

# Marsden Cove Marina Terms and Conditions for Berth Rental

## 1.0 APPLICATION

- 1.1 These terms and conditions (**Terms**) apply to all persons who rent a berth from Marsden Cove Marina, a Division of Marsden Maritime Holdings Limited (**MMH**). For ease of reference, capitalised terms used in these Terms that are not otherwise defined have the meaning given to them in clause 22.0.
- 1.2 Under these Terms MMH grants a licence to you to occupy the Berth during the Term and you agree to accept the same. Nothing in these Terms shall create a lease, a tenancy or any other property right in the Berth described in the Berth Application.
- 1.3 The full agreement and the terms of the licence between you and MMH (**Agreement**) are contained within:
  - (a) the Berth Application; and
  - (b) these Terms.
- 1.4 You must comply with the Agreement, the Marina Rules and any other document published or administered by MMH or its duly authorised representatives from time to time for the purpose of managing the Marina. Without limiting the foregoing, you must, when using the Berth and the Vessel, always comply with all legal requirements or notices affecting or relating to the Berth and/or the Vessel, and any instructions from Marina staff.
- 1.5 If your Vessel remains berthed at the Marina for more than two hours after you first arrive, you will be deemed to have accepted these Terms and have agreed to comply with them. You acknowledge that it is your responsibility to read and understand these Terms and failure to do so does not exempt you from liability to MMH.
- 1.6 You acknowledge that MMH periodically publishes policies and rules relating to activities at the Marina (**Policies**), including in respect of vessel maintenance and work by contractors, and you agree to comply with the requirements of those Policies as published and updated from time to time.
- 1.7 If there is any inconsistency between the provisions of the documents listed in clauses 1.3, 1.4 and 1.6, the documents shall have the following order of priority (to the extent of any inconsistency): a) these Terms; b) the Berth Application; c) the Marina Rules; d) any other document published or administered by MMH or its duly authorised representatives for the purpose of managing the Marina.

## 2.0 TERM

- 2.1 This Agreement shall start on the Arrival Date and remain in effect until the earlier of:
  - (a) the Departure Date;
  - (b) the date it is terminated by either party giving ten (10) Working Days' notice to the other party; or
  - (c) the date it is terminated by MMH in accordance with clause 16.0. (the **Term**).
- 2.2 Without prejudice to MMH's rights under these Terms, if it permits the Customer to remain in occupation of the Berth beyond the Departure Date the occupation shall be:
  - (a) on a daily holding over arrangement at the Rental Fee payable as at the Departure Date, calculated on a daily basis;
  - (b) terminable by either party giving ten (10) Working Days' notice to the other party; and
  - (c) otherwise on the same terms and conditions of this Agreement, provided that MMH may, at any time and in its sole discretion, require the Customer to move the Vessel to an alternative Berth within the Marina and the Customer's failure to do so will be a material breach of this Agreement.

## 3.0 BERTH RENTAL FEES AND OTHER CHARGES

- 3.1 Berths are rented on a casual or monthly basis and Rental Fee payments become due as follows:
  - i. Daily Casual Rental*  
This fee is based on a daily rental for short term berth rentals. Payments are due **prior** to departure from the Marina upon presentation of an invoice to you by MMH.
  - ii. Monthly Rental*  
This fee is based on a monthly rental with payments due in advance no later than the first calendar day of each month with the first instalment being payable on the Arrival Date (time being of the essence). You will receive a monthly invoice for the Rental Fee and the obligation to pay the Rental Fee is an essential term of the Agreement.
- 3.2 Rental Fees and other charges (including the Liveaboard Surcharge) are reviewed and determined periodically by MMH at its discretion. MMH may, in its sole and absolute

discretion propose a new Rental Fee by giving you not less 10 Working Days' written notice (**Review Notice**). You must, within 5 Working Days of the date of the Review Notice (**Response Date**) advise whether you accept the proposed new Rental Fee. If you do not agree with the proposed new Rental Fee, then notwithstanding anything contained in the Agreement, either party may terminate this Agreement by notice to the other, such termination to take effect on the expiry of the Review Notice. At that time clause 16.1 shall apply and you must remove your Vessel from the Marina. If you fail to respond to a Review Notice by the Response Date you shall be deemed to have accepted the proposed new Rental Fee. The new Rental Fee will apply from one (1) day after the expiry of the Review Notice.

