

# **NZ BOAT SHARE OC46.1 LIMITED**

## **VESSEL RULES**

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# Vessel Rules

## 1. Use of Vessel

- 1.1 The Vessel is intended to be utilised solely for private, personal and recreational purposes by the Shareholders and their guests within New Zealand waters. Use of the Vessel for commercial purposes (hire/reward/benefit) or any sub-charter is strictly prohibited.

## 2. Technical/Skill Assessment and Grading

- 2.1 All Shareholders will be required to undertake a half day handover course conducted by the Manager prior to being permitted to use the Vessel. The course will familiarise the Shareholder(s) with *inter alia* the Vessel, operating procedures, safety systems, equipment and systems and shut down procedures.
- 2.2 During the handover course contemplated by Rule 2.1 the Shareholder's skill level will be assessed and graded by the Manager. Following the assessment/grading process, the Manager shall determine how and where the Vessel may be used by the Shareholder.
- 2.3 Factors to be taken into account by the Manager when assessing/grading the Shareholder's skill/competence level may include, but not be restricted to:
- 2.3.1 Prior boat ownership experience; and
- 2.3.2 Formal qualifications and/or prior sea-time experience.
- 2.4 A Shareholder's skill level will be recorded in the owner's file to be retained in the Manager's office. Skill levels will be graded as:
- 2.4.1 Beginner:** little to no experience;
- 2.4.2 Intermediate:** some experience but not with vessel of similar size, type or power;
- 2.4.3 Experienced:** numerous hours in control of vessel of similar size, type or power.
- 2.5 A Shareholder may request from the Manager or undertake additional private training (at own expense) and/or have their experience/competence level re-evaluated by the Manager at a mutually convenient time.
- 2.6 Where a Shareholder wishes to utilise the Vessel in circumstances (weather or operational limit related) beyond their personal experience level as recorded, a suitably qualified Master can be arranged by the Manager at the Shareholder's expense (provided reasonable prior written notice is given to the Manager).

## 3. Who may use Vessel

- 3.1 The primary users of the Vessel are the Shareholders and their guests and only while a Shareholder is on board.
- 3.2 Notwithstanding Rule 3.1 individuals other than a Shareholder may use the Vessel as a Shareholder's guest without the Shareholder being physically present on board, provided:
- 3.2.1 The prior written approval of the Manager has been obtained before the proposed use;
- 3.2.2 The guest who will assume responsibility for operation and control of the Vessel has demonstrated to the satisfaction of the Manager that they are suitably qualified and experienced to undertake the proposed use of the Vessel;

- 3.2.3 The use of the Vessel is at no cost or charge to the guest or any of the guest's party and the Shareholder has not and will not directly or indirectly receive any consideration, benefit or reward in this respect;
  - 3.2.4 The Shareholder accepts full responsibility and liability for any damage caused by his or her guest to the Vessel (including her equipment) and any third party Vessel, property and/or equipment;
  - 3.2.5 The guest's use shall be deducted from that Shareholders' annual use allowance; and
  - 3.2.6 The guest (and their guests, if any) has attended the Manager's safety briefing and has agreed to abide by these Rules as if they were a Shareholder.
- 3.3 Shareholders seeking the Manager's approval for use of the Vessel by a third party under Rule 3.2 will be charged an amount of \$500 + GST to cover the Manager's time in assessing the competence of the proposed third party user and attending to the briefing. Third party user assessment and briefing will take approximately four (4) hours.
- 4. Factors to be considered**
- 4.1 Factors that will be considered by the Manager when considering approval (or not) of the Shareholder's guest's use of the Vessel (in the absence of the Shareholder) include:
- 4.1.1 The age of the prospective guest;
  - 4.1.2 The prospective guest's boating skills, including whether such guest has satisfactorily completed the NZ Day Skipper, Boat master or higher marine certification;
  - 4.1.3 Which other prospective guest/s will be present and their level of boating skills (if applicable and necessary in the reasonable opinion of the Manager); and
  - 4.1.4 Whether the prospective guest has previously been on board the Vessel and the duration thereof.
- 5. Compliance and Indemnity**
- 5.1 Shareholders and their guests must operate the Vessel strictly in compliance with these Rules, all applicable New Zealand legislation including legislation relating to the operation of the Vessel in New Zealand waters, along with all rules and regulations imposed by Maritime New Zealand, RNZ Coastguard and the relevant local authority, and indemnify the Company, the other Shareholders and the Manager from any penalty, damage or cost/expense resulting from a breach of such laws, rules and regulations.
- 5.2 Shareholders and their guests undertake to return the Vessel in the same tidy and clean condition as she was at commencement of the Shareholder's use (fair wear and tear excepted). Shareholder/s are responsible for ensuring that no foreign objects are disposed of in the ablution facility. Shareholders will be charged for any additional costs incurred by the Manager as a result of a blocked toilet or excess cleaning resulting thereof.
- 5.3 All personal effects and food brought on board by a Shareholder or Shareholder's guest must be removed from the Vessel at the end of the use of the Vessel.
- 5.4 No Shareholder may use the Vessel whilst in arrears with any payment due to the Manager. While the Shareholder's account with the Manager remains in arrears, the Manager may permit other Shareholders and their guests to use the Vessel during the defaulting Shareholder's time allocation until such time as the Shareholder's account is brought up to date.

