

1 DEFINITIONS:

Where the following words appear in these Terms and Conditions, they shall have these meanings:

- 1.1 **Agreement** shall mean this agreement which includes these terms and conditions.
- 1.2 **Berth** means the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of this Agreement.
- 1.3 **Charges** shall mean the fees payable for the Berth by the Owner.
- 1.4 **Company** shall mean the Company set out on the front of this Agreement.
- 1.5 **Harbour** shall include the Marina, Mooring or any other facility for launching, mooring or berthing a vessel belonging to the Company.
- 1.6 **Length Overall (LOA)** means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.
- 1.7 **Owner** shall include any charterer, master, agent or other person for the time being in charge of the Vessel (excluding the Company).
- 1.8 **Period** means the term for which the Company will provide a Berth as set out in clause 2.
- 1.9 **Pontoon** means a moored and decked floating structure providing landing or mooring facilities.
- 1.10 **Premises** means all the land, adjacent water and buildings occupied by or under the control of the Company, including, slipways, pontoons, quays, sheds, lofts, workshops, storage Ashore Accommodation, drystack, roadways and car parks.
- 1.11 **Storage Ashore Accommodation** means the land space temporarily allocated to the Owner from time to time by the Company for the storage ashore of the Vessel during the term of this Agreement or part thereof.
- 1.12 **Terms and Conditions** means these terms and conditions.
- 1.13 **Vessel** shall include any form of craft, boat, ship, yacht, dinghy, multihull, or the marine structure which is in the care and control of the Owner.

2 THE BERTHING AGREEMENT:

Berths at the Harbour or Premises shall be contracted for the periods and at the rates of Charge set out on the front of this Agreement.

- 2.1 This Agreement shall not be automatically renewed but will end at the conclusion of the period set out on the front page to this Agreement if not terminated sooner by the Company or by the Owner under the provisions of clauses 8 or 10.
- 2.2 All berthing Charges are payable in advance, if payment is not received by the time the berthing Period commences, fees will accrue at the daily rate until such time as payment is received. Owners opting to pay in instalments by monthly direct debit will be subject to a 10% surcharge.
- 2.3 Berthing Charges are applied to the Length Overall of a Vessel.
- 2.4 Where possible the Company will let berths on a 12-month basis. If available, berths may be let on a short-term basis. Vessels on a short-term contract, at the Company's discretion, may be moved to different berths during the period of the contract. The Company will do their utmost to accommodate, but cannot guarantee, that further periods of short-term berthing will be available on expiry of existing short-term contracts in the same berth.

3 LIABILITY, INDEMNITY AND INSURANCE:

- 3.1 The Company shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties not employed by it or any defect in any part of an Owner's or third party's vessel); this extends to loss or damage to Vessels, gear, equipment, cars or other goods left with it for repair or storage, and harm to persons entering the Premises or the Harbour and/or using any facilities or equipment.
- 3.2 The Company shall take all reasonable steps to maintain security at the Premises and to maintain the facilities at the Premises and in the Harbour in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of the Company,

Vessels, gear, equipment or other goods are left at the Owner's own risk and Owners should ensure that they have appropriate fully comprehensive insurance against all usual risks.