- 3.3 Your usage of Shore Services is user pays, payable via our Tally Web system.
- 3.4 Tally Web is our online system which operates power for some berths and for laundry and shower facilities. Top-ups can be made by customers using their credit card in the Tally Web Portal or at the Marina Office.
- 3.5 In addition to any Rental Fees or other charges payable by you under the Agreement, MMH reserves the right to pass on to you any unforeseen charges, costs, levies and fees imposed on MMH by the government, and any local government body or agency in relation to the operation of the Marina.
- 3.6 The payment of any Rental Fees does not give you any holding or proprietary rights over the Berth or any other berth in the Marina.
- 3.7 Payments to MMH can be made by credit card, eftpos and cash at the Marina office, by direct credit into the MMH bank account specified on any invoice you receive, or by direct debit. Where the payment method is direct debit, the Customer agrees to complete and return to MMH an authority for payment in the form required by MMH within three (3) Working Days of being requested by MMH to do so.
- 3.8 Where any part of the Rental Fee or other monies due under the Agreement remains outstanding for more than three (3) Working Days from the due date noted in the relevant invoice, MMH may charge the Customer default interest. Default interest will accrue at the Default Rate (calculated on a daily basis) on the outstanding amount from the due date until the date of payment (inclusive). Without limiting clauses 16.4 and 18.3, any legal and collection costs will also be recoverable by MMH under this clause.
- 3.9 GST applies to all Rental fees and other charges under the Agreement. If overseas registered vessels have a TIE (Temporary Import Entry) issued by Customs NZ, GST is not payable on Rental Fees. However, GST will still apply to power, any Liveaboard Surcharge and any charges associated with Shore Services.

## 4.0 BERTH

- 4.1 You shall only berth the Vessel at the Berth. Any berth change must have prior approval from MMH via the Marina office and will require the Customer to submit a new Berth Application.
- 4.2 You shall not assign, sublet or authorise any other person or vessel to use the Berth.
- 4.3 No alterations and/or modifications shall be made by you to any berth, structure or property of MMH without prior written permission from MMH.
- 4.4 The Customer's right of occupation under this Agreement relates only to the allocated water space of the Berth.. In common with others, you have the right to tie up to the allocated berth structures and the right of access in, and the use of, the common waterways and pathways of the Marina subject to the Agreement, and such other rules as to access and access hours as MMH may specify for safety, security and the preservation of good order.
- 4.5 The Vessel is berthed in the Marina entirely at the Customer's risk. MMH and its Representatives shall not, whether directly or indirectly, be liable in negligence or otherwise for any damage to, or theft or loss of, the Vessel or any tackle, goods, gear, machinery or other property while the Vessel is berthed in the Berth or in or around the Marina, no matter how or from what cause such loss or damage may arise or occur.
- 4.6 You acknowledge and agree that, to the fullest extent permitted by law, MMH makes no warranty whatsoever as to the condition of the Marina or the Berth, and you agree that you will use those areas and facilities solely at your own risk.
- 4.7 With effect from the date on which a Default Event occurs under the Agreement, the Customer grants MMH a security interest in the Vessel and the proceeds of any sale of the Vessel as security for any amounts owing by the Customer to MMH under the Agreement and the performance of the Customer's obligations under the Agreement. Any security interest granted under this clause shall not attach unless and until a Default Event has occurred.
- 4.8 The Customer shall execute such agreements and notices and do and cause to be done such things as may reasonably be required by MMH to protect or perfect the security interest intended to be created by the Agreement. The Customer acknowledges that MMH is entitled to take all necessary steps to register its security interest under the PPSA, and consents to MMH doing so.
- 4.9 The Customer waives its rights under the PPSA to receive a copy of any verification statement in respect of any financing statement or financing change statement registered by MMH in respect of the Vessel.