## 6. **Skipping the Vessel**

- 6.1 Except with the prior permission of all Shareholders and in emergency situations, the Vessel may only be under the control of person/s who have demonstrated an acceptable level of experience, skill and competence satisfactory to the Manager.
- 6.2 An experienced Master can be arranged at the expense of the Shareholder, provided reasonable advance prior written notice is given to the Manager.
- 6.3 The Manager is authorised by the Company and the Shareholders to place a qualified skipper on board at the Shareholder's expense if this is deemed to be necessary by the Manager in its absolute discretion.

## 7. **Vessel Use Allocation**

- 7.1 Each Share held by a Shareholder shall entitle the Shareholder to fifty-four (54) VUD's and unlimited substitute/standby VUD's per year, subject always to availability.

- 7.1.1 The Shareholder's use entitlement shall comprise thirty-six (36) Off Peak Days use and eighteen (18) Peak Days use per year, spread evenly across the following periods:

- (a) Spring to Summer  
1 August – 31 November;
- (b) Summer to Autumn  
1 December – 31 March; and
- (c) Winter  
1 April – 31 July,

with Shareholders each being entitled to twelve (12) Off Peak Days and six (6) Peak Days in each period.

- 7.2 In the event that the Vessel requires maintenance or repair or is otherwise not available to Shareholders for at least 330 days per year, then each Shareholder's entitlement to use the Vessel shall be reduced by an amount proportionate to the additional time that the Vessel is incapable of being used.

## 8. **Bookings**

### 8.1 **General**

- 8.1.1 A booking in any period shall be for no more than five (5) consecutive days. The manager has discretion to extend this to seven (7) days.
- 8.1.2 Use of the Vessel will be allotted to Shareholders in intervals of one VUD. On each VUD, the Vessel must be collected from the Vessel's marina berth and returned to the same berth at the end of the VUD unless alternative arrangements in respect of place and/or time have been made with the Manager. The Manager will arrange for service and valet of the Vessel to be carried out each evening prior to the next VUD as deemed necessary in accordance with the Management Agreement.
- 8.1.3 The Manager will handle the booking and allocation process on the Company and Shareholders' behalf and in accordance with the Management Agreement.
- 8.1.4 Notwithstanding Rule 8.1.2, Shareholders may, subject to the Manager's approval, request consecutively allocated VUD's and take the Vessel for overnight trips provided always that the Manager is satisfied as to the Shareholder's competency for such use. Unless an emergency situation arises, the Vessel must remain at anchor or moored in a safe anchorage between the hours of sunset and sunrise.

- 8.1.5 Shareholders may swap or 'gift' VUD's between each other by mutual agreement. Shareholders must notify the Manager of any booking exchanges or 'gifting' between Shareholders more than forty-eight (48) hours in advance. For the avoidance of doubt 'gifting' of any VUD by a Shareholder to another does not relieve or reduce the 'gifting' Shareholder's obligations in respect of any monies owing or due to the Manager under the Management Agreement.
- 8.1.6 Annual time allocation is on a 'use it, or lose it' basis. Should a Shareholder not utilise their annual time allocation for any reason whatsoever, that Shareholder's entitlement to use the Vessel for that interval will expire and will not accrue in any way.
- 8.1.7 Use of the Vessel for any day or part of a day is deemed to be a full VUD and deducted from the Shareholder's use allocation.

