

FRESHWATER MARINA INC - MOORAGE CONTRACT

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admin@freshwatergroup.ca

**30 DAYS' NOTICE IS REQUIRED TO VACATE THE MARINA (MAIL OR EMAIL)
PROOF of INSURANCE REQUIRED – see 13(b)**

The Undersigned (the "Owner") hereby applies for moorage at Freshwater Marina (the "Marina"). The Owner hereby agrees to the provisions of this Non-Transferable Contract as set out on this page and on the succeeding pages of this Contract and to abide by all Marina rules and regulations (collectively, the "Terms") and to pay Freshwater Marina (the "Company") for moorage the following fees:

Moorage Fee: Per Month \$ _____ plus Tax _____ Date: _____
Hydro (Metered month .14C per KW plus Tax \$10.00 Refundable Key Deposit
Berth # _____ Key# _____

VESSEL INFORMATION (PLEASE PRINT)

Name of Vessel: _____ Type of Vessel: _____
Length: _____ Beam: _____ License Register Number: _____
Insured By: _____ Policy #: _____

OWNER INFORMATION

Name: _____ Address: _____
Email: _____ Signature _____
Phone: _____ Cell: _____
Emergency Contact: _____ Phone: _____

THE COMPANY MAY CHANGE THE FEES AT ANY TIME IN ITS SOLE AND ABSOLUTE DISCRETION but shall provide written notice of material changes to fees. Posting an updated fee or rate schedule at the Marina office shall constitute effective written notice to the Owner. The Company agrees, subject to the observance by the Owner of the Terms, to allow the Owner to moor the vessel described below (the "Vessel") at the Marina for the period applied for.

- The Owner **HEREBY REPRESENTS AND WARRANTS** that the information in this application is accurate and HEREBY AUTHORIZES the Company and its agents to obtain such credit reports or other information as required to complete a credit investigation. This consent is given pursuant to Section 7 of the B.C. *Personal Information Protection Act* and its amendments thereto.
- **A PORTION OF THE MOORAGE FEE WILL BE ALLOCATED TO VEHICLE PARKING. HOWEVER, THE COMPANY DOES NOT GUARANTEE THAT VEHICLE PARKING WILL BE AVAILABLE AT ANY PARTICULAR TIME**
- **ELECTRICITY AND GARBAGE DISPOSAL AND OTHER SERVICES ARE NOT INCLUDED IN THE MOORAGE FEE.**
- **THE COMPANY ASSUMES NO RESPONSIBILITY FOR THE CARE, SECURITY OR PROTECTION OF THE VESSEL OR ANY OTHER PROPERTY.**
- **THIS CONTRACT CONTAINS TERMS WHICH EXCLUDE LIABILITY OF THE COMPANY FOR DAMAGE AND PERSONAL INJURY AND WHICH PROVIDE AN INDEMNITY TO THE COMPANY.**

