



CONDITIONS OF USE AND LICENCE FOR HARD STANDING

The following Conditions of Use and Licence for Hard Standing (the “**Conditions**”) apply to all Marina Users. Should any conflict arise between the Agreement and a long term licence, the Agreement shall be paramount. These Conditions may be altered from time to time by resolution of the Board of Directors of the Company without reference to Marina Users. Any change will be displayed at the Control Tower and will be deemed to have been incorporated at the date and time of display. Upon signature of the Application Form the Owner accepts and agrees to abide by the terms of this Agreement.

1. DEFINITIONS

- “Agreement” means these Conditions as may be amended from time to time, the Application Form as signed by the parties and any special conditions available from the Control Tower;
- “Annual Licence” means a Licence granted for a period of 12 months commencing 2011;
- “Application Form” means the form entered into and signed by the Company and the Owner which forms part of this Agreement;
- “Berth” means the space allocated from time to time (subject to the provisions of paragraph 8.1) to the Owner by the Company for the Vessel within the hard standing area;
- “Cancellation Policy” means the company’s policy for the cancellation of licences, available by request from the Company;
- “Company” means Island Harbour Holdings Limited – in Administration, and includes any parent, subsidiary or associated companies and any agent, concessionaires or associated persons;
- “Company’s Standard Charges” means the Company’s standard charges for the grant of a Licence and other ancillary costs, as published from time to time, and subject to change, available for inspection at the Control Tower;
- “Control Tower” means The Lock Control Tower, Island Harbour, Mill Lane, Binfield, Newport, Isle of Wight. PO30 2LA;
- “Crew” means any person involved in the running or administration of the Vessel, and shall include charterer, master, agent or other person for the time being lawfully in charge (other than the Company);
- “Harbour” means the harbour in which the Marina is situated, and shall include any yacht harbour, Marina, pontoons, moorings, or any other facility for berthing a Vessel;
- “Licence” means the revocable, non-transferable, non-assignable, non-exclusive licence automatically granted to the Owner upon signature of this Agreement by the Company and the Owner to:
- 1) store the Vessel within an allocated hard standing area subject to the provisions of paragraph 8.1, which, dependent upon availability, may be subject to change from time to time at the Company’s discretion;
 - 2) allow the Owner and the Crew reasonable use of the Marina;
 - 3) allow the Owner to use the car-park; and
 - 4) allow the Owner to use the electricity and other amenities;
- “Licence Fee” means the fee as stated on the Application Form payable by the Owner to the Company for the granting of the Licence’
- “Licence Period” means the period for which the Licence is granted, as stated on the Application Form;
- “Marina” means Island Harbour and shall include all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mud berths, sheds, lofts, workshops, hard standing, roadways, car park, the boat repair yard, brokerage and other harbour facilities;
- “Owner” means the person identified as the owner of a Vessel on the Application Form, and shall include his Charterer, Master, Agent or other person for the time being lawfully in charge (other than the Company) of the Vessel;
- “User” means any Owner, member of the Crew, guest, child or any other person within or using the Marina at any time;
- “Seasonal Licence” means a Licence granted to the Owner valid only for specific parts of the year, as stated on the Application Form; and
- “Vessel” means any vessel or vehicle including but not limited to any form of craft, boat, ship, yacht, dinghy,

multihull, RIB, dinghies, jet skis, windsurfers or other waterborne platform which is the property of or is in the care and control of the Owner whether or not stated in the Application Form.

2. LICENCE

- 2.1. Subject to the Owner paying the Licence Fee and both parties signing the Application Form the Company grants to the Owner a Licence in accordance with the terms of this Agreement.

