

# PENDER HARBOUR RESORT AND MARINA

## Marina Moorage Agreement – General Terms and Conditions

*Effective January 1, 2024*

### Definitions

1. **“Berth”** shall mean the slip designated to the Owner by the Marina to be used for moorage of the Vessel;
2. **“Invoice”** shall mean the marina moorage invoice issued by the Marina;
3. **“Marina”** shall mean Pender Harbour Resort and Marina, located at 4686 Sinclair Bay Road, Garden Bay, Sunshine Coast, British Columbia;
4. **“Owner”** shall mean the individual or entity named on the Invoice;
5. **“Terms”** shall mean these General Terms and Conditions; and
6. **“Vessel”** shall mean any vessel owned by the Owner, whether in title or in beneficial ownership, to be moored at the Facilities (hereinafter defined).

### Part A: Agreement, Facilities and Licence

1. **Agreement and Acknowledgement:** These Terms and the Invoice collectively shall constitute an agreement (the **“Agreement”**) entered into between the Marina and the Owner. The Owner named on the Invoice hereby acknowledges and affirms that:
  - a) they understand and agree that this moorage agreement is comprised of the Invoice together with the Terms;
  - b) they are the legal and beneficial owner of the Vessel or the lawful agent of such owner, with full authority to enter into this agreement;
  - c) they have carefully read and understood the Terms; and
  - d) by paying the amount listed on the Invoice, they agree to be bound by and at all times comply with these Terms, in consideration of the moorage facility provided by the Marina.
2. **Facilities:** The Agreement pertains to the following facilities (collectively, the **“Facilities”**):
  - a) **Resort Facilities**, being certain common-use shore-side facilities located at Pender Harbour Resort, 4686 Sinclair Bay Road, Garden Bay, Sunshine Coast, British Columbia, including a boat ramp, parking and access roads; and
  - b) **Marina Facilities**, being certain marina facilities owned and operated by the Marina and located in a water lot adjacent to and connected with the Resort Facilities, and for greater certainty including the Berth, other berths, and common-use infrastructure for shore power, piped water, docks for accessing the berths by foot, and portions of the water lot for accessing the berths by boat.
3. **Licence for Permitted Uses:** Subject at all times to the limitations, terms and conditions set out in this Agreement, including without limitation compliance at all times with the Marina Rules (defined below), the Marina hereby grants to the Owner for the Term, as set out below, a limited license to use the Facilities as follows (collectively, **“Permitted Uses”**):
  - a) occupy and use the Berth, or such other place as the Marina may specify from time to time, for the purpose of mooring the Vessel;

- b) access and enter upon the under-water portions of the Marina Facilities water lot with the Vessel for the purpose of obtaining access to and exiting from the Berth by water;
- c) reasonable use of the common-use infrastructure of the Marina Facilities, in common with the Marina, other licensees of other berths in the Marina and other persons permitted by the Marina; and
- d) reasonable use of the Resort Facilities, in common with the Marina, other licensees of other berths in the Marina and other guests and persons permitted by the Marina.

## **Part B: Access and Use**

- 4. **Marina Rules and Regulations:** The Marina may from time to time publish rules and regulations governing the use of the Facilities by all people at the Facilities including owners, guests, invitees, tradespeople, employees, and other users ("**Marina Rules**"). The version of the Marina Rules in effect at the time of execution of this Agreement are posted on the Marina's website. The Owner shall at all times comply in all respects with the Marina Rules, which may be amended from time to time by the Marina at its sole discretion without notice, and shall cause the Owner's guests, family members, invitees, visitors, tradespersons, employees or agents (collectively, "**Owner's Guests**") to do the same.
- 5. **Conduct:** The Owner shall not do, and shall not permit the Owner's Guests to do, in or on the Vessel or anywhere in the Facilities, any act or thing and shall not use the Vessel that is not in compliance with the Permitted Uses or in any manner which, in the sole and unfettered opinion of the Marina shall or may constitute an annoyance, nuisance, disturbance, danger or damage to the Facilities or any other user of the Facilities, any other person renting moorage from the Marina, or to the occupants or owner of any property adjoining or adjacent to the Facilities. In addition, the Vessel and the use and possession thereof by the Owner must comply with all governmental laws and regulations. The Owner shall not in any way enable, permit or otherwise allow any Owner's Guest or other person to enter or be present in the Facilities unless accompanied by the Owner.
- 6. **Tenders:** Owner shall keep the Vessel's tender on board the Vessel at all times, except only when it is not in actual use. Subject to space availability, Marina may in its discretion permit the tender to be moored beside or otherwise adjacent to the Vessel, in which case a supplemental Moorage Fee shall be applicable for the tender.
- 7. **No Live Aboard:** Neither the Owner, nor any other person, may live aboard the Vessel, while moored at the Berth without the express written consent of the Marina, which consent the Marina may withhold at its sole and unfettered discretion.
- 8. **Parking and Trailers:** Parking spaces in the parking lot that forms part of the Resort Facilities are common-use spaces limited to use by non-commercial standard-sized passenger vehicles and are subject to availability and available on a first-come, first-served basis. Subject to such availability and restrictions, the Owner may park one vehicle at a time in such parking spaces. Parking for any additional Owner vehicles or Owner's Guest vehicles is not allowed without the express authorization of the Marina, which may be withheld at the Marina's sole discretion due to the limited availability of parking spaces at the Facilities. The Owner may not park their Vessel trailer at the Facilities at any time, other than at the time the Owner is actually loading or unloading their Vessel.