IMPORTANT - PLEASE READ THE FOLLOWING PAGES*

FRESHWATER MARINA INC. STANDARD MOORAGE CONTRACT TERMS

1. **Consideration.** In consideration of the payment of \$10.00 by each party to the other, the Fees payable hereunder, the Company allowing the Owner to use a berth at the marina on the provisions in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Owner agree as set out herein.
2. **Berth License.** This Contract creates only a licence in favour of the Owner for the use of an assigned berth at the Marina. This Contract is not a lease or a bailment agreement. The Owner shall have no proprietary rights whatsoever to any berth. The Vessel shall only be moored at the berth designated on the face of this Contract, provided that the Company may at any time and from time to time require that the Vessel be moored at a different berth. **Neither the berth nor the Vessel when moored at the berth may be used as living quarters or a residence or otherwise for residential accommodation.** The Company shall have the right at any time and from time to time, without any notice to the Owner and at the sole risk of the Owner, to rearrange the position or orientation, or change the location, of the Vessel, and the Owner hereby appoints the Company as its agent for such purposes. The Owner hereby acknowledges that it bears sole responsibility for the maintenance, moorage conditions, weather protection, and covering of the Vessel, and the Owner will from time to time inspect the same and ensure the integrity and safety of the mooring and the general condition of the Vessel and any structures or materials used to cover same, and ensure that the Vessel is moored properly to the satisfaction of the Owner.
3. **Description of Vessel.** The Owner represents and warrants that the description of the Vessel on the face page of this Contract is accurate and complete. If, in the sole and absolute discretion of the Company, the description of the Vessel is inaccurate or incomplete in any respect, whether material or not, the Company may refuse to allow the Vessel to be moored at the Marina, or, if the Vessel is already moored at the Marina, the Company may exercise its right of termination pursuant to Section 9 of this Contract.
4. **Utility Fees.** The Owner shall promptly pay, as an additional fee, all fees charged by the Company in respect of electricity. As the Company shall in its sole and absolute discretion consider reasonable. If the Owner fails to pay any such fees, the Company may at any time thereafter and without any notice, immediately or after such period of time as the Company determines in its sole and absolute discretion, terminate some or all of the utilities and services provided, without limiting any other remedies available to the Company as a result of the Owner's failure to pay. The Company is entitled to change these fees, in its sole and absolute discretion, at any time, but will provide written notice of any material changes to the Owner. Posting an updated fee or rate schedule at the Marina office shall constitute effective written notice to the Owner.
5. **Accounts. All fees are payable in advance and subject to applicable taxes. Fees for the applicable period set out on the face of this Contract must be paid in full immediately (upon execution of this Contract) in accordance with the terms and conditions regard payment outlined at signing. All accounts are due immediately upon being issued by the Company. The Owner shall pay interest on all overdue accounts at a rate of two percent per month (twenty-four percent per year), compounded monthly. In the event an account is still unpaid by the 15th of the month, the Company at its sole discretion may elect to charge or continue charging interest as aforesaid or to place the Vessel and moorage on the daily rate. The Owner shall reimburse the Company on demand for all losses, costs and expenses incurred by the Company to collect overdue accounts, whether by legal action or otherwise.**
6. **Marina Use and Safety.**
 - a) The Owner and the Owner's agents, guests, employees, incites, licensees, contractors, and any other person at the marina in connection with the Vessel or the Owner's use of the Marina, or for whom the Owner's responsibility in law (collectively with the Owner, referred to as the "**Owner Parties**") shall not carry on any business at the Marina without the prior written consent of the Company, which consent may be withheld by the Company in its sole and absolute discretion.

- b) Any third party (outside vendor) hired by an Owner to perform work on a vessel while at the Marina must secure the Marina's prior approval before such work is commenced. The Marina will at all times exercise control of third parties permitted to enter the Marina and in the case of third parties, the Marina must first approve the materials and methods, insurance coverage, licenses and willingness of the third party to observe the Marina's Standard Moorage Contract Terms before permitting the third party onto the Marina property to perform the work.
- c) Any third party permitted onto Marina property, whether pre-approved, shall not be construed as having any endorsement of the Marina for the work or services of such party nor shall the Marina be in any way responsible for the work done by any such party.
- d) The Owner Parties shall not carry on any activity at the Marina or on the Vessel while it is moored at the Marina that may be deemed by the Company, the Company's sole and absolute discretion, to be a nuisance or unsafe.
- e) The Marina is a shared space and Owner Parties shall conduct themselves so as to preserve the quiet enjoyment of all users and to ensure that all users and staff are free from unreasonable disturbance or interference. Alcohol cannot be consumed outside in any public areas. Alcohol must be confined to Owner's boat and immediate dock area surrounding the boat. Smoking is prohibited on all docks.
- f) Children under 10 years of age must be supervised by an adult at all times while on the Marina's premises.
- g) Pets shall be leashed at all times while on the Marina premises. Pet owners must clean up after their animals and dispose of excrement in the proper container.
- h) Owner Parties are required to park in designated areas only. The speed limit in parking areas is 10km/h.
- i) For vessels in the Marina and within the channel leading to the Marina beginning at the breakwater, **maximum speed is four knots or no wake, whichever occurs first.**

Except for entering or leaving the slip, main engines, power generating equipment or other noisemaking equipment shall not be operated between the hours of 9 PM and 7 AM.