- 4.10 If the Vessel is sold during the Term, then the proceeds of sale of the Vessel shall remain subject to MMH's security interest.

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## 5.0 LIVING ON BOARD

- 5.1 Neither you nor any of your Invitees may live anywhere in the Marina other than on the Vessel and then only with the prior written approval of MMH. Any such approval may be withheld at MMH's sole discretion, or may be granted subject to any conditions that MMH considers appropriate in relation to living on board arrangements, which will include that:
- (a) you are the owner of the Vessel; and
  - (b) you must comply, at all times, with the Liveaboard Rules.
- 5.2 If you are given permission to Liveaboard the Vessel, you:
- (a) agree to comply with the Liveaboard Rules; and
  - (b) acknowledge that:
    - (i) you will be charged and must pay a Liveaboard Surcharge in addition to the Rental Fees and other charges payable by you under the Agreement, such Liveaboard Surcharge being payable in accordance with clause 3.7; and
    - (ii) a failure by you to comply with the Liveaboard Rules will constitute a material breach of the Agreement by you for the purposes of clause 16.2.

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## 6.0 MANAGEMENT ENTERING AND MOVING VESSEL

- 6.1 MMH reserves the right to enter and/or move the Vessel and to use the Berth in the case of an emergency. MMH may also require you to vacate the Berth if MMH, in its sole discretion, considers it necessary to allow urgent repairs to the Marina to be carried out. In such circumstances MMH will use reasonable endeavours, but shall not be obliged, to provide you with an alternative berth or mooring for your Vessel.
- 6.2 If MMH reasonably considers that there is an imminent risk to the Marina or to the health and safety of any person within the Marina it may take whatever steps it considers are required, in its sole and absolute discretion, to promote the integrity and safety of the Marina.
- 6.3 MMH also reserves the right to require you to vacate the Berth if necessary to facilitate non-urgent construction, development, alterations or maintenance within the Marina. In such circumstances, MMH will provide you with an alternative berth for you to use for the Term.
- 6.4 Where MMH has used reasonable endeavours to contact you to arrange for you to vacate the Berth under clause 6.1, 6.2 or 6.3 and we have been unable to contact you or you are unable to remove the Vessel within the time requested by MMH, MMH may remove the

Vessel from the Berth and you consent to MMH doing all things necessary to affect such removal. We may, at our discretion, charge you for any costs that we incur in removing a Vessel under this clause 6.0 and you agree to pay such charges.

- 6.5 MMH will take all reasonable care when entering and/or moving a Vessel under this clause but will not be liable for any damage or loss caused to the Vessel and will not be liable to pay any compensation to the Customer in respect of any relocation under this clause.

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## 7.0 BERTH AND VESSEL SIZE

- 7.1 You will ensure that the dimensions of the Vessel (as specified in the Berth Application) are true and correct and you agree not to allow any part of the Vessel to exceed such dimensions.
- 7.2 Without limiting clause 7.1 you agree that the **overall** length of your Vessel **must not** exceed the maximum length of the Berth and **no part of your Vessel is to overhang any walkway**. For further guidance regarding dimensions, see the diagrams regarding vessel length on the Berth Application.

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## 8.0 INSURANCE

- 8.1 You must at all times have a minimum cover of \$5,000,000 third party insurance for your Vessel while using a berth in the Marina. MMH will require you to provide reasonable proof of such current insurance prior to allocating you a berth and upon reasonable request during the period that the Vessel occupies the Berth. Any certificate of currency provided by you pursuant to this clause must contain, at a minimum, details of the insured entity, period of insurance, type of insurance, name of the insurer, a policy number, and confirmation of the amount of insurance.
- 8.2 You must ensure and you accept responsibility to ensure that any contractor that you or your Invitees allows into the Marina to carry out work on the Vessel holds sufficient insurance to satisfy the insurance requirements of MMH, as such insurance requirements are published by MMH from time to time.