## **8.2 VUD Bookings and Redelivery**

- 8.2.1 All VUD bookings are on a 'first come, first served basis' and must be initiated by way of email to the Manager with proposed VUD and departure/arrival times.
- 8.2.2 The Manager will confirm availability (or not) of any proposed VUD(s) by telephone. Bookings are only guaranteed if confirmed as such by the Manager.
- 8.2.3 VUD bookings must be made before 3pm on the day prior to the proposed VUD. Bookings received after 3pm will be treated as a request for a substitute/standby booking.
- 8.2.4 Shareholders must notify the Manager of the time they intend to commence their VUD. On redelivery the Shareholder is responsible for ensuring that the Vessel:
  - (a) returned on time;
  - (b) is fuelled;
  - (c) is securely moored at its nominated berth;
  - (d) all shutdown procedures as outlined in the Vessel's operations manual have been adhered to; and
  - (e) the Vessel keys are placed in the lock box located at the offices of 36 Degrees Brokers Limited (which, as at the time of writing is at, Suite 9, 1 Westhaven Drive).

## **8.3 Substitute/Standby Days**

- 8.3.1 Availability of any substitute/standby VUD may be ascertained by contacting the Manager by telephone after 3pm on the day prior to intended use or between 8:30am and 12pm on the actual day of intended use.
- 8.3.2 Requests for substitute/standby bookings made after 12pm on the actual day of intended use will be at the discretion of the dock staff on duty.
- 8.3.3 Substitute/standby use (if available) will be granted for a single day (or part thereof).
- 8.3.4 Given the inherent last minute nature of a substitute/standby booking the Vessel may not have received a full turnaround valet/service since its last use and the Shareholder will be expected to take the Vessel on an 'as is, where is' basis.
- 8.3.5 The Manager reserves the right to charge the Shareholder (in addition to use payments under the Management Agreement) a Substitute/Standby Use Rate of \$150+GST short notice booking fee per day of use.

#### **8.4 Cancellations/Unforeseen Circumstances**

- 8.4.1 Where a Shareholder is unable to use their allocated booking, the Manager will endeavour to secure an alternate date, subject to availability, provided a minimum of forty-eight (48) hours' notice is given to the Manager by the Shareholder.
- 8.4.2 In circumstances where a Shareholder's booking becomes unavailable as a result of maintenance or repair requirements, the Shareholder may choose an alternative VUD (normally reserved for maintenance or contingency) subject to availability.
- 8.4.3 A booking cancellation must be received by the Manager a minimum of forty-eight (48) hours prior to the allocated VUD. Cancellation request/s received after this time will result in a deduction of the day or days' use from the Shareholder's entitlement.

#### **8.5 Christmas/Boxing Day (Xmas) and New Year's Eve/New Year's Day (NY)**

- 8.5.1 Allocation of VUD's over Xmas and NY will be conducted by way of ballot in July of every year with each 'event' being booked as two (2) consecutive days.
- 8.5.2 Shareholders must notify the Manager by email by July of their intention to be included in the ballot.
- 8.5.3 Shareholders allocated with bookings (via ballot) for either Xmas or NY will not be eligible for any additional ballots which may be run throughout the year.
- 8.5.4 Cancelled Xmas/NY VUD's allocated by ballot will be made available to the other Shareholders to book as part of their use allocation. Preference will be given to Shareholders who have not been successful in prior ballots.

#### **9. Insurance, Damage & Indemnity**

- 9.1 Insurance appropriate to the size and type of vessel will be procured and maintained by the Company in respect of damage to the Vessel and third party property and personal injury liability.
- 9.2 The Shareholders authorise the Manager to claim and recover any amounts payable under an insurance policy.
- 9.3 Each Shareholder is individually responsible for payment of any insurance excess, non-insured Vessel, property or equipment loss or damage costs, or any guest or third party claims incurred during any VUD that the Vessel is in the Shareholder's or his guest's care.
- 9.4 Shareholders shall be proportionately liable for payment of any insurance excess arising from any claim that may become necessary in respect of force majeure events (or without limitation, any COVID-19 related event, epidemic, pandemic or government imposed measures in response to such events) occurring whilst the Vessel is safely at berth and not under the control of the Company, the Manager or any of the Shareholders (or their guests).
- 9.5 Each Shareholder indemnifies each of the other Shareholders, the Company and the Manager from any action or claim that arises from any Shareholder's use of the Vessel, or from a breach of the terms of these Rules, or of any applicable law, regulation or rules while the Vessel is in such Shareholder's or such Shareholder's guest's care.
- 9.6 The Manager will complete a condition report on the Vessel after every use by each Shareholder or his nominated guest. Shareholders will be liable for any repairs and/or additional maintenance to the Vessel or her equipment which may be required or become necessary as a result of a lack of reasonable care on the part of any person on board during that Shareholder's VUD, which will be noted in the condition report completed after the Shareholder's use of the Vessel.

