

# *Marina Operators Legal Liability Form*

1. **NAME OF ASSURED**

2. **LOCATION OF PREMISES A/O YARD:**

3. **PERIOD:**      **12 months @**      **Noon, Pacific Standard Time**

4. **PREMIUM:**

The Minimum and Deposit Premium shall be \$            **(RETAINED)** subject to adjustment at expiry of the period of this insurance at            % on gross charges of the Assured, such adjustment to be paid within 90 days.

5. **GROSS CHARGES**

Gross charges shall be defined as total charges (collected or uncollected) made by the Assured as Marina Operators during the period of this insurance.

6. **COVERAGE**

This insurance covers the legal liability of the Assured as Marina Operators for: -

(i) Loss of or damage to any vessel or craft which is in the care, custody or control of the Assured carrying out their duties as Marina Operators including shifting and moving within the limits of the Marina.

(ii) Loss of or damage to cargo of or other things on or discharged from any of the vessels or crafts referred to in (i).

(iii) Loss of or damage to machinery or equipment of any vessel or craft, whilst such machinery or equipment is removed from such vessel or craft and is in the care, custody or control of the Assured.

(iv) Damages resulting from: -

(a) Loss of or damage to)    Occurring in the course  
property [other than    ) of and arising from the  
vessels or crafts       ) operations of the Assured  
and properties       ) as Marina Operators.  
Referred to in (i),    )  
(ii) or (iii) above]    )

(b) Loss of life or       )  
bodily injury to       )  
persons.               )

(v) Removal of wreck

where such liability results from negligence of the Assured, his servants, agents or sub-contractors occurring during the period of this insurance.

**7. LIMIT OF LIABILITY**

The Limit of Liability under this insurance in respect of any one vessel is \$ \_\_\_\_\_ but not exceeding \$ \_\_\_\_\_ any accident or series of accidents arising out of one occurrence. In addition, Underwriters will bear costs, charges and expenses (as provided for in Clause 9 below) up to a similar amount.

**8. DEDUCTIBLE**

This insurance shall only pay the excess of \$ \_\_\_\_\_ in respect of the Assured's ultimate net loss resulting from any one accident or series of accidents arising out of one occurrence.

**9. COSTS**

(i) In respect of any claim which may become the subject of indemnity hereunder, this insurance shall also cover [subject to Clause 7 above] (a) costs, charges and expenses which the Assured may, with the written consent of the Underwriters herein, incur and (b) costs awarded against the Assured.

In the event of this insurance being one layer of a series of layers of insurance, the amount recoverable hereunder in respect of such costs, charges and expenses shall not exceed the proportion of such costs, charges and expenses that the damages recoverable under this insurance bear to the total amount of damages arising from such claims or proceedings.

(ii) In cases where: -

(a) the parties claiming against the Assured fail in or withdraw their action, or

(b) the amount of any compromise or award is such that there is no claim hereon or the claim hereon is less than the amount stated on any undertaking or formal notice under the Claim Control Conditions hereof.

The lawyers having the conduct of the investigation and defense shall apportion the costs, charges and expenses incurred on an equitable basis between the parties concerned including the Assured and Underwriters (if any) concerned on other layers, having due regard to the amount of the claim, the amount of any award or settlement and the amounts severally at risk by the parties concerned, taking into account also any undertaking or formal notice given by any of the interested parties as to the conduct of the defense and any settlement. In the event of any disagreement with the apportionment, the matter shall be referred to arbitration by an independent arbitrator to be agreed between the parties concerned.

## ***EXCLUSIONS***

Notwithstanding anything contained herein to the contrary, this insurance shall not cover any liability: -

- i. in respect of property
  - (a) owned by used by or leased to the Assured;
  - (b) in the care, custody or control of the Assured (other than property referred to in Clause 6 (i), (ii) or (iii) above);
- ii. being collision liability, towers liability or liability arising out of the navigation of any vessel or craft owned or operated by the Assured or any affiliated or subsidiary concern or party; however nothing in this clause shall be deemed to exclude coverage of any vessel or craft in the care, custody or control, for moorage and storage purposes only, of the Assured or any affiliated or subsidiary concern or party but not owned by them or any of them, against collision liability, towers liability or liability arising out of the navigation of such vessel or craft whilst shifting and moving within the marina and its immediate vicinity, where such liability results from negligence of the Assured his servants, agents, sub-contractors or any affiliated or subsidiary concern or party;
- iii. in respect of or arising in connection with an oil tank vessel or craft, or any vessel or craft previously engaged in carrying explosive or inflammable liquids or gases or arising in connection with work on or near any fuel tank or pipeline of an oil burning vessel or craft unless the rules, regulations and requirements of the port or governmental authorities at the place where the work is being carried out have been complied with. Should a gas free certificate not be required by the port or governmental authorities then such a certificate must be obtained from a chemist approved by Lloyd's Agent prior to the commencement of work;
- iv. in respect of or arising in connection with any new vessel or craft being built by the Assured;
- v. for payments under penalty clauses, detention, demurrage, loss of time, loss of freight, loss of charter, loss of market or any other consequential loss whatsoever in respect of property referred to in Clause 6 (i), (ii) and (iii) above;
- vi. for any claim arising directly or indirectly under Worker's Compensation or Employer's Liability Acts or any other Statutory or Common Law Liability in respect of loss of life or, bodily injury to or illness of any workman or other person employed in any capacity whatsoever by the Assured, his agents or sub-contractors when such loss of life, bodily injury or illness arises out of or in the course of the employment of such workman or other person;
- vii. arising from the existence, maintenance, or use of:-
  - (a) any licensed truck, automobile or other mechanically propelled vehicle;
  - (b) any unlicensed truck, automobile or other mechanically propelled vehicle outside the premises or yard of the Assured;