- j) Owner Parties shall not prop the gate open for any reason. All Owner Parties must be accompanied by an Owner.
- k) The Owner Parties shall not self-fuel, or fuel from portable containers, any Vessel at the Marina.
- l) There shall be no barbeques, welding equipment, burning torches or any other open flame apparatus used within the Marina. Gas barbeques securely mounted within a vessel are acceptable.
- m) Owners may carry out minor repairs and maintenance only. Major repairs to vessels or maintenance to engines must be performed in a boatyard.
- n) All vessel washing, cleaning and detailing must adhere to the highest of eco-friendly standards.
- o) All boathouses which are outfitted with a curtain to prevent the entry of birds must be closed at all times. The curtain must be closed before departing the marina. Costs incurred in clean-up resulting from the failure to do so will be the responsibility of the Owner.
- p) The Owner Parties shall not build within or modify any boathouse or any part of the Marina without prior approval of the Company. Any materials or work associated with improvements or amendments to a boathouse, or the Marina become the property of the Company. The Marina reserves the right to remove, add, or adapt any existing construction, addition, or modification made to any portion of the docks, including but not limited to dinghy racks, dock boxes and stairs.
- q) The Owner Parties shall not permit any garbage, debris, Blackwater, sewage, bilge contents, petroleum products or other organic or inorganic wastes, contaminants or pollutants, including oil, spirits, paint, or flammable materials, to be emptied overboard or escape from the Vessel or be deposited anywhere within the Marina except into receptacles provided for that purpose. The Owner Parties shall comply with all environmental laws. Without the express written consent of the Company, the Owner Parties shall not bring any contaminants or pollutants onto the Marina excepting only fuel and lubricants in the fuel tanks, engine and operating parts of the Vessel. **The Owner Parties shall notify the Company promptly of any breach or suspected breach of this Section and shall indemnify the Company against all loss and expense**

arising therefrom. All fines levied or costs incurred in cleanup, resulting from a breach, will be the sole responsibility of the Owner Parties.

