

## **Sandbanks Boat Yard & Marina Company Limited**

THIS IS AN IMPORTANT LEGAL DOCUMENT. You should read the terms and conditions carefully and if there is any term You do not understand You should seek independent legal advice before You sign the agreement.

### **APPLICATION**

Every person entering the Marina for any purpose and by any means shall be deemed to agree and be bound by these terms and conditions.

#### **1. Definitions**

'Berth' The space on the water or land from time to time allocated to You by Us for the Boat during the term of the Berthing Licence;

'Berthholder' The person whose application for a Berth has been accepted by Us;

'Berthing Licence' The annual / seasonal agreement entered into between Us and the Berth holder to moor a Boat in a Berth in the Marina or swinging moorings;

'Boat' The vessel described in the Berthing Licence application form or any replacement vessel that with Our prior written consent is licensed to use the Berth;

'Manager' The person or his representative who shall be responsible for day-to-day administration of the Marina;

'Marina' All parts of the Sandbanks Boat Yard & Marina Company Limited marina and shipyard, and all property owned by under the custody and controls of or situated within Our property, including docks, jetties, quays, piers, mud berths, sheds, workshops, offices, hardstanding roadways and car park;

'Our', 'Us' or 'We' Means Sandbanks Boat Yard & Marina Company Limited or any other in the same name group of companies;

'Summer Season' Means the inclusive period of 1st April until 30th September.

'Winter Season' Means the inclusive period of 1st October until the 31st March of the following year.

'You' or 'Your' Means the Berthholder and any visitor, any agent thereof and any charterer, master skipper or any other person being in control of the Boat;

'Users' Means ALL persons entering into/onto the Marina for whatever purposes including the Berthholder and You.

#### **2. Conditions of Use**

You, Berthholders and Users for themselves, acknowledge and/or undertake:

**2.1:** that We have the right to board and enter (by force if necessary) to carry out any emergency work on the Boat without giving You prior notice if it is in Our reasonable opinion that such work is necessary for the safety of the Boat or the safety of other Users. You shall pay on demand Our reasonable charges and interest for such work;

**2.2:** that if reasonably requested by Us, You shall deposit the keys with the Manager allowing full access to the interior and lockers of the Boat including engine keys. We will not accept responsibility to act as a keyholder.

**2.3:** that the Boat shall be moored in the Berth allocated by Us from time to time and shall not be moored elsewhere in the Marina without Our prior written agreement;

- 2.4:** that We have the absolute right at any time when the Berth is not occupied to allocate another boat to occupy the Berth without being liable to You to pay compensation;
- 2.5:** that you will not sublet, assign or otherwise deal with the Berth allocated to You to a third party;
- 2.6:** that the Boat shall be berthed in such a manner and in such a location as We may reasonably require. All necessary warps and fenders must be provided and the Boat must be properly and safely secured and attached to the mooring at all times. In particular, the security of the warps must be checked, fit for use and replaced when necessary;
- 2.7:** to remove the Boat at Our request. If the Boat is not so removed We shall have the right to remove the Boat and You shall pay Our reasonable costs and expenses incurred in respect of but not limited to cramage and storage charges at Our short term berthing rate;
- 2.8:** to comply with all reasonable instructions of the Manager in all matters relating to the safe and efficient operation of the Marina;
- 2.9:** to keep the Boat in a good, clean and operable condition at all times;
- 2.10:** except with Our prior written consent which may be withheld at Our sole discretion not to use any part of the Marina or the Boat for any commercial purposes including hiring, embarkation of charter parties, sale or demonstrations for sale or hire of the Boat provided that the occasional use of the Boat by Your personal friend on payment to You of a contribution towards the actual running costs of the said Boat shall not be deemed a commercial purpose hereunder;
- 2.11:** not to live aboard the Boat nor permit any other person to live aboard the Boat. For the purpose of this condition a person shall be deemed to be 'living aboard' a Boat if he shall spend more than 8 nights aboard in any period of 30 days;
- 2.12:** to navigate and control the Boat in the Marina at all times in a seaman like manner so as to cause no danger or damage or inconvenience to any other person or vessel. In particular the Boat shall proceed at a speed that is safe in relation to prevailing conditions and shall at all times comply with the speed restrictions as displayed from time to time within the Marina and in any event never to exceed a maximum water speed limit of five knots;
- 2.13:** to observe the bylaws of the Poole Harbour Commissioners and all other statutory rules and regulations affecting the Marina, a copy of which is displayed in the Marina office;
- 2.14:** to notify the Manager prior to the departure of the Boat from the Marina, providing notice of the anticipated time and date of departure and return;
- 2.15:** not to swim, dive, fish or bait dig within the Marina;
- 2.16:** to report in writing to the Manager within 24 hours any accident or injury that occurs within the Marina;
- 2.17:** not to bring any dangerous, inflammable, poisonous or noxious substances, spirits, oil, petrol or flammable fluid, gas or solid into the Marina or keep or store such substances on the Boat except in properly secured containers expressly designed to contain such substances against leakage or escape and which are necessary and/or suitable for the Boat. The consequences of any leakage or escape of such substances shall be Your responsibility;
- 2.18:** to take all necessary precautions against the outbreak of fire on the Boat. At least one fire extinguisher in or upon the Boat suitable for the type of engines, fuel and equipment relating to the Boat and of a kind that shall be approved by the appropriate government department must be provided. Such extinguishers shall at all times be kept instantly ready for use and in good and efficient working order;
- 2.19:** to take all waste home and not to dispose of the same over board or to leave it on the pontoon, jetties or other parts of the Marina. The disposal of oil, petrol, tar, paint, antifouling, bleach, sewage, any other similar noxious substances, out of date flares or other pyrotechnics is Your sole responsibility and cannot be disposed of by Us. In no circumstances shall such substances or waste materials be discharged into the water, sewage system or left elsewhere in the Marina;
- 2.20:** not to undertake repairs to or maintenance of any Boat (otherwise than running repairs) anywhere in the Marina;