9. **Transient Moorage and other Vessel Movement:** The Marina reserves the sole discretionary right to:
- a) assign and reassign berths and moorage;
  - b) change the location of the Berth; and
  - c) rearrange or reposition the position of the Vessel if its positioning is interfering with the passage of other vessels or access to or from other berths, all at the Owner's sole risk and expense.

#### **Part C: Insurance**

10. **Insurance:** The Owner shall have and keep in force hull and machinery insurance for the full current market value of the Vessel and protection and indemnity insurance for third party liability, to a minimum of CAD \$3,000,000 million. The Owner shall provide a valid copy of all applicable insurance to the Marina upon the execution of this Agreement. The Owner shall ensure that the aforementioned protection and indemnity insurance policy names the Marina as an additional insured. Failure to have proper and valid insurance at all times will be grounds for immediate termination of this Agreement.

#### **Part D: Fees**

11. **Fees Payable:** The Owner shall pay the Moorage Fee and the Hydro Fee set out on the Invoice, together with any GST, PST or other taxes payable on same, at the time of entering into this Agreement. Thereafter, unless the Marina expressly agrees in writing otherwise, the Moorage Fee and the Hydro Fee shall be payable annually in advance each calendar year not later than the date specified on the invoice. The Marina may from time to time revise the Moorage Fee and Hydro Fee in accordance with this Agreement.
12. **Calculation of Moorage Fee.** The Marina shall calculate the Moorage Fee by the application of a linear rate to the greater of:
- a) overall length of the Vessel, which length shall be measured from the top of the bow or anchor (whichever is furthest forward) to the end of the motor, swim grid or any other kind of extension (whichever is furthest aft), without any exception for overhang of any kind; or
  - b) overall length of the slip required for the Vessel.

The Marina may from time to time at its sole discretion revise the linear rate used to calculate the Moorage Fee.

13. **Hydro Fee for Utilities and Services:** The Moorage Fee does not include charges for electricity, water, or other utilities or services that the Marina may provide. The Owner shall, as part of the Invoice, pre-pay a \$20.00 minimum charge for the provision to Owner for reasonable access to metered shore-power electricity and piped water, up to credit covered by this charge (the “**Hydro Fee**”). Charges for any additional use of the metered shore-power electricity and piped water beyond the prepaid quantity provided for under the Hydro Fee shall be levied to the Owner upon the termination or renewal of this Agreement. The Marina may without prior notice place reasonable restrictions on Owner use of such services if the Marina, in its sole discretion acting reasonably, determines that Owner use is greater than a reasonable amount. The Marina may increase the Hydro Fee once each calendar year to reflect changes in the costs associated with providing such services including the rates that the Marina is being charged for such shore-power electricity and water. The Owner shall pay the Marina for any other utilities or services that the Marina offers at the rates and on the terms set by the Marina from time to time.
14. **Payment:** The Owner shall pay the Marina all amounts when due under this Agreement. If no due date is specified, then such amounts must be paid immediately upon invoicing by the Marina. Without limiting any other right or remedy available to the Marina under this Agreement or in law or equity, for any overdue amount, the Marina will apply to overdue amounts a late payment penalty of 2% per month compounded monthly (26.82% per annum), and the Marina may without notice suspend all shore-power electricity and water privileges.
15. **Moorage Fee Upon Termination:** If the Owner terminates this Agreement in accordance with its Terms, and provided that the Marina is able enter into a new moorage agreement for the Berth with a different owner within one month of the date of termination of this Agreement, the Marina shall refund to the Owner *pro rata* portions of the Moorage Fee for the balance of the Term remaining as of the effective date of termination. Other than the foregoing, the Owner will not be entitled to any reimbursement or return of any portion of the Moorage Fee or Hydro Fee due to any early expiry or termination of the Term, or if the Owner assigns, transfers or otherwise conveys their interest in this Agreement or the Berth without the express written consent of the Marina.
16. **Lien:** The Marina shall have a lien on the Vessel for any overdue Moorage Fee or Hydro Fee or any other fees, charges or amounts contemplated by or due as a result of the Agreement. The Owner authorizes the Marina to move the Vessel at the expense of the Owner to dry storage as security to recover monies owed under this Agreement. The Marina shall have the right to take possession of the Vessel and any other Owner goods and effects at the Facilities and to dispose of same to enforce and satisfy any such lien in accordance with the provisions of the *Warehouse Lien Act*, R.S.B.C. 1996, Chapter 480, which shall apply *mutatis mutandis*.