- 3.3 The Company shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of any defect in the Vessel or property concerned unless it shall have been expressly engaged to do so by the Owner on commercial terms. Similarly, the Company shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident for which the Company is not responsible. However, the Company reserves the right to do in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so it shall be entitled to charge the Owner concerned on normal commercial charging basis (and where appropriate, to claim a salvage reward).
- 3.4 Owners may themselves be liable for any loss or damage caused by them, their crew/passengers or their Vessels and they shall be obliged, unless expressly agreed in writing with the marina manager, to maintain adequate fully comprehensive insurance including third party liability cover for the full market value of the Vessel, its gear and equipment and for not less than £3,000,000 and where appropriate, Employer's liability cover (in accordance with current legal requirements) to at least the statutory minimum. Such insurance shall be affected with reputable insurers and the Owner shall be obliged to produce evidence of such insurance within 7 days of being requested to do so by the Company.
- 3.5 The Owner hereby agrees to indemnify the Company against any loss, damage or costs reasonably incurred by, and all claims or proceedings instituted against, the Company and/or its servants or agents which may be caused by the Owner, the Vessel or vehicle or other property belonging to the Owner, or his servants, agents, crew, guests, or sub-contractors except to the extent that such loss, damage, costs, claims or proceedings may be caused by an act or omission of the Company or those for whom it is responsible.
- 3.6 The Company provides Wi Fi internet at the Harbour free of charge for use by Owners on the strict proviso that the Company offers no guarantee of availability, stability or performance of the service from time to time and accepts no liability from any reliance placed or perceived loss arising from the use of the service.
- 3.7 All persons using any part of the Harbour, Marina and/or Premises or facilities provided thereon for whatever purpose and whether by invitation or otherwise do so at their own risk unless any injury or damage to person or property sustained was caused by or resulted from a negligent act or omission of the Company or those for whom it is responsible.

4 CHANGE OF DETAILS:

The Owners must notify the Company in writing of the details of any change of name of the Vessel or change of address or email and/telephone number(s) of the Owner.

5 BERTH ALLOCATION:

The physical layout of every Harbour and Premises and the varying needs and obligations of the Company and its customers requires that the Company retains absolute control of Berth allocation within the Harbour and Premises. Accordingly, the Owner shall not be entitled to the exclusive use of any particular Berth but shall use such Berth as is from time to time allocated to him by the Company.

6 PERSONAL NATURE OF AGREEMENT:

- 6.1 This Agreement is personal to the Owner and relates to the Vessel described on the front page of this Agreement. It may not be transferred or assigned to a new Owner or to a different Vessel, whether temporarily or permanently, without the express written consent of the Company.
- 6.2 Within 7 days of any agreement for the sale, transfer or mortgage of a Vessel subject to this Agreement the Owner shall notify the Company in writing of the name, address and telephone numbers of the Purchaser, Transferee or Mortgagee, as the case may be.