**2.21:** not to permit any contractor to work on the Boat in the Marina unless the contractor has provided proof to the Manager of third party liability insurance in the sum of at least two million pounds (£2,000,000);

**2.22:** not to operate or permit to be operated within the Marina an engine generator, other machinery, a radio or any other apparatus so as to cause noise nuisance annoyance or inconvenience to any other User. We have the right to require any User to leave the Marina forthwith if any of them shall fail to observe these regulations after being requested by the Manager to do so;

**2.23:** to behave in a considerate manner and in such a way so as not to cause nuisance, annoyance or inconvenience to Us or any other User. We have the right to require any User to leave the Marina forthwith if any of them shall fail to observe these regulations after being requested by the Manager to do so;

**2.24:** to ensure that at all times halyards, flags, banners, wind generators and other items attached to the Boat are secured so as not to cause any noise nuisance and annoyance or inconvenience to any other Users;

**2.25:** not to erect washing lines nor visibly dry clothes on the Boat or elsewhere;

**2.26:** not to stow dinghies, tenders and rafts on or alongside the Boat unless otherwise agreed in writing by Us;

**2.27:** not to store, fix or leave parts of the Boat or other equipment including dinghies, gear fittings, fenders, supplies stores or similar items upon the pontoons, jetties, car park or otherwise in the Marina without Our prior written consent, which consent may be granted or refused by Us in Our absolute discretion;

**2.28:** to mark the Boat and any dinghies, tender trailers and cradles clearly with the name of the Boat. Any other equipment which is not stored securely in the Boat must also be clearly marked with the name of the Boat;

**2.29:** to only access the Marina via designated entrances. Entry upon all adjoining land and water to the Marina owned by Us is forbidden.

**2.30:** You shall be permitted to arrange a private sale of not more than one Boat (such Boat usually being berthed at the Marina) during any one or more periods of twelve consecutive months of the Berthing Licence and You shall notify Us of any such sale. In the event of a private sale We must be notified of the name and address of the purchaser. In the event that You want to sell Your Boat you irrevocably appoint Us as Your agent whilst such Boat is berthed and/or stored at the Marina and We shall be entitled to charge a commission of 10% for each sale.

**2.31:** You may not bring any animal into the Marina. Strict regulations exist for the control of rabies and We reserve the right to require You to remove any animal from the Marina without prior notice. No animal having been taken abroad shall be brought into or landed in the Marina. We reserve the right to report any suspected breach of this clause to the appropriate authorities;

**2.32:** that trolleys must be returned to the designated trolley storage area after use.

### **3. Insurance**

**3.1:** You undertake and agree to fully insure the Boat and any other property, as is normal for a Boat of its size and power and description which includes public liability insurance for cover of no less than two million pounds sterling (£2,000,000). Such insurance to be effected with an insurance company of good repute and for such additional risks as We may from time to time reasonably require;

**3.2:** You shall not cancel, surrender or materially alter the terms of such insurance policy without Our prior written consent, which will not be unreasonably withheld;

**3.3:** You shall provide Us on demand with copies of such current insurance certificate and policy of insurance together with a copy of the receipt for the last premium paid.

### **4. Licence**

**4.1:** You will be required to complete a Berthing Licence. Until such a Berthing Licence is in place We reserve the right to charge You at the current Visitor's Rate whether or not a previous agreement with Us existed. Visitor's Rates are displayed in the Marina office and will be charged from the expiry of the previous agreement until the new Berthing Licence is concluded and commences;

**4.2:** the Berthing Licence is granted to You for either a Summer Season, Winter Season or yearly and permits You to berth the Boat in a Berth allocated by Us from time to time. The Berth is subject to change and We have the absolute right without prior notice to require You to move and re-berth the Boat and shall have the right to move and re-berth the Boat to any location in the Marina if We reasonably consider it to be in Our interests, or the interests of any other Users;

**4.3:** the Berthing Licence shall incorporate these terms and conditions;

**4.4:** We give no guarantee or accept responsibility for the suitability of any Berth, equipment or facilities provided;