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## 9.0 DOCKING LINES AND SECURING YOUR VESSEL

- 9.1 MMH does not supply docking lines. It is the responsibility of the owner, or person in charge of the Vessel, to supply and maintain their own docking lines. MMH reserves the right to require the Customer to replace any docking lines that are not maintained, appear unsafe or could cause a hazard. If you fail to comply with any request made by MMH under this clause within a reasonable period of time, MMH may replace the docking lines and recover all associated costs from the Customer.

- 9.2 The Vessel must be secured at all times to ensure no damage, injury, or loss is caused to the Marina or any other vessel or person.

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## 10.0 SHORE POWER

- 10.1 You must ensure that the use of any Shore Services complies with the Agreement and all relevant bylaws, rules, regulations and legislation governing the supply or discharge of such Shore Services.
- 10.2 All vessels are required to have an electrical warrant of fitness (**EWO**) in accordance with the New Zealand Electrical Code of Practice (ECP-29) if connecting to shore power permanently. An Electrical Compliance Form is to be completed and provided to Marina staff prior to connecting to any shore power supply. If a connection to shore power is made without an EWO by the Vessel, you will be liable for any damage caused to any Marina property or any other person or person's property because of a breach of this clause.
- 10.3 A temporary power supply cord can be used to connect to shore power. However, an electrical compliance form is still required to be completed. The temporary supply can only be connected to one portable electrical appliance. You may not leave the Vessel unattended if the electrical supply is active. You will be liable for any damage caused to any Marina property or any other person or person's property because of a breach of this clause.

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## 11.0 POLLUTION

- 11.1 You must not cause or permit any Contamination to the Marina, including the Marina waters.
- 11.2 Without limiting MMH's rights and remedies in relation to any Contamination, you must immediately upon becoming aware of any Contamination give written notice to MMH with particulars of each such occurrence and then:
- (a) promptly provide such further information as MMH may reasonably require; and
  - (b) upon lawful request from MMH or a competent regulatory authority at the Customer's expense clean-up and rectify any Contamination and if you fail to comply with any request made by MMH under this clause within a reasonable period, MMH may clean up and rectify the Contamination and recover all associated costs of doing so from the Customer; and
  - (c) comply with any lawful direction issued by MMH or a competent regulatory authority in connection with any Contamination and its consequences, including as to the time during which any such direction must be carried out.
- 11.3 Your Vessel must be equipped with a sewage holding

tank that can be discharged into a land-based pump out facility. There are pump out facilities located on "A" Pier and the Fuel Jetty. If you do not have a holding tank on board your Vessel, then your toilet outflow will be sealed by Marina staff to prevent use for the duration of your stay at the Marina.

- 11.4 No swimming, fishing or diving is permitted in the Marina. No hull cleaning may be carried out in the Marina. Any underwater maintenance of the Vessel is only allowed subject to prior written permission from MMH and must be carried out by a certified contractor.
- 11.5 Without limiting MMH's rights under the Agreement, any breach of this clause may result in you being prosecuted by the Northland Regional Council.

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## 12.0 SAFE REPAIR

- 12.1 You shall keep the Vessel in a good and safe repair, with adequate anodes and regular slipping and antifouling. You must ensure that the Vessel is seaworthy and able to move under its own power.
- 12.2 If you fail to comply with this clause 12.0, MMH may issue you with a written notice to comply. If you fail to do so within the time specified in such notice, MMH may arrange for the necessary work to be done to ensure that the Vessel complies with this clause 12.0 and may recover all associated costs from you.