#### **Part E: Term, Renewal, Termination**

17. **Term:** The Term of this Agreement shall be for a duration of one calendar year from the date of the Invoice, unless otherwise earlier terminated or renewed in accordance with this Agreement.
18. **Term Renewals:** This Agreement may be renewed by the Owner from time to time with the consent of the Marina, by payment in accordance with the Marina’s invoice, or in

advance on or before the expiration of the Term (or renewal Term, if applicable), of the amount of annual Moorage Fee and Hydro Fee stipulated by the Marina for the subsequent Term, together with any GST, PST or other taxes payable on same. By renewing this Agreement, the Owner agrees to continue to be bound by every term of this Agreement.

19. **Termination by Marina:** If the Owner is in default of any of his obligations under this Agreement and such default continues for a period of 7 days after notice thereof from the Marina, then the Marina may terminate this Agreement without any further notice or liability to the Owner.
20. **Termination by Owner:** The Owner may terminate this Agreement at any time by giving one month's notice in writing to the Marina. The Owner shall remain liable to comply in full with every term of this Agreement until the expiry of the notice period.
21. **Vacate Upon Expiry or Termination:** Upon the expiry or termination of this Agreement, the Owner shall forthwith vacate the Facilities and remove the Vessel and all Owner's other goods and effects from the Facilities and cause any Owner's Guest to do likewise. Notwithstanding the foregoing, following the expiry or termination of the Term, if the Vessel remains at the Berth or any Owner's other goods and effects remain at the Facilities, without otherwise limiting the rights of the Marina hereunder:
  - a) The Marina may, at its sole discretion, chain the Vessel, secure the Owner's other goods and effects, and/or exclude the Owner access to the Facilities; and
  - b) The Owner shall be deemed to be occupying the Berth for the purposes of transient moorage and shall pay the Marina the then applicable daily rate of transient moorage charged by the Marina for each day the Vessel continues to be moored at the Berth.

#### **Part F: Emergencies and Damage to Berth and Marina**

22. **Emergency:** In cases of emergency, including where in the opinion of the Marina the Vessel is in danger of sinking, or is an immediate hazard to other vessels, the Marina Facilities, or the marine environment, the Marina is authorized to act on behalf of and in the name of the Owner, and to take any reasonable action required in respect of the Vessel. The foregoing does not create an obligation on the Marina to take any such action. The Owner shall indemnify and hold harmless the Marina for any expenses or losses incurred in relation to any such action and any damage to the Vessel occasioned by such action.
23. **Abatement and Termination:** In the event of damage to the Marina or the Berth:
  - a) if the damage is such that the Marina Facilities or the Berth or any substantial part thereof is rendered not reasonably capable of use and occupancy by the Owner for the Permitted Uses for any period of time in excess of 14 days, then, unless the damage was caused by the fault or negligence of the Owner or Owner's Guests, from and after the date of occurrence of the damage and until the Marina Facilities or the Berth are again reasonably capable of use and occupancy as aforesaid, and provided in any case that the Marina shall receive insurance proceeds in lieu of any Moorage Fee that has abated, the Moorage Fee shall abate from time to time in proportion to the part or parts of the Marina Facilities or Berth not reasonably capable of use and occupancy.

b) if either:

- (i) the Marina Facilities or the Berth, or
- (ii) berths, whether of the Owner or other licensees of the Marina, comprising in the aggregate 25 percent or more of the Marina Facilities,

are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Marina they cannot be repaired or rebuilt (based on standard hours of construction work) within 60 days after the occurrence of the damage or destruction, then the Marina may at its option, exercisable by written notice to the Owner given within 10 days after the occurrence of such damage or destruction, terminate this Agreement, and the Owner shall instead deliver up possession of the Berth to the Marina with reasonable expedition but in any event within 7 days after delivery of such notice of termination, and the Moorage Fee shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Owner may be entitled under subclause 24(a) by reason of the Berth or Marina Facilities having been rendered in whole or in part not reasonably capable of use and occupancy).