3. OWNERS & USERS DUTIES

- 3.1. No washing lines shall be erected within the Marina, including washing lines on board the Vessel, nor shall washing be dried on the exterior of the Vessel.
- 3.2. No temporary canvas coverings or any other structure is allowed to be placed on the Vessel without the express permission of the Company;
- 3.3. No noisy, noxious or objectionable engines, radio or other apparatus or machinery shall be operated within the harbour and/or car park so as to cause any nuisance or annoyance to the Company, other Users of the Marina or its neighbours.
- 3.4. The Owner hereby undertakes to be responsible for all Users visiting the Owner or the Vessel. Children who must be supervised at all times.
- 3.5. Except with the written consent of the Company, such consent to be within the absolute discretion of the Company, no part or parts of the Marina shall be used for commercial purposes. Commercial purpose shall include hiring, embarkation or disembarkation of charter parties, sale or demonstration or hire of the Vessel.
- 3.6. The Owner and all Users of the Marina must act in a responsible manner at all times and noise must be kept to a minimum, especially after 11:00pm. The Company reserves the right to require the Owner and Users to leave the Marina immediately if they do not act in a responsible fashion or fail to observe the terms of this Agreement.
- 3.7. Animals are only permitted in the Marina on the condition that they are kept under the control of the Owner at all times. **Dogs must be kept on leads.** Owners and Users are requested to exercise dogs away from the pontoons and are responsible for collection and disposal of fouling. Failure to collect and dispose of dog foul may result in a fine of up to £50. The Company reserves the right to require the removal of any animal from the Marina at any time. No animal that has come from or been to another country in the last 6 months shall be brought into the Marina without the consent of the Company.
- 3.8. Dinghies, tenders and rafts shall be stowed aboard the Vessel and must be named for identification purposes.
- 3.9. Emptying of bilge tanks, septic tanks or any other similar container into the confines of the hard standing is prohibited.
- 3.10. The Owner or Users must report in writing any injury or accident that occurs within the Marina to the Control Tower within 24 hours.
- 3.11. Access is strictly limited to those areas of the Marina that the Company makes available for use by the Owner and Users. Entry upon restricted areas is forbidden and the Company accepts no liability in such circumstances.
- 3.12. Fishing is strictly prohibited within the Marina and its surrounding grounds, foreshore, and premises.
- 3.13. The Company operates a zero tolerance policy towards drunken or aggressive behaviour or any drug abuse and will remove any offenders without notice. Where deemed appropriate by the Company, the Police will be informed and the Company will demand the immediate removal of the Vessel by the Owner.
- 3.14. All persons entering onto the Marina or mooring a Vessel in it do so at their own risk. The Company shall not be liable in any way for any injury to any such persons or for any loss or damage suffered by them or by any Vessel or property brought by them into the Marina.
- 3.15. Any damage caused to the Marina including without limitation the moorings, equipment, office, toilets and car parks, by any Owner or User or their pets shall be the responsibility of the Owner and must be made good to the reasonable satisfaction of the Company.

4. WORKS

- 4.1. Prior written consent to work to be carried out on the Vessel in the Company's harbour premises or moorings shall not, without good cause, be withheld in the following circumstances:
- 4.1.1. Where the work to be carried out is work for which the Company, its concessionaires or those who normally carry out such work on its behalf, would normally employ a specialist sub-contractor; and
- 4.1.2. Where the Company is satisfied that whole of the work is being carried out under warranty by the manufacturer

and/or supplier of the Vessel or any part of her equipment to which the warranty relates.

- 4.2 Only the Company's service provider (who at the present time is Richardson's Yacht Services) and their staff are permitted to move Vessels, Vessel supports or any other Vessel-related items.
- 4.3 Vessel covers (if fitted) must be in serviceable order, close fitted and well secured with ropes passing under the Vessel, but not secured to props or cradles.
- 4.4 All sails are to be removed from all yachts for the winter period.
- 4.5 Owners must provide their own forms of suitable access onto their Vessel once it has been laid up ashore.
- 4.6 No welding or shot blasting may take place without prior consent of the Company.
- 4.7 If outside contractors or workmen are instructed to carry out any work in the Marina, they must report to the Control Tower daily, and prior consent must be obtained in writing for them to operate in the Marina. At the discretion of the Company a charge of £50 per day shall be paid. Evidence of £500,000 indemnity insurance must be presented to the Control Tower.