- r) No litter or debris shall be left on the Marina except that refuse may be placed in the containers provided for that purpose. Such containers are to be used for vessel garbage only and not for household use.
 - s) All docks and finger piers must be always kept clear to permit easy access by emergency crews and their equipment. The Marina reserves the right to confiscate any items left on the docks. Any costs incurred in disposal or storage of these items will be the responsibility of the Owner.
 - t) Chafing gear and dock boxes shall not be attached to the docks.
 - u) Water, electrical cords or mooring lines shall not be placed across walkways. All electrical cords must be marine grade and have a plug with a watertight seal. No gear of any kind shall be stored on the dock unless in an approved dock box.
 - v) Dinghies, skiffs or tenders are to be stored in the water within the Owner's berth or on the Owner's vessel, unless otherwise approved by the Marina.
 - w) No part of any vessel may extend over the main walkways. All vessels shall be moored in a safe and secure manner on cleats with strong mooring lines. In the event the Marina deems the Owner's mooring lines to be insufficient, the Marina may replace such lines, and the Owner shall pay the costs.
 - x) If the Vessel is in danger of sinking or is a hazard to other vessels or the Marina, as determined by the Company in its sole and absolute discretion, the Owner at the Owner's expense must remove the Vessel from the Marina. **The Company may, but is not obligated, to arrange for the removal from the Marina of any vessel or other item which, in the company's opinion, in its sole and absolute discretion, appears to be in danger of sinking or a hazard to other vessels or the Marina, in which case the Owner will indemnify the Company for the costs of such removal. The Company shall not be liable for any loss suffered by the Owner Parties or damage to the Vessel by reason of removing the Vessel from the Marina.**
 - y) If any vessel sinks within the Marina, the Owner must take immediate action to remove the vessel. If the Owner fails to take immediate action, the Marina may remove the vessel, and the Owner pay all costs incurred in the removal.
7. **Terms, Rules and Regulations.** The Owner Parties shall comply with the Terms, and with such additional or changed terms, rules or regulations as are from time to time made by the Company, in its sole and absolute discretion. The Terms include, without limitation, the provisions set out in this Contract, and on the face page, the Marina Rules and Regulations, the Boat Yard Rules and Regulations, the Contractor's Rules and Regulations, and any additional or changed terms, rules or regulations, and all of the foregoing are hereby incorporated as provisions of this Contract. **The Owner shall ensure that the Owner Parties comply with the Terms and agrees to indemnify the Company for any failure of any of the Owner Parties to comply with the Terms.** The Company is entitled to change the Rules and Regulations, in its sole and absolute discretion, at any time, but will provide written notice of any material changes. Post the updated Rules and Regulations at the Marina office shall constitute effective written notice to the Owner.
8. **Lien and Sale of Vessel.**
- a) The Company shall have a possessory and a charging lien upon the Vessel for all amounts which are or become owing to the Company by the Owner under this Contract or otherwise (collectively, the "**Fees**").
 - b) If Fees are outstanding for 45 days, the Vessel may be seized and impounded by the Company. In such event, the Owner authorizes the Company to lift the Vessel and store it in the Company's boat yard or storage facilities, or any other impoundment facilities, and the Owner will indemnify the Company for the costs of the same. The Company shall not be liable for any loss suffered by the Owner parties or damage to the Vessel by reason of seizing, lifting, or impounding the Vessel in accordance herewith, or selling it under Section 8(c) below, or otherwise enforcing any rights or remedies of a creditor.
 - c) To realize any Fees, the Company may, upon 45 days' notice to the Owner, in any manner sell and absolutely dispose of the Vessel (including, without limitation a disposition by way of destruction, or sale for scrap) pursuant to its contractual lien, and the Owner hereby appoints the Company as its attorney to do all things and sign all documents necessary for such sale and disposition. Without limiting the foregoing, the Owner

covenants and agrees to provide the Company, upon demand, with all documents of title for the Vessel, registry papers, "blue book" etc., as necessary and an executed bill of sale, and, if applicable, an executed bill of sale/transfer form in the form required by and registrable at the Ship's Registry/Transport Canada and signed by the registered owner (the "Registry Transfer"), in order to effect such sale and disposition as contemplated hereunder.

- d) The Company shall be entitled to deduct from the proceeds of any sale or disposition hereunder, in addition to the Fees, all costs and expenses of every nature whatsoever incurred by the Company in connection with such sale (including without limitation legal fees on a solicitor and own client basis and any costs or expenses incurred by the Company in connection with obtaining a declaration in any court regarding the rights of the Company under this Section 8 or the validity of a sale or proposed sale of the Vessel pursuant to this Contract) and in the event that such costs and expenses to recover from the Owner the costs and expenses incurred by the Company in connection with such uncompleted sale.
- e) If the Vessel is a federally registered Vessel, the Company may, in its sole and absolute discretion, require the Owner to provide the Company with an executed Registry Transfer in advance of, and for the duration or any portion thereof, of the moorage or storage of the Vessel at the Marina, and the Owner covenants to provide the Company with the same upon demand. The Company covenants to make no use of the Registry Transfer except in accordance with the sale or disposition hereunder, and provided that the Owner pays in full to the Company all Fees, the Company covenants to return the Registry Transfer to the Owner unused when the Owner removes the Vessel from the Marina, or, if applicable, claims the Vessel from an impoundment facilities.
- f) The Owner acknowledges and agrees that, notwithstanding that this is not a bailment agreement and the Company is not a Bailee, the Company, in enforcing a lien hereunder, has the right to sell the Vessel as if it were a warehouse of the Vessel and is entitled to all rights and remedies of a warehouse, and to use the procedures set forth in the B.C. *Warehouse Lien Act* and amendments thereto.