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## 13.0 MARINE PEST CONTROL

- 13.1 You must ensure that all possible steps have been taken to ensure that the Vessel is not harbouring marine pests.
- 13.2 You acknowledge that the Marina operates the 6/1 rule, pursuant to which the Vessel must either:
- (a) have been antifouled within six months prior to arrival at the Marina; or
  - (b) had a washdown one month prior to arrival at the Marina: and
- proof of compliance with this clause must be provided by you to MMH at the time you complete the Berth Application and otherwise upon reasonable request.
- 13.3 Without limiting the foregoing, MMH may request that you complete an antifoul of the Vessel no less frequently than once every two years and provide such evidence as MMH may reasonably request to ensure that such exercise has been undertaken. If you fail to comply with this clause 13.3, MMH may issue you with a written notice to comply. If you fail to do so within the time specified in such notice, MMH may arrange for the necessary work to be done to ensure that the Vessel complies with this clause 13.0 and may recover all associated costs from you.

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## 14.0 WORK IN MARINA

- 14.1 Marsden Cove is a recreational marina and not a marina where significant maintenance should be undertaken or planned. You should consult with MMH to understand what maintenance tasks can be completed whilst your Vessel is in the Marina waterspace.

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## 15.0 VISITORS

- 15.1 You must ensure that:
- (a) all of your Invitees comply with the terms of the Agreement and all relevant bylaws, rules, regulations and legislation; and
  - (b) any children under the age of 12 and for whom you or your Invitees are responsible, are accompanied by a person over the age of 18.
- 15.2 Without limiting clause 11.0, you shall not, and shall ensure that your Invitees do not, pollute, permit the pollution of, or discharge into, the Marina any poisonous, noxious, dangerous or offensive substance or thing.
- 15.3 You must ensure that any contractor invited into the Marina by you (or by any of your Invitees) signs in via the QR code located on each gate of the Marina piers.

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## 16.0 TERMINATION

- 16.1 On termination of the Agreement for any reason, you must remove the Vessel and all of the Customer's goods and effects from the Marina within seven (7) Working Days of the relevant date of termination.
- 16.2 If the Customer fails to pay any part of the Rental Fee, charges or other monies due under the Agreement or otherwise defaults on any of the Terms (including the Marina Rules and the Liveboard Rules (if applicable)), MMH may at its sole and absolute discretion issue the Customer a notice of default setting out the nature of the default and, if in MMH's opinion the default can be remedied, how it can be remedied (**Default Notice**). Where relevant, the Default Notice shall state the total outstanding monies owing to MMH, including any interest at the Default Rate.
- 16.3 If the default stated in the Default Notice is not remedied within five (5) Working Days of the Customer's receipt of the Default Notice (or such other time period specified in the notice), or is not capable of being remedied, then MMH may terminate the Agreement immediately, provided that the Customer shall remain liable for payment of all Rental Fees, charges (if applicable) and other monies owing to MMH under the Agreement, and any costs incurred by MMH from the date of termination of the Agreement until the Vessel is removed from the Marina.

- 16.4 Termination of the Agreement shall not affect:

- (a) the continued existence and validity of the rights and obligations of the parties under the following provisions which shall survive termination: any Customer Representative Form accompanying the Berth Application, and clauses 3.6, 3.8, 4.7 to 4.10, 6.5, 11.0, 16.0 to 19.0, 21.0 and 22.0 of these Terms, and any other provisions that are intended by their nature to survive termination; and
- (b) the accrued rights and obligations of the parties at the date of termination.

- 16.5 Any failure by MMH to enforce a provision of the Agreement shall not limit MMH's future right to enforce any provision of the Agreement.