#### **Part G: Risk of Loss, Liability, and Indemnity**

24. **Risk:** The Vessel while moored at the Berth and otherwise present in the Facilities shall be solely at the Owner's risk. The Marina shall not be responsible for the security of the Vessel from theft, damage or other loss. Any approval by the Marina shall not detract from the Owner's full responsibility for the Vessel or incur any liability for the Marina. The Marina makes no warranties, express or implied, as to the condition of the Facilities (including floats, walkways, gangways, ramps, gear, parking and related items) or the suitability of the Berth and the Facilities for their intended purpose. The Owner acknowledges that the Owner had an opportunity to inspect the Facilities and the Berth prior to the execution of this Agreement and agrees to accept the Facilities and the Berth in their current condition.
25. **Liability:** The Owner shall be liable for any loss, damage, or destruction caused to the Facilities or any other property of the Marina or other users of the Facilities by the Vessel or the Owner or the Owner's Guests. Without limiting the generality of the foregoing, the Owner shall be responsible for and at his or her own expense, pay or otherwise make good to the satisfaction of the Marina any injury, loss or damage arising out of or caused by the maintenance or repair of the Vessel or by any failure to detect therein or by the use or operation of the Vessel and will keep indemnified the Marina from and against all actions, proceedings, costs, damages, expenses, claims and demands incurred in consequence of the exercise by the Owner of the rights, benefits, privileges and permission hereby given or in consequence of any breach or non-observance of any of the conditions of the Owner's part herein contained or in consequence of the use, operation or ownership of the Vessel.
26. **Limitation of the Marina's Liability:** The Owner agrees that:
- a) the Marina and its employees, contractors and agents shall not be liable, either jointly or severally or solely, for any bodily injury to or death of, or loss or damage to any property belonging to, the Owner or Owner's Guests or any other person in, on,

or about the Berth or the Facilities, or for any use of the Berth or Facilities, notwithstanding that negligence or other conduct of the Marina or anyone for whose conduct the Marina is responsible may have caused or contributed to such matter, and without limiting the generality of the foregoing, in no event shall the Marina be liable:

- i. for any loss or damage to the Vessel, however caused, while moored at the Berth or otherwise present in the Facilities,
  - ii. for the non-observance or the violation by anyone of any provision of any of the Marina Rules in effect from time to time,
  - iii. for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, maintenance services, or any other work in or about the Berth or the Facilities,
  - iv. for loss or damage, however caused, to money, securities, negotiable instruments, papers, or other valuables of the Owner or any of Owner's Guests, or
  - v. for loss of time or income, inconvenience, or any indirect or consequential damages, however caused.
- b) the Owner releases and discharges and holds harmless the Marina from any and all actions, causes of action, claims, damages, demands, expenses, and liabilities which the Owner now or hereafter may have, suffer, or incur which arise from any matter for which the Marina is not liable under subclause 26(a).
27. **Indemnity:** The Marina and its employees, contractors and agents shall not be liable, either jointly or severally or solely, for any injury, loss or damage resulting from the negligent or willfully tortious acts or omissions of the Owner or Owner's Guests, or from any pollution event in or about the Facilities arising in or caused by the Vessel or the Owner or the Owner's Guests, or from the Vessel sinking or otherwise becoming partially or completely submerged or a constructive or actual loss in or in the vicinity of the Facilities. The Owner shall indemnify and save harmless the Marina and its employees, contractors and agents from and against all actions, proceedings, costs, damages, expenses, claims and demands that arise out of or in connection with any such injury, loss or damage.

#### **Part H: General**

28. **Assignment:** The Owner will not assign, grant any sub-right or permission under this Agreement or otherwise transfer this Agreement or any right or rights granted by this Agreement, including the right to moor the Vessel in the Berth, to any person without the prior written consent of the Marina, which consent the Marina may arbitrarily withhold. Any assignment without the prior written consent of the Marina is void and entitles the Marina to terminate this Agreement. If the Marina consents to an assignment of this Agreement, the Marina will not be obliged to refund the Moorage Fee or the Hydro Fee to the Owner. The Owner may not moor any boat in the Berth other than the Vessel.
29. **Successor Legislation.** Any statute referred to herein shall be deemed to include that statute as amended, restated and/or replaced from time to time, and any successor legislation to the same general intent and effect.

**30. General:**

- a) This Agreement does not constitute a contract for bailment and the Owner expressly acknowledges that the Marina is not a bailee in respect of the Vessel.
- b) This Agreement will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein, without reference to conflict of law principles.
- c) The Owner shall advise the Marina in writing of any changes in its address or phone numbers. Any notice required to be given to the Marina will be addressed to Pender Harbour Resort Ltd. at the address given on the Invoice.
- d) Clauses 4, 10, 14 to 17, and 22 to 27 shall survive expiration or earlier termination of this Agreement.

*[End of General Terms and Conditions]*