- viii. which is or but for the existence of this insurance would be covered under any other indemnity or insurance insuring to the benefit of the Assured, except for any excess of the amount which would be recoverable under such other indemnity or insurance had this insurance not been effected, but only to the extent that the excess amount is covered by this insurance;
- ix. arising from any strike, lock-out, labor disturbance, riot, civil commotion or act of any person taking part in any such occurrence, or from any act of any person acting maliciously;
- x. directly or indirectly occasioned by, happening through or in consequence of: -
  - (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or piracy;
  - (b) destruction of or damage to property by or under the order of any government or public or local authority;
- xi. directly or indirectly caused by or contributed to by or arising from ionizing radiation's or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
- xii. any liability assumed by the Assured beyond that imposed by law; provided, however, that if by agreement, or otherwise, the Assured's legal liability is lessened then Underwriters hereon shall receive the benefit of such lessened liability.

## ***GENERAL CONDITIONS***

### **INSPECTION OF BOOKS**

The Assured shall keep a complete and accurate record of all gross charges for operations covered hereunder and shall make these records available to Underwriters upon request.

### **NOTICE OF CLAIM**

In the event of any occurrence which may result in a claim under this insurance the Assured shall give prompt written notice to the Underwriters hereon, shall forward every summons or process (or copies thereof) served upon the Assured and shall keep Underwriters fully advised.

### **CLAIM CONTROL**

Underwriters shall at any time be entitled (but not obliged) to control or take over the conduct of the investigation defense and settlement of any claim suit or proceeding against the Assured which is or is likely to be the subject of indemnity under this insurance.

In the event of this insurance being one layer of a series of layers of insurance and more than one layer being likely to be involved in a particular occurrence, the Assured shall endeavor to obtain the agreement of the insurers of each affected layer as to the manner in which such control or taking over shall be effected and the costs, charges and expenses incurred borne.

If Underwriters hereon consider that a claim made against the Assured should not be contested then Underwriters hereon shall be entitled at any time to give an undertaking to the Assured to indemnify him for a sum equivalent to the limit of liability stipulated in Clause 7 above or such lesser sum as would have been payable under this insurance had the claim been settled at the time. Thereupon Underwriters hereon shall relinquish any control and conduct of the investigation or defense of the claim and shall thereafter have no further liability in respect of the claim for costs, charges or expenses incurred subsequent to the giving of the undertaking. Where, however, the claim hereon is thereafter settled for a sum less than the amount referred to above, costs, charges and expenses shall be apportioned in accordance with Clause 9 (ii) above.

In the event of this insurance being one layer of a series of layers of insurance, then if Underwriters hereon wish to exercise their rights under this condition and at such time the insurers of another layer or layers reject the settlement then possible, Underwriters hereon shall be entitled to give formal notice to the Assured that they consider the claim should be settled at that time. Thereafter Underwriters hereon shall have no liability for any costs, charges or expenses incurred subsequent to the giving of such notice. Where however the claims hereon is thereafter settled for a sum less than the amount at which it was capable of being settled at the date when such notice was given, costs, charges and expenses shall be apportioned in accordance with Clause 9 (ii) above.

### **SUBROGATION**

In the event of any claim or loss being paid under this insurance Underwriters shall be subrogated to all rights and remedies of the Assured. The Assured shall not admit liability nor give any waiver of subrogation without the express permission of Underwriters.

### **DUE DILIGENCE**

It is the duty of the Assured and his agents at all times to take such measures as may be reasonable for the purpose of averting or minimizing a loss.

### **ASSIGNMENT**

It is agreed that no assignment of or interest in this insurance or in any moneys which may be or may become payable hereunder, is to be binding on or recognized by Underwriters, unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on this insurance and the insurance with such endorsement is produced before payment of any claim or return premium hereunder; but nothing in this condition is to have effect as an agreement by Underwriters to a sale or transfer to new management.

### **CANCELLATION**

This insurance may be cancelled by either party on giving the other fifteen (15) days notice in writing.

In the event of Underwriters giving notice then the words "minimum and" in Clause 4 above shall be deemed to be deleted.

Notwithstanding the foregoing it is further understood that in the event that payment of the minimum and deposit premium is not made by the Assured within thirty (30) days after attachment of the insurance, or, in the event the Underwriters shall have agreed to accept deferred payments, if any payment of any premium is not made on the day agreed, this policy may be cancelled at any time thereafter by the Underwriter giving to the Assured named herein five (5) days notice of such cancellation.

Such notice may be given by the Underwriter or on his behalf by an authorized Agent or by the Agent or Broker effecting this insurance.

Such cancellation shall be without prejudice to the premium earned and due for the period the policy was in force, the Assured being required to supply his gross receipts for the period the policy was in force to enable calculation of the earned premium.