificate of currency for such policies.

**17. DAMAGE TO MARINA PROPERTY**

17.1 The Berth Occupier will be responsible for all damage to all 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 or storage of the vessel.

**18. TERMINATION & CLAIMS PROCEDURE**

18.1 If the Berth Occupier at any time fails to pay the Marina Management the rental fees and charges due under this agreement, or is otherwise in breach of any of the terms, conditions and provisions herein, and such breach shall continue for the space of 7 days after notification of the breach has been given or sent to the address recorded in the Berth Rental Agreement, then the Berth Occupier’s right to occupy the berth, pursuant to the Berth Rental Agreement, shall terminate upon expiry of such notice and the further provisions of this clause shall become applicable and may be enforced by the Marina Management PROVIDED that the berth occupier shall remain liable for payment of rental fees and other charges until the vessel is removed from the marina.

18.2 On the termination of this agreement, the Berth Occupier shall promptly remove the vessel and all goods and effects of the Berth Occupier from the marina, and in default of the Berth Occupier so doing the Marina Management shall be entitled to invoke the claim procedure as outlined below.

* 1. If the Berth Occupier defaults under this agreement or is terminated under clause 18, the Marina Management may, at its total discretion, serve a default notice on the Berth Occupier, by posting the same to the Berth Occupier’s given address or alternatively affixing the default notice in a prominent position to the vessel, requiring the Berth Occupier to remedy the default within 28 days clear.

18.4 Should the Berth Occupier fail to comply with the default notice within the time specified in the notice, the Marina Management may (but without any obligation to do so), without further notice, remove any vessel occupying the berth and recover the cost of removal from the Berth Occupier.

18.5 Where the Marina Management removes any vessel in accordance with this clause, it shall be entitled to a lien on the vessel to the extent of the costs of removal and storage.

18.6 Should the Berth Occupier fail to remedy the default to the satisfaction of Marina Management within 28 days after the date of such removal, the Marina Management may, at any time thereafter, 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 Marina Management’s expenses incurred in the removal and storage, 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 Manager and thirdly to the Berth Occupier.

18.7 The Berth Occupier hereby irrevocably appoints the Marina 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.

**19. ABANDONED, UNSEAWORTHY OR ILL-REPAIRED VESSELS AND VESSEL MAINTENANCE.**

19.1 The Berth Occupier shall keep any vessel occupying the berth in good serviceable condition and repair so as not to obstruct, interfere with or endanger other vessels navigating or berthed in the Marina.

19.2 Should the Berth Occupier fail to comply with sub-clause 19.1, the Marina Management may serve a default notice on the Berth Occupier requiring the Berth Occupier to remedy specified areas in default within a reasonable period of time.

19.3 If the Berth Occupier fails to comply with a default notice issued under clause 19.2 within the time specified, the Marina Management may, at its total discretion, invoke the claim procedure as outlined in clause 18 of this agreement.

**20. VESSEL MAINTENANCE**

20.1 **Commercial Activity**

Boat hulls with soft or ablative anti- fouling paint shall not be scrubbed or cleaned in the Marina by divers or with underwater scrubbing devices. Approved haul-out facilities must be used for these coatings. Mechanical devices or scrapers, or any process that removes paint underwater, may not be used.

Divers are not allowed to leave any sort of material in the water including film, debris or zinc. Contractors must dispose of their own waste off site. The marina is not permitted to handle hazardous wastes generated by commercial operators or maintenance contractors.

20.2 **Engines and Bilges**

Absolutely no oil, fuel, or anti- freeze is to be discharged into the marina. Use absorbent pads provided by management to soak up oil and fuel in bilges.

Do not pump contaminated bilge water into the marina. Install a manual bilge pump shutoff switch to avoid discharging contaminated bilge water.

Never drain oil, antifreeze or other liquids into the bilge. Use pumps to drain engine oil directly.

Recycle all waste oil and antifreeze on shore.

Do not dispose of fuel, oil or filters in the marina rubbish bins. It is your responsibility to dispose of any oil, antifreeze and oil filters at appropriate off site facilities. Do not use detergents or soaps on fuel, oil or otherwise contaminated bilge water. While enzyme-based bilge cleaners are generally safe to use, it may take some time before the oil sheen is gone. It is best to remove contaminated water and dispose of it appropriately at the local refuse station. The discharge of emulsified oil is a direct breach of the marina’s terms and conditions.

20.3 **Vessel Cleaning**

Scrub and rinse your boat often. A quick rinse after each outing reduces the need to scrub the top-side with harsh cleaners. If cleaners are used, no visible suds or discoloration of the water are permitted. Spot clean or use small amounts of phosphate-free and biodegradable soaps only when necessary. Otherwise, use alternatives such as baking soda or vinegar as all-purpose cleaners. Remember there is no legal discharge of any cleaner into our waters.

20.4 **Biosecurity**

The Marina Management has the right to deny berthage to any vessel which is fouled, or is suspected of carrying marine pests, and enforce removal and cleaning of fouled vessels.

The Marina Management, at their own discretion, and at any time may request confirmation of documentation from vessel owners for their last antifoul/hull clean.

20.5 If you believe you’ve seen something unusual out there, please notify Marina Management immediately

• Note its location

• Take a sample if you can, plastic bag it and refrigerate

• Call MPI’s Freephone 0800 80 99 66

**21. EMERGENCY MANAGEMENT**

21.1 The 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 extreme emergencies, the Marina Manager reserves the right to take whatever steps are required to ensure the integrity of the marina facility. The Marina Management’s judgment in this respect is actioned at their sole discretion

**22 BAILMENT**

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

**23 PRIVACY ACT DISCLOSURE**

23.1 The Berth Occupier hereby authorises the Marina Management, upon default or termination of this agreement, to disclose to the membership of the Marina Operators’ Association of NZ Inc., any personal information held by the Marina Management about you.

**PART II – DEFINITIONS**

“Berth” means the berth in the Marina described in the Berth Rental Agreement.

“Berth Occupier” means the person or entity named in the Berth Rental Agreement.

“Commencement Date” means the date specified in the Berth Rental Agreement.

“Default Rate” means the Marina Manager’s bank overdraft interest rate plus a further 4% per annum.

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

“Marina” means the relevant marina facility in which the Berth Occupier is keeping a vessel or interest and includes the Marina Structures, access ways, all facilities and services.

“Marina Management” means the body appointed to run the Marina business and to bind the Marina in its legal affairs and includes its successors and assigns.

“Marina Rules” means the rules established by the Marina Management as contained in this agreement and those published and updated by the Marina Management from time to time.

“Nominated Vessel” means the vessel specified in the Berth Rental Agreement. Details or any other vessel nominated by the Berth Occupier by notice in writing to the Marina Management.

“Services” means the 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 Area.

“Term” means the period commencing on the Commencement Date and ending on the Termination Date.

“Termination Date” means the date specified in the Berth Rental Agreement, or a date specified in an notice to terminate this agreement giving the required written notice period as described in the Rental Agreement.

“Working Day’ means any day of the week other than: (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, Waitangi Day, and Auckland Anniversary Day; and (b) a day in the period commencing with 24 December in any year and ending 5 January in the following year. A working day shall be deemed to commence at 9.00am and terminate at 5.00pm.