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## 17.0 ENFORCEMENT

- 17.1 In addition to, but without limiting, any other right or remedy MMH has under the Agreement or at law, where:
- (a) the Customer has not complied with its obligations under clause 16.1 within the seven (7) Working Days timeframe stated in clause 16.1; or
  - (b) the Customer has not complied with a Default Notice issued under clause 16.2 within the timeframe stated in the Default Notice,  
(each a Default Event for the purposes of clause 4.7) then MMH may, in its sole discretion, take the Vessel into its possession and lock and/or impound the Vessel;
  - (c) until all Rental Fees, charges and other amounts outstanding under this Agreement are paid in full; and/or
  - (d) upon twenty (20) Working Days' written notice to the Customer, sell the Vessel together with any chattels situated on or in the Vessel in such manner (whether by public auction or private sale), for such consideration and on such terms and conditions as MMH thinks fit, without being responsible for any loss to the Customer or any other person.
- 17.2 On the enforcement of the security interest created by the Agreement, sections 114(1)(a), 133 and 134 of the PPSA shall not apply and the Customer waives all rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA on such enforcement.
- 17.3 MMH can, in its sole discretion, either secure the Vessel in its Berth or alternatively remove the Vessel to another berth or hardstand. Without limiting any other right or remedy MMH has under clause 4.7, any other provision of this Agreement or at law, where MMH issues a Default Notice under the Agreement it shall be entitled to a lien on the Vessel to the extent of the costs of removal and storage of the Vessel.



- 17.4 The Customer indemnifies and holds MMH harmless against all liability for fees, costs and expenses incurred, and from all claims, suits and demands made by any person, in respect of storing, selling or otherwise disposing of the Vessel or any chattels under clause 17.1(d).
- 17.5 If MMH sells the Vessel and/or any chattels situated on or in the Vessel in accordance with clause 17.1(d), the proceeds of any such sale shall be applied:
- (a) first in satisfaction of all MMH's expenses incurred pursuant to clauses 17.1 and 17.3, including in the removal and or storage of the Vessel, administrative expenses, the cost of providing custodians, any sale process undertaken in relation to the Vessel and solicitor and own client costs;
  - (b) secondly in or towards satisfaction of any amounts owed by the Customer to MMH; and
  - (c) lastly, the payment of the balance (if any) to the Customer.
- 17.6 The Customer hereby irrevocably appoints MMH to be the attorney of the Customer to execute all documents and to do all things as are necessary to give effect to MMH's rights under the Agreement, including this clause 17.0.
- 17.7 The Agreement is not, in any way, intended by either party to create a bailment and the Customer understands that MMH accepts no responsibility for the care of the Vessel or its contents. Without limiting the foregoing, the Vessel and any chattels in or fixed to the Vessel shall not be deemed to be in the possession, custody or control of MMH in any manner whatsoever, unless and until MMH enforces its security interest under this clause 17.0.
- (iii) MMH exercising its rights under the Agreement to move the Vessel or disconnect it from any Shore Service;
- (b) damage to, or theft or loss of any other property belonging to the Customer or any Invitee of the Customer, which property is within the Marina premises (including any vehicle within the Marina car park); or
- (c) injury, loss or damage sustained or suffered by the Customer, or any Invitee of the Customer or any other person in the Marina however such loss, damage or injury may occur.
- 18.3 The Customer acknowledges and agrees that it is personally liable to MMH for paying any costs incurred by MMH (including all debt collection and legal costs and expenses on a solicitor and own client basis) in relation any breach by the Customer of its obligations under the Agreement (including the enforcement, or attempted enforcement, of MMH's rights and remedies under the Agreement).
- 18.4 The Customer indemnifies MMH against all losses, expenses, legal liability including any legal claims, damages, expenses, collection costs and other liabilities (whether direct, indirect or consequential) (**Losses**) arising out of the Agreement or of any act or omission of the Customer or its Invitees. Additionally, the Customer agrees to indemnify third parties for any Loss suffered by a third party which is caused by, or results from, the acts or omissions of the Customer or its Invitees, and this clause is for the benefit of and may be enforced by any such third party under the terms of the Contract and Commercial Law Act 2017.