- 6.3 In the event that the Owner sells/transfers the ownership of the Vessel during the term of this Agreement, whereby the new owner wishes to berth the Vessel at the Harbour, the Company will not unreasonably refuse a new owner a berthing contract on terms to be agreed with the new Owner, subject to all accounts being settled in relation to the Vessel up to the date of transfer.
- 7 USE OF BERTH BY COMPANY WHEN VACANT:**
The Company reserves the right to use the Berth when it is left vacant by the Owner. If Owner's remove vessels from the Harbour or take them away for an extended period of time the Company must be notified in advance.
- 8 TERMINATION:**
- 8.1 The Company shall have the right (without prejudice to any other rights it may have in common law) to terminate this Agreement in the following manner in the event of any breach by the Owner.
- 8.2 In the event of any breach of this Agreement by the Owner, the Company may serve notice on the Owner specifying the breach and requiring him to remedy the breach within 14 days of the date of the notice. In the event of any serious or persistent breach or such breach poses an immediate risk or threat to the health, safety and welfare of any person or property the time specified for remedy may be immediate or extremely short. If the Owner fails to affect the remedy within that time, or if the breach is not capable of remedy, the Company may serve notice on the Owner terminating this Agreement and requiring him to remove the Vessel from the Harbour or Premises immediately.
- 8.3 If the Owner fails to remove the Vessel on termination of this Agreement whether under this clause or otherwise, the Company shall be entitled:
- 8.3.1 to charge the Owner at the Company's 24-hour rate for overnight visitors for each day between termination of this Agreement and the actual date of removal of the Vessel from the Harbour and Premises; and/or
- 8.3.2 at the Owner's risk (save in respect of loss or damage caused by the Company's negligence or other breach of duty during such removal) to remove the Vessel from the Harbour and Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berth fees.
- 8.4 Any notice of termination under this Agreement shall, in the case of the Owner, be served personally on the Owner or sent by registered post or recorded delivery service to the Owner's last known address and in the case of the Company shall be served at its principal place of business or registered office.
- 8.5 The Company has the right to terminate this Agreement, by giving written notice to the Owner, if at any time the Harbour or Marina Premises shall be so damaged, impeded, or interfered with by force majeure (as defined below) as to render it unlikely that the Company will be able to continue to provide a berth in accordance with this Agreement. For the purposes of this condition, force majeure means any event or circumstances (whether arising from natural causes, human agency or otherwise) beyond the Company's reasonable control including (but not limited to) weather conditions, riots, civil commotion, fire or war.
- 8.6 All amounts due by the Owner under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 9 RIGHT OF SALE AND OF DETENTION:**
- 9.1 Where the Company accepts a Vessel, gear, equipment or other goods for berthing, repair, or storage the Company does so subject to the provision of the Torts (Inference with Goods) Act 1977 (the Act). This Act confers a right of sale on the Company in circumstances where an Owner fails pay monies due or fails to collect or accept re-delivery of the goods (which includes a Vessel and/or any other property). The Vessel and/or other property shall be sold by the best method of sale reasonably available in the circumstances. The proceeds of the sale after payment of the said money due and the expenses of the sale shall be paid to the Owner of the Vessel and/or other property. Such sale will not take place until the Company has given notice to the customer in accordance with the Act.
- 9.2 Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of solicitors.
- 9.3 Maritime Law entitles the Company in certain other circumstances to bring an action against a Vessel to recover debt or damages, such action may involve the arrest of the Vessel through the Courts and its eventual sale by the Court. Sale of a Vessel may also occur through the ordinary enforcement of a judgement debt against the Owner of a Vessel or other property.
- 9.4 Notwithstanding the above, the Company reserves a general possessory lien (i.e. the right to take possession of and prevent the Owner from gaining access to, using or moving a Vessel and/or other property), to detain and hold onto the Owner's Vessel or other property pending payment by the Owner of any sums due to the Company. If this Agreement is terminated or expires while the Company is exercising this right of detention it shall be entitled to charge the Owner at the Company's 24 hour rate for overnight visitors for each day between termination or expiry of this Agreement and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Harbour or Premises. The Owner shall at any time be entitled to remove the Vessel or other property upon providing proper security, for example a letter of guarantee from a Bank or a cash deposit, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs.
- 10 TERMINATION BY OWNER:**
- 10.1 This Agreement may be terminated on one calendar month written notice by the Owner to the Company. Following such notice, the Company shall prepare an account of:
- 10.1.1 all sums owed by the Owner in respect of services or facilities used up to the intended date of departure of the Vessel; and
- 10.1.2 the Charge that would have been payable by the Owner to the Company in respect of this Agreement if the original term of this Agreement had ended on the date of expiry of the notice of termination; less
- 10.1.3 the sum actually paid by the Owner to the Company in respect of this Agreement.
- 10.2 Where the balance is in favour of the Company the Owner shall be required to pay the balance before removal of the Vessel from the Harbour or Premises and where the balance is in favour of the Owner the Company shall pay it to the Owner at the end of the notice period and following the departure of the Vessel from the Harbour or Premises.
- 10.3 If the Charges are paid for by Direct Debit, the full balance of all berthing Charges including the one calendar months' notice must be paid in full before this Agreement may be cancelled. The Owner must notify the Company immediately if the Direct Debit mandate is cancelled, any fees incurred by the Company resulting from a failed Direct Debit will be charged to the Owner.
- 10.4 Should the Vessel continue to be berthed at the Harbour or stored at the Premises beyond the agreed cancellation date then berthing or storage will be charged at the Company's published daily rates.
- 10.5 Refunds for termination will not be given retrospectively. The refund will apply from the date when one calendar months notice was formally given to the Company by the Owner.
- 11 VESSEL MOVEMENTS:**
- 11.1 The Company reserves the right to move any Vessel, gear, equipment or other goods at any time for reasons of safety, security or good management of the Harbour and Premises.
- 11.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into an agreement with the Company. Where a specific date or tide range for relaunch of the Vessel has been agreed between the Owner and the Company at the time of slipping or lifting out (or arrival by land) this charge alone will be