**4.5:** Our tariff of berthing charges may be amended at any time and relates to a boat's total length including davits, bowsprit, boarding ladders, sterndrives, tenders, outboards, rudders, anchors, pulpits, pushpits and any other extensions fore and aft of the Boat. Any amendments will be displayed in the Marina office;

**4.6:** You are responsible for paying all fees within the contract dates of the signed Berthing Licence;

**4.7:** all berthing charges must be paid in advance. No Berth will be reserved until all fees have been received in full;

**4.8:** You may terminate Your Berthing Licence at any point by giving 30 days notice in writing to Us.

**4.9:** the Berthing Licence shall be determinable by Us at any time on 7 days written notice to You.

**4.10:** if You do not collect Your Boat by the termination date of the Berthing Licence We reserve the right to charge You at the rate of £100 per day or to remove Your Boat from the Marina and store it at another location and You will indemnify Us for all reasonable charges.

**4.10.1.1:** if after 14 days of the termination date of the Berthing Licence You fail to collect your Boat

**4.10.1.2:** We may as the agent of You sell the Boat and You will indemnify Us against any liability incurred by Us to any third party whose property shall have been sold by Us in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to You.

**4.10.1.3:** if after We have made reasonable efforts We are unable to locate You We shall be entitled to retain such proceeds of sale absolutely unless You shall claim them within 6 months of the date upon which Your Berthing Licence expired and

**4.10.1.4:** You shall indemnify Us against any damage occasioned to the Boat and any actions claims proceedings costs expenses and demands made against Us caused by or related to the presence of Your Boat in or on the Marina.

**4.11:** the Berthing Licence is exclusive to the Boat and You and is not transferable to any third party;

**4.12:** in the event of outstanding debts by the Berthholder to Us in respect of berthing charges, repairs, stores, fuel, electricity, telephone or any other service rendered by Us then We reserve the right in addition to any other remedy available to Us to retain Your Boat until such time as the debt has been discharged,. We further reserve the right to remove the Boat from its Berth and out it on the hardstanding at Your expense if the accounts are not settled within 30 days of the date of the invoice;

**4.13:** We reserve the right to charge You interest on late accounts at a rate of 4% above the Bank of England's base rate from the due date until the date of payment.

## **5. Electricity**

Electricity (where applicable) is provided by Us to You for the use of the Boat alone subject to the following terms and conditions:

**5.1:** We cannot guarantee continuous supply as power cuts and breakdowns are not within Our control. We accept no responsibility for loss or damage arising out of the supply of electricity or its termination;

**5.2:** We shall approve connectors and cables not supplied by Us. You shall not seek to connect or reconnect the connectors and cables prior to receiving Our approval;

**5.3:** the maximum load when available on each outlet is 16 Amps. Overloading will cause trips to activate and immediate reconnection may not be possible. Reconnection will not be carried out outside of office hours.

**5.4:** all electricity consumed shall be paid for by You on demand at the current rate of charges in force at the Marina from time to time;

**5.5:** if payment is overdue the supply will be disconnected and a reasonable reconnection charge imposed.

## **6. Miscellaneous**

**6.1:** all vehicles and Boats are moored at the Users sole risk;

**6.2:** nothing in these terms shall create the relationship of landlord and tenant;

**6.3:** We expressly reserve the right to introduce new terms or vary these terms in order to promote the better administration of the Marina in the interests of the Users as a whole or to comply with statutes regulations or bylaws. Any such amendments will be displayed at the Marina office and will be deemed to be incorporated 14 days after the date and time when first displayed .

**6.4:** if an objection is received from You within the 14 days from the date of first display We shall consider that You wish to terminate the Berthing Licence pursuant to clause 4.8

**6.5:** apart from any loss, damage or injury which results from Our negligence or deliberate act or that of those for whom We are responsible every person entering and using any part of the Marina or its facilities for any purpose, whether by invitation or otherwise does so entirely at their own risk;

**6.6:** notwithstanding anything contained in these conditions in no circumstance (save for death or personal injury caused by Our negligence) shall We be liable in contract, tort or otherwise, whatsoever the cause thereof, for any special indirect or consequential loss of any nature whatsoever suffered or incurred by any person;

**6.7:** if at any time any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law the validity legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby;

**6.8:** where We are unable to perform any of Our obligations by virtue of fire, flood, damage, storm, earthquake or other natural disaster, explosion, riot, terrorism, malicious damage or any other act, omission or state of affairs beyond Our control then We shall be relieved of all of Our obligations and shall incur no responsibility or liability in respect thereof whether for damages or otherwise;

**6.9:** No exercise, failure to exercise or delay in exercising any right, power or remedy shall be held to be a waiver by Us of that right, power or remedy.

**6.10:** We accept no responsibility to any person to enforce any provision of these terms against any other person and it may not be required to do so;

**6.11:** all notices, requests, demands or other communications to or upon the parties shall be in writing and shall be given to You at Your last known address and to Us at Our registered office;

**6.12:** these terms shall be governed by and construed in accordance with English law and any disputes arising under the terms shall be submitted to the exclusive jurisdiction of the English Courts.