## 18.0 LIABILITY

- 18.1 MMH is not responsible for the care or protection of any property belonging to the Customer in the Marina. The Vessel and any other property brought into the Marina by you and/or your Invitees are at all times your own responsibility, and while located at the Marina remain solely at your own risk.
- 18.2 Neither MMH, nor any of its Representatives, shall be liable (in negligence or otherwise) for any:
- (a) damage to, or theft or loss from, the Vessel, or for any damage to, or theft or loss of, any contents situated on or around the Vessel, while the Vessel is in the Marina however that may occur, including any loss or damage caused by:
  - (i) the removal of the Vessel by any person not authorised by the Customer to remove it, whether such removal was permitted by MMH or not;
  - (ii) the use of any Shore Service, including any interruption to that service; or
- (a) the Customer's contact details on the Berth Application are correct for the purposes of service;
- (b) it has full power and legal capacity, and has obtained all authorisations and done all things necessary, in order to enter into the Agreement and to perform its obligations under the Agreement;
- (c) it either:
- (i) has full legal title as the owner of the Vessel; or
  - (ii) where the Vessel is jointly owned, represents the joint owners and has the authority of all other joint owners to

## 19.0 CONTACT DETAILS

- 19.1 MMH must be advised of any changes of address, contact phone numbers and vessel details in order to contact the Customer or a Customer Representative in the event of an emergency and to keep its records up to date. Any such information will be kept by MMH in accordance with the Privacy Act 2020.
- 19.2 The Customer warrants from the date on which the Agreement is signed and continuously throughout the Term, that:

bind them jointly and severally to the Agreement, and will provide evidence of such ownership or authority that is satisfactory to the Manager promptly upon request.

(d) where a Customer Representative signs the Agreement on behalf of the Customer, or the Customer appoints a Customer representative to act on its behalf during the Term:

(i) the Customer Representative has been expressly authorised in writing to act on behalf of the Customer in relation to the Agreement;

(ii) the Customer has agreed to grant unlimited authority to the Customer Representative to act for the Customer in all matters concerned with, or arising out of, the Agreement and MMH will be entitled to deal with that Customer Representative in all respects as if the Customer Representative were the Customer (without further enquiry) and the Customer shall be bound accordingly; and

(iii) without prejudice to clause 19.2(d)(ii), the Customer will, upon request by the Manager from time to time, promptly provide documents or evidence satisfactory to MMH as to the identity of the Customer Representative and/or that the Customer Representative is duly and fully authorised in accordance with this clause.

19.3 The Customer may appoint or change its Customer Representative by 10 Working Days' notice to MMH at any time during the Term provided the new Customer Representative completes a new Customer Representative Form. To avoid doubt this Agreement remains between MMH and the Customer, and the Customer remains responsible for its obligations and liabilities under the Agreement, notwithstanding the appointment of or any change to the Customer Representative.

19.4 Any notice issued by MMH to the Customer under the Agreement shall be in writing and:

- (a) delivered personally;
- (b) affixed upon the Vessel;
- (c) posted; or
- (d) emailed,  
to the Customer (using the contact details specified either in the Berth Application or as otherwise updated by the Customer to MMH in accordance with clauses 19.1 and 19.2).

19.5 A notice is deemed to be received:

- (a) if delivered personally, when delivered;
- (b) if affixed upon the Vessel, three (3) Working Days after it is so affixed;
- (c) if posted, five (5) Working Days after it is posted; or
- (d) if emailed, when recorded as being sent.

## 20.0 VARIATION OF TERMS & CONDITIONS

20.1 These Terms may be varied from time to time by MMH by giving written notice to you, provided such variation is reasonably required to manage the Marina in a safe, effective, and commercially sustainable manner, and the same variation is applied to all customers of the Marina who occupy a Berth. Any variation will take effect ten (10) Working Days after the date of the notice.

### 21.0 BYLAWS, REGULATIONS & NEW ZEALAND LAW

21.1 You agree, when using the Berth and the Vessel in the Marina, to at all times comply with:

- (a) the Agreement;
- (b) all bylaws and regulations in relation to the Marina;
- (c) all policies published from time to time by MMH in relation to the Marina and made available to you at the Marina office or on the Marina website, including policies relating to health and safety and the engagement of contractors;
- (d) all notices affecting or relating to the Berth and/or the Vessel; and
- (e) all instructions from Marina staff.