- payable for the launch. However, where the Owner requests a different date or tide range the company reserves the right to charge the Owner for the cost of moving other vessels to gain access to the launch point and for any attendant expenses, such as crane hire. The Company will provide the Owner with an estimate of such costs and charges prior to incurring them.
- 11.3 Vessels shall be berthed or moored by the Owner in such a manner and position as the Company may require and unless otherwise agreed adequate warps and fenders for the Vessels shall be provided by the Owner.
- 11.4 No Vessel, when entering or leaving or manoeuvring in the Harbour, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Harbour.
- 11.5 If the Owner requests a launch or lift of their Vessel by the Company in their absence, it is the obligation of the Owner to ensure that the Vessel is in all respects watertight and all hull openings inspected and closed prior to the planned launch date. The Company accepts no responsibility for the watertight integrity or otherwise of the Vessel upon launch.
- 11.6 *Advisory Note:* Owners, their guests and crew are advised that Vessels are at all times subject to the speed restrictions and byelaws of the Harbour and Navigation Authorities and the requirements and powers of regulatory authorities, including but not limited to the Maritime and Coastguard Agency and the Health and Safety Executive; there are criminal penalties for the breach of such restrictions, requirements and Byelaws.
- 12 COMMERCIAL USAGE:**
No part of the Company's Harbour or Premises or any Vessel or vehicle shall be used by the Owner for any commercial purpose, including hiring, embarkation or disembarkation of charter parties, sale or demonstration of sale or hire of the vessel provided that the occasional use of the vessel by a personal friend of the Owner on payment to the Owner of a contribution towards the actual running costs of the said vessel shall not be deemed a commercial purpose except where the Owner has sought and obtained prior written agreement from the Company. Where this Agreement is granted to a commercial operator whose Vessel is operated for hire or reward in the course of trading, special conditions will apply to this Agreement as appended.
- 13 STORAGE:**
- 13.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Company allocated a separate Berth for them.
- 13.2 No gear, fittings or equipment, supplies, stores or the like shall be left upon the pontoons, in the car parks or throughout the Harbour and Company's Premises.
- 13.3 At the Company's discretion, and only subject to specific criterion, may masts remain stepped whilst the vessel is laid up in the Storage Ashore Accommodation. Removal of sails, spray hoods and dodgers will be obligatory.
- 13.4 It is strictly forbidden to start Vessel engines in gear and other boat machinery whilst stored in the Storage Ashore Accommodation.
- 13.5 Children are not permitted onto the Storage Ashore Accommodation without prior permission of the Company.
- 13.6 Owners are instructed not to move or interfere with boat supports put in place by the Company.
- 13.7 Owners carrying out personal work in the Storage Ashore Accommodation must ensure that all debris is cleaned up and disposed of correctly at the end of each day. Appropriate steps must be taken to contain the work area around the Vessel, particularly when undertaking any kind of work involving spraying or blasting.
- 13.8 Owner's using ladders to access their Vessels whilst on the Storage Ashore Accommodation, do so at their own risk. Owners are responsible for ensuring they are in good working order and correctly secured to the Vessel before use. All Owner's ladders must be removed from the Vessel and secured or removed from site when not in use. The Company will not provide ladders to Owners to access their Vessels.
- 13.9 Vehicles are not allowed to park in the Storage Ashore Accommodation, only the loading and unloading of vehicles is permitted in this area with supervision.