9. **Termination by Company.** The Company may terminate this Contract by giving 48 hours' notice to vacate to the Owner if:

- a) Any of the Owner parties breach any of the terms of this Contract or fail to abide by any of the Terms at any time.
- b) The Owner fails to pay when due any sums the Owner owes to the Company on any account; or
- c) The conduct of any of the Owner parties or the Owner Parties' use of the Marina is, in the sole and absolute discretion of the Company, prejudicial to the orderly and safe operation of the Marina, the safety of other persons or their property, or constitutes a nuisance or annoyance to the Company or its customers.

Otherwise, the Company may at any time and for any reason terminate this Contract by giving 30 days' notice to vacate. Upon receiving a notice to vacate, the Owner shall, at the Owner's expense, vacate the berth on or before the date specified in the notice. Any unpaid Fees accruing due or to become due for the balance of the term of the moorage shall thereupon become payable immediately.

10. **Termination by Owner.** If the Owner wishes to vacate the Marina, the Owner must give 30 days' written notice of intention to vacate to the Company and the effective date that the Owner vacates must be the last day of a calendar month.

11. **Survival.** Notwithstanding anything in this Contract to the contrary, this Contract shall survive the vacating of the Marina by the Owner or Vessel, and the issuance of a notice to vacate for cause or otherwise by either party to this Contract in no way terminates or rescinds any of the terms, conditions, releases, indemnities or exclusions agreed to herein.

12. **No- Refund.** No refund shall be made of any paid moorage fees in any circumstances.

13. **Limitation of Liability.** The Owner acknowledges that boating and the maintenance of a marine vessel involve many inherent risks, dangers and hazards and hereby agrees and acknowledges that:

- a) **The Owner fully assumes and accepts all such risks, dangers and hazards, including without limitation the possibility of personal injury, death, and loss or theft of the Vessel, its contents, and personal property. The Vessel, its contents and any personal property moored or stored at the marina are done so at the Owner's sole and exclusive risk.**