9.7 For the purpose of Rules 9.3, 9.4 and 9.5 the cost of damage, loss, claim and report is to be determined by the Manager of the Vessel insurer (as the case may be) in its sole discretion and may include:

9.7.1 Costs of repairs to the Vessel or the market value of the Vessel at the time of the loss, whichever is the lesser;

9.7.2 Towing, salvage, recovery, storage and appraisal fees;

9.7.3 An administration fee determined by the Manager; and

9.7.4 A per VUD cost for Vessel downtime.

## 10. **Log Books**

10.1 A Vessel usage log book ("Log Book") will be kept on board the Vessel and will be the Shareholder's responsibility on each time of using the Vessel to record:

10.1.1 date and name(s) of the Shareholder(s) whose VUD allocation is being used;

10.1.2 the name of the skipper (if not the Shareholder);

10.1.3 time boarded and redelivered;

10.1.4 engine hours at commencement and completion of the use; and

10.1.5 number and names of individuals on the Vessel.

10.2 Shareholders will be allocated an average of four (4) hours per VUD engine running time used. The Company may levy a mechanical service charge on a Shareholder for exceeding the allocation on an annual basis.

## 11. **On Board Consumables and Supplies**

11.1 Shareholders are responsible at their own expense for any food, drink, clothing and personal effects and shall ensure that all items brought on board are removed at the end of the trip.

## 12. **Fuel and Oil Expense**

12.1 The Manager will ensure that the Vessel is fully fuelled at the commencement of each VUD that the Vessel is moored at its home berth. It is the responsibility of every Shareholder who uses the Vessel to ensure that the Vessel is refuelled prior to redelivery to its home berth. Where the Vessel is redelivered and has not been fully refuelled, an additional fee, on top of cost of fuel necessary to fully refuel, may be levied on the Shareholder for time incurred by the Manager in refuelling the Vessel.

12.2 Where a Shareholder, with the Manager's permission, has permitted another party to use the Vessel in accordance with Rule 3.2, the Shareholder remains solely responsible for the payment of all fuel and oil costs in connection with usage by its nominated guest.

## 13. **Shareholders Direct Expenses**

13.1 Each Shareholder who uses the Vessel will be responsible for any breakages or damage to the Vessel and/or equipment and stores occasioned by the negligent acts or omissions of the Shareholder or any of its party which are not covered by insurance, and any insurance excess in insurable claim situations arising during the usage of the Vessel by the Shareholder.

**14. Authority to Incur Expenses Payable by the Company**

- 14.1 Where a Shareholder is prevented by forces beyond its reasonable control from seeking approval from the Company or the Manager in respect of an urgent emergency purchase which is required to ensure the continued safety or seaworthiness of the Vessel, the Company authorises the Shareholder to make such purchase provided the cost thereof is less than \$500.
- 14.2 All other Vessel related purchases require the prior approval of the Company or the Manager.

**15. Reimbursement Procedure**

- 15.1 Subject to Rule 14, any Shareholder incurring approved expenses in respect of the Vessel must forward receipts of such expenses to the Manager promptly thereafter.
- 15.2 The Company will reimburse a Shareholder who has incurred approved expenses in connection with the maintenance of the Vessel by direct credit within seven (7) working days after receipt by the Manager of the receipts for such expenses.