- 13.10 Owner's must ensure that their Vessel is maintained in a clean, tidy and seaworthy state at all times. Owners are responsible for checking and maintaining adequate and secure mooring lines at all times, particularly prior to any adverse weather conditions. Owners are responsible for checking and maintaining the security of any Vessels stored ashore, including covers, cradles and chocks.
- 14 PARKING:**
Subject always to the availability of parking spaces, Owners and their crew may only park vehicles on the Premises in accordance with the directions of the Company. Parking is available at the absolute discretion of the company and vehicles may only be parked when the berth holder is making concurrent use of or visiting their boat. Marina car parks are not permanent parking facilities. Parking permits must be displayed at all times and all vehicles parked on the Premises must be insured, taxed and road worthy. Motor caravans, trailers and tents may not be parked or used anywhere on the Company's Premises without the prior written consent of the Company. Boat trailers may only be parked with prior agreement of the Company in the designated storage area and the published storage charges must be paid in advance. The Company shall not accept any liability for any loss or damage to vehicles left on the Premises. Cars are to be parked only in the signposted areas and are parked at the sole risk of the Owner.
- 15 ELECTRICITY:**
The Owner may use the electricity provided for the moorings provided that he has obtained the Company's prior written consent and has obtained a meter (if applicable). A meter may be obtained from the Company, the cost of which is charged in accordance with the published rates, or alternatively any meter provided by the Owner must first be provided to the Company in order that it may be tested to ensure it meets the required standards. In the event that the Owner uses electricity without the prior consent of the Company and/or the Company becomes aware that the meter supplied by the Owner is faulty, the Owner shall be liable to pay the Company the sum of £100 plus VAT, without prejudice to any other rights the Company may have under this Agreement, for each quarter that the meter is not working and/or the Owner is using electricity without consent.
- 16 MARINA AND HARBOUR REGULATIONS:**
- 16.1 The Owner shall at all times observe the Company's regulations and in particular:
- 16.1.1 the Owner shall provide and maintain at least one fire extinguisher, which is approved and manufactured to EN3 standards for portable fire extinguishers and ensure it is fit for purpose for the Vessel and for immediate use in case of fire;
- 16.1.2 the Owner shall refuel only at the designated fuelling berth and are to vacate the berth when the fuelling operation is completed. Where fuel is required to be transferred in portable containers, the Company reserves the right to refuse the use of any container deemed unfit for the purpose.
- 16.2 The Company shall supply the Owner with a copy of the regulations current at the time of application for a berthing agreement. The Company reserves the right to introduce new regulations on the grounds of legal requirement or for the safety or security or good management of the Harbour or Premises and to amend such regulations as from time to time shall be necessary. Such regulations and any amendments to them shall become effective on being displayed on the Company's public notice board or other prominent place at the Company's Premises and the Company shall have the same rights against the Owner for a breach of the Regulations as for a breach of the terms of this Licence.
- 16.3 *Advisory Note:* Owners, their guests and crew are advised that their conduct and that of their Vessels is likely to be regulated and governed at various times by statutory, local authority and Harbour regulations