- b) **For the duration of this Contract, the Owner shall obtain Protection and Indemnity insurance coverage for the full value of the Vessel, its contents and any personal property moored or stored at the Marina, which insurance shall include without limitation a minimum of \$2,000,000.00 third party liability coverage. The Owner acknowledges and agrees that the Company shall not be responsible for providing any insurance coverage.**
- c) **Subject to the rights granted to the Company under Section 8 of this Contract, the Company does not in any way take possession of, or undertake any duty to take care of, any vessel berthed under this Contract or otherwise at the Marina. The Company does not represent that the berth or the floats are fit for any purpose. The Owner accepts the Marina premises on an "as is", "where is" basis and acknowledges that, in its own judgment, the Marina and berth is suitable and appropriate for the Vessel.**
- d) **The Company is not liable or responsible for, and the Owner hereby waives and releases the Company from, any loss, theft, damages or expenses, of any nature whatsoever (including without limitation those arising or resulting from personal injury, death, or loss or theft of or damage to vessels, contents, or personal property, and those suffered or incurred by any of the Owner Parties), however caused, whether by negligence of the Company or the acts of third parties, including without limitation contractors or vendors operating on Marina property, or otherwise;**
- e) **The Owner shall hold harmless and indemnify the Company in respect of any and all liability for personal injury, death, or loss of or damage to vessels or contents suffered by the Company, any of the Owner Parties, or third parties (including without limitation to any children or minors under the supervision of the Owner or the Owner Parties), as a result of or in connection the Owner Parties' attendance at the Marina, or the Owner's mooring or occupying a vessel at the Marina, however caused, whether by negligence of the Company or the acts of third parties, including without limitation contractors or vendors operating on Marina property, or otherwise; and**
- f) **The Owner further agrees to be liable for any loss, damage or destruction caused to the Company's property by the Owner Parties' or in connection with the Vessel or the Owner Parties' use of the Marina, and to pay the costs and expenses incurred by the Company in respect of restoring such loss, damage or destruction, within 30 days of receiving an account for the same.**
14. **No Assignment or Sublicense by Owner.** This Contract is personal to the Owner. The Owner shall not assign this Contract and shall not sublicense the berth, in either case without the express prior written consent of the Company, which consent may be withheld in the Company's sole and absolute discretion. A person purchasing the Vessel shall not acquire any of the rights arising under this Contract, which rights will automatically terminate (notwithstanding that the Owner's obligations shall survive) upon any change in ownership of all or any part of the Vessel unless the Company, in its sole and absolute discretion, agrees otherwise. Before selling the Vessel, the Owner shall bring this Section to the attention of the prospective purchaser and of any agents acting on behalf of either the Owner or the prospective purchaser, and shall advise the transferee to provide the Company with the Bill of Sale, and evidence of insurance for the Vessel, in connection with any request by the transferee to assume this Contract or enter into a new one with the Company.
15. **Notices.** Any notices to be given by the Owner in connection with this Contract shall be in writing and delivered to the Company's office at the address on the face of this Contract. Any notices, billings, or other communications to be given to the Owner by the Company may be given in writing to the Owner by electronic mail to the Owner at the email address listed on the face page of this Contract, or by mailing it to the address on the face of this Contract, or by posting it on the Vessel. Notice given by mail or posting on the Vessel shall be deemed effectively given three days after being so posted on the Vessel or mailed to the Owner in accordance herewith. Notice given by electronic mail shall be deemed effectively given on the day of sending, if sent before 5:00 p.m. PST, and the next day, if sent before 5:00 p.m. PST, unless the Company receives an electronic notice on non-receipt or "bounce back". The Owner shall provide a valid email address. Notice may also be effectively given by posting publicly at the Marina office, as and were indicated in this Contract.
16. **Marina and Company.** The word "Marina" includes without limitation the marina docks and berths, the boat yard and the dry storage facilities, and any property or waters owned or leased by the Company. **Where used in connection with an indemnity, or a release or waiver or limitation of liability, in each case in favour of the Company, the word "Company" shall include, and the indemnity, release or waiver or limitation of liability**

shall extend and apply to, the Company's affiliates, and to all directors, officers, principals, shareholders, employees and agents of the Company and its affiliates.

17. **Criminal Interest Rate.** If any interest (including any fees, bonus, additional consideration or otherwise) stipulated herein, would, except for this clause, be or effectively be a criminal rate under the *Criminal Code (Canada)*, or void for uncertainty, or unenforceable for any other reason, then the interest chargeable hereunder shall be one per cent less than the rate which would be a criminal rate (or a void or unenforceable rate), calculated in accordance with generally accepted actuarial practices and principles.
18. **No Contra Referendum.** The language in this Contract shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties to this Contract.
19. **Governing Law.** This Contract shall be in all respects governed and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia. Each of the parties hereto hereby irrevocably attests to the exclusive jurisdiction of the courts of the Province of British Columbia.
20. **Entire Agreement.** This Contract is the entire agreement between the Company and the Owner in respect of the subject matter of this Contract and in respect of any circumstances or events surrounding or arising in connection with the subject matter of this Contract. This Contract cannot be added to or altered except by agreement in writing. There are no representations, warranties, conditions, covenants, agreements or promises of any nature (implied, collateral, statutory or otherwise) binding upon the Company in connection with this Contract, or in connection with any circumstances or events surrounding or arising in connection with the subject matter of this Contract, except as expressly set out herein.