**16. Fixtures**

- 16.1 Any new fixtures to the Vessel (excluding items replaced under warranty (if applicable) or as part of the regular maintenance schedule or which may arise as a change to any maritime related rules/regulations/legislation) requires prior approval of all Shareholders irrespective of whether the expense thereof is to be met by a Shareholder individually and not by the Company.
- 16.2 Any Shareholder wishing to add or remove fixtures must:
- 16.2.1 Obtain the prior written approval of the Manager, the Company and the other Shareholders to add or remove such fixture or fixtures;
  - 16.2.2 Notify the Manager, the Company and the other Shareholders at the time approval is sought of the estimated cost of making good the Vessel in respect of the proposed removal of the fixture or fixtures;
  - 16.2.3 Notify the Manager, the Company and the other Shareholders at the time approval is sought of the estimated cost of the additional fixture and any additional installation costs in that respect; and
  - 16.2.4 Provide to the Company and the Manager a written undertaking to pay for the costs of making good in respect of removal of fixtures or costs of the additional fixture or fixtures (including installation) as the case may be.

**17. Claims and Proceedings**

- 17.1 In the event of any claim, accident, damage or loss arising out of the use of the Vessel a Shareholder and/or its nominated guest pursuant to Rule 3.2, the Shareholder must ensure that the Shareholder and guest (if applicable):
- 17.1.1 Promptly report such incidents in writing to the Manager and the relevant authorities (i.e. Coastguard, Harbour Master, NZ Police or Maritime New Zealand);
  - 17.1.2 Do not, without the prior written consent of the Manager and the Company, make any offer, promise of payment, settlement, waiver, release, indemnify or admission of liability;
  - 17.1.3 Permit the Company or its insurers at its own cost to bring, defend, enforce or settle any legal proceedings against a third party; and



17.1.4 Complete and furnish within a reasonable time any statements, information or assistance which the Company or the Manager or the insurers may request and, if requested, must appear at Court to give evidence.

17.2 The Company and the Manager are not and will not be liable to any person, and each Shareholder (or if a Shareholder is not an individual, the individual who controls or each of the individuals who control such Shareholder) jointly and severally indemnifies both the Company and the Manager from any and all claims, actions, expenses, liability whatsoever or any property claims resulting from loss or damage to property stolen from the Vessel or otherwise lost during the Shareholder's (or its nominate guests) use thereof, or to any property left on board the Vessel after its return.

## 18. Miscellaneous

18.1 No animals or pets of any kind are permitted anywhere on board the Vessel under any circumstances except in the case of an emergency or with the prior consent in writing of the Company and the Manager.

18.2 No smoking is permitted at any time inside the cabin or bridge of the Vessel. Shareholders and their guests shall ensure that any cigarette/cigar butts are not thrown overboard (whether underway or berthed/at anchor) but retained in an appropriate receptacle and disposed of ashore.

18.3 In the event that an item of Vessel equipment is lost, damaged or fails to operate while the Vessel is in the control or possession of a Shareholder or Shareholder's guest, then the Shareholder and Shareholder's guest must notify the Manager and the Company as soon as possible.

18.4 Should a Shareholder or Shareholder's guest require assistance of any emergency service (i.e. Coastguard, Search & Rescue) or any other assistance, such assistance is to be contracted directly with the particular service and paid for by the Shareholder. The Shareholder must notify the Company and the Manager as soon as possible as to what services were utilised and the circumstances thereof.

18.5 Shareholders are warned that a material breach of these Rules or consistent breaches of a less material nature (following warning by the Manager) shall be considered a default under the Company's constitution and subject to the consequences outlined therein.

## 19. Definitions

19.1 In these Vessel Rules, unless the context otherwise requires:

**"Company"** means **NZ Boat Share OC46.1 Limited**;

**"Management Agreement"** means the management agreement between the Company and the Manager in respect of the Vessel;

**"Manager"** means **The Yacht Collective Limited** or such other person or entity appointed to manage the Vessel;

**"Off-Peak Day"** means any day that is not a Peak Day;

**"Peak Day"** means any Saturday, Sunday or Public Holiday;

**"Public Holiday"** means any New Zealand Public Holiday and any day designated as a Public Holiday by the Manager;

**"Shares"** means shares in the capital of the Company;

**"Shareholder"** means a holder of Shares and **"Shareholders"** means all of the holders of Shares;

**"Vessel"** means the Beneteau Oceanis 46.1 vessel and her machinery and equipment owned by the Company;

**"Vessel Rules"** means these rules as may be amended by the Manager from time to time in accordance with the Management Agreement; and

**"VUD"** means a Vessel Use Day during which a Shareholder may use the Vessel being (unless otherwise agreed in accordance with these Vessel Rules) the period starting at sunrise and finishing at the earlier of 8.00pm or sunset on the same day.