- which may be more extensive than those of the Company and the breach of which may result in criminal penalties.
- 16.4 No Owner shall use, or permit the use of a Vessel in the Company's Harbour or Premises as the only or main place of abode of any person. **Liveboards are strictly forbidden in all of the Company's Harbours and Premises.** The Owner must supply to the Company in writing, details of the Owner's home address. This address must be different to the address of the Harbour or Premises. The Owner shall be obliged to produce evidence to the Company of such home address within 7 days of a request to do so.
- 16.5 Personal pets of the Owners are permitted at the Harbour and Premises but shall be kept under control at all times and on leads whilst walking around the Harbour and Premises. Owners must ensure their pets are not allowed to behave in any manner as to cause a nuisance to other Owners, users of the Harbour and/or marina facilities or the Company. Owners must ensure any fouling caused by their personal pets is disposed of in the receptacles provided by the Company. There are no quarantine Berths in the Harbour, Vessels with animals from abroad will be refused a Berth.
- 17 ACCESS TO PREMISES/WORK ON THE VESSEL:**
- 17.1 Subject to clause 17.2 no work shall be done on the Vessel, gear, equipment or other goods while on the Premises without the Company's prior written consent other than minor running repairs or minor maintenance of a routine nature by the Owner, his regular crew or members of his family not causing nuisance, or annoyance to any other Owner, customer or person residing in the vicinity, nor interfering with the Company's schedule of work, nor involving access to prohibited areas.
- 17.2 Prior written consent will not be unreasonably withheld where:
- 17.2.1 the work is of a type for which the Company would normally employ a specialist sub-contractor; or
- 17.2.2 the work is being carried out under warranty by the manufacturer and/or supplier of the Vessel or any part of the equipment to which the warranty relates.
- 17.3 Notwithstanding the foregoing, during periods of work by the Company on the vessel, neither the Owner nor his invitees shall have access to the Vessel without the Company's prior consent, which shall not be unreasonably withheld.
- 17.4 On such occasion that the Owner requests that a contractor not the Company is required to work on the Vessel the Owner must gain the prior permission of the Company. The contractor must report to the Harbour office, sign a Concession Agreement or an Annual Permit to Work, pay the relevant charge and produce a valid public liability insurance certificate with a minimum cover of £3,000,000 before commencing any work on the Vessel.
- 18 HEALTH, SAFETY AND THE ENVIRONMENT:**
- 18.1 Attention is drawn to the Company's Health, Safety and Environmental Policy, as amended from time to time. The Company shall make available in the Company's offices a copy of the policy current at the time of application for a berthing agreement. Any amendments shall be displayed on the Company's public notice board or other prominent place the Company's Premises and further copies available upon request. The Owner, his regular crew, members of his family and/or any person or company carrying out work on the Vessel, with the permission of the Company, must comply with the Company's Health, Safety and Environmental Policy.
- 18.2 The Owner shall at all times be responsible for the proper upkeep and safe condition and maintenance of the Vessel, its gear and equipment (whether afloat or ashore) and shall maintain it in good, clean and seaworthy condition and ensure that the Vessel is able to navigate under its own power at all times.
- 18.3 The Owner, his crew, members of his family and any person carrying out work on the Vessel is responsible for reporting to the Company all accidents involving injury to any person or damage to any public or private property that occur in the Harbour or on the Premises as soon as possible after they occur and in any event no later than 48 hours after such accident or damage has occurred.
- 18.4 No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Harbour or Premises so as to cause nuisance or annoyance to other users of the Harbour or Premises or to any person residing in the vicinity and the Owner undertakes for himself, his guests and all using the Vessel that they shall not behave in such a way as to offend as aforesaid. Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.
- 18.5 No refuse shall be thrown overboard or left on the pontoons, or car parks or on any other part of the Premises, or disposed of in any way other than in the receptacles provided by the Company or by removal from the Company's Harbour and Premises. The Company's further directions regarding waste management shall be posted on the Company's public notice board or other prominent place and copies will be available from the Company on request.
- 18.6 Bathing, diving and fishing within the Harbour or Premises is not permitted.
- 18.7 For the purpose of keeping the water clean and unpolluted, whilst moored in the Company's Harbour, all Owners must refrain for using onboard toilets. The toilet facilities provided ashore by the Company must be used.
- 19 GENERAL:**
- 19.1 Any indulgence granted by the Company to the Owner and any failure by the Company to insist upon strict performance of these terms shall not be deemed a waiver of any of the Company's rights or remedies nor be deemed a waiver of any subsequent default by the Company.
- 19.2 The invalidity in whole or in part of any clause in this Agreement shall not affect the validity of the remainder of such clause or this Agreement.
- 19.3 This Agreement is between the Company and the Owner as principals and is not assignable by the Owner. The Company may without consent assign or sub-contract all or any of its rights and obligations hereunder.
- 19.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement does not and is not intended to give rights to enforce any of its provisions to any person who is not a party to it.
- 20 LAW AND JURISDICTION:**
- This Agreement shall be governed by and construed in accordance with the laws of England and Wales and both parties hereby agree to the exclusive jurisdiction of the said Court. In the event that a dispute between the parties arising out of or in connection with this Agreement cannot be resolved between the parties, the parties shall first consider, as an alternative to court proceedings resolving the matter by arbitration in accordance with the provisions of the Arbitration Act 1996.