21.2 The Customer authorises MMH to obtain and collect any relevant information about the Customer from any person (including credit reference agencies) and to use this information and any information about the Customer already held by MMH for purposes associated with the Agreement. The Customer has the right to access personal information (within the meaning of the Privacy Act 2020) held by MMH and to request correction of any errors in that information.

21.3 The Customer hereby authorises MMH to, upon termination of the Agreement due to a Default Event, disclose to the membership of the Marina Operators Association of NZ Inc. any personal information held by MMH about the Customer.

21.4 The Customer must not assign any of its rights or obligations under this Agreement to any person without the prior written consent of MMH, which consent can be withheld for any reason or may be subject to conditions. MMH may assign all or any of its rights or obligations under this Agreement to any person.

21.5 If the Customer is comprised of more than one person, the liability of each of those persons under this Agreement is joint and several.

21.6 These Terms are subject to New Zealand law.

## 22.0 DEFINITIONS

22.1 In these Terms, unless the context requires otherwise:

**Arrival Date** is the date specified as the arrival date in the Berth Application.

**Berth** means the berth in the Marina described in the Berth Application.

**Berth Application** means the form titled Berth Application and which contains details regarding the Customer, Vessel, insurance, and other berth rental arrangements, and is signed by MMH and by (or on behalf of) the Customer.

**Berth Length** means the maximum vessel dimensions permitted in the Berth as published by MMH (which may be less than the physical dimensions of the Berth noted on the Berth Application).

**Contamination** means the discharge into the air, onto land or into water of any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy or heat which is or might become hazardous, dangerous, radioactive, oxidising, poisonous, infectious, flammable, explosive, noxious, toxic, corrosive, irritating, offensive, or damaging to health of any person or to otherwise cause contamination or that would breach any regulation or law.

**Contractor** means any person invited or engaged by or on behalf of the Customer to perform works or services in respect of the Vessel at the Marina.

**Customer or you** means the person or entity named as the Customer in the Berth Application.

**Customer Representative** means an individual who confirms they are authorised to represent the Customer and legally bind the Customer to the terms of the Agreement by signing a Customer Representative Form.

**Default Notice** has the meaning given in clause 16.2

**Default Event** has the meaning set out in clause 17.1 of these Terms.

**Default Rate** means MMH's bank overdraft interest rate plus a further 5% per annum.

**Departure Date** is the date specified as the departure date in the Berth Application.

**GST** means goods and services tax under the Goods and Services Tax Act 1985.

**Invitees** means any of the Customer's agents, contractors, employees, licensees, or invitees.

**Liveaboard** means to sleep overnight on your Vessel while it is moored in the Marina.

**Liveaboard Rules** means the rules for living on board a vessel within the Marina, as updated and published by MMH from time to time.

**Liveaboard Surcharge** means the surcharge for living aboard the Vessel set out in the price list published by MMH from time to time.

**Marina** means Marsden Cove Marina, Whangarei and includes the Berth, all structures, wharves, foreshore areas, parking areas, driveways, accessways, services, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, Marsden Cove Marina.

**Marina Rules** means the rules for using the Marina, as updated and published by MMH from time to time.

**MMH** means Marsden Maritime Holdings Limited and includes its successors and assigns.

**PPSA** means the Personal Property Securities Act 1999.

**Rental Fee** means the rental fee described in the Berth Application and stipulated in the Marina Price List at the date of the Agreement, as that fee may be amended from time to time in accordance with the Agreement.

**Representative** means in relation to a party, any duly authorised employee, office, contractor or agent of that party.

**Shore Services** means power, water, sewage, pump or any other shore service.

**Term** has the meaning given in clause 2.1.

**Termination** has the meaning given in clause 16.3.

**Vessel** means the vessel specified in the Berth Application.

**Working Day** means any day of the week other than: (a) a Saturday, Sunday, or public holiday (as defined in the Holidays Act 2003) in Auckland; 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.