5. VESSELS & HARD STANDING

- 5.1. The Owner shall deposit a set of keys for the Vessel at the Control Tower. Such keys should enable the Company access to the interior of the Vessel and should include engine keys for use by the Company in the event that the Vessel needs to be accessed.
- 5.2. The Owner shall furnish the company with a copy of the Vessel's current insurance documents upon entering into the Licence.
- 5.3. Halyards shall be secured so as not to cause nuisance or annoyance.
- 5.4. No Vessel shall be refuelled in the Marina other than in the Company's refuelling berth.
- 5.5. The Owner shall take all necessary precautions against the outbreak of fire upon the Vessel. The Vessel must have at least one fire extinguisher of an approved BSI standard type, size and installation for immediate use in case of fire. Extinguishers are to be regularly maintained and in good working order at all times. Your insurance must cover fire and consequential damage.
- 5.6. The Owner shall not, nor shall they permit any other person to live upon the Vessel (meaning spending more than 14 nights aboard in any 30 days).

6. DEPARTURE AND ARRIVAL OF VESSELS

- 6.1. Advance warning should be given to the Control Tower prior to the Vessel's departure from the Marina. At the time of giving such warning the Control Tower should also be provided with the anticipated time and date of return. Failure to give such information may result in a Berth not being available for the Vessel on its return. Vessels returning to Berths and finding another craft on its Berth must berth in a visitor's berth and the Control Tower must be notified immediately.
- 6.2. The advance warning required by the Company will be in normal circumstances 2 days.

7. CAR PARK

- 7.1. All users of the Marina and the Marina premises must display a permit in their vehicles at all times if issued to them and shall have current car tax and insurance
- 7.2. Any Users failing to display a permit may result in the clamping of their vehicle. The Company does not accept any responsibility for any vehicles that have been clamped.
- 7.3. Owners are required to park their cars in such position and manner as shall, from time to time, be directed by the Company. Owners leaving their cars in the Marina for a period that they are away, in excess of one week, from the Marina are required to deposit a set of keys to their cars with the Control Tower. The Company is authorised to move cars at the risk of the Owner, forcing entry into the car if necessary for such purpose, without being liable for any damage thereby caused.
- 7.4. Each Owner and User attending a single Vessel may occupy no more than a total of two car parking spaces between them. However, on written request the Company may, in its sole discretion, allow the Owner and User to occupy more than two parking spaces temporarily with the proviso that such additional spaces must be vacated on demand by the Company.
- 7.5. Except with the written consent of the Company, such consent to be within the absolute discretion of the Company, caravans and tents may not be parked or used in the Marina. The Company is permitted to charge for storage of trailers as per its standard charges from time to time in force. The surroundings of all boats laid up ashore must be clear and clean and no gear may be stowed in the open. The Company reserves the right to make a charge for clearing any left items or rubbish not removed.

- 7.6. The Owner indemnifies the Company in full in respect of any claim for loss, damage, salvage and any third party claim made against the Company as a result of the acts or omissions of the Owner, the Users or caused by the Vessel. Every Vessel in the Marina and its contents must be adequately insured and the Owner must provide evidence of such insurance upon signature of this Agreement or on demand by the Company, such insurance to include coverage in respect of any third party damages of not less than £3,000,000.

8. DURATION OF LICENCE AND LICENCE FEE

- 8.1. Nothing in the Licence shall entitle the Owner to the exclusive use of a particular hard standing berth. The Licence to berth shall be for the duration specified in the Application Form and gives the Owner a Licence to use the Berth allocated from time to time by the Company. The Berth allocated may be changed by the Company at any time during the Licence Period without prior notice to the Owner.
- 8.2. Payment of the whole of the Annual Licence and Seasonal Licence as applicable is due in full on the day this Agreement is signed by the parties.
- 8.3. The Company reserves the right to charge interest on any overdue sums at a rate of 2% above bank base rate per month.
- 8.4. The Licence is exclusive to the Vessel and to the Owner and is not transferable without written consent from the Company, such consent to be within the absolute discretion of the Company.
- 8.5. The Licence Fee is calculated by multiplying the length of the Vessel (for the purpose of the Licence Fee calculation length shall include all extensions such as tenders and/or dinghies in davits, bowsprits, bumpkins etc) by the licence fee per metre as determined by the Company and as stated in the Company's Standard Charges.

9. WASTE

- 9.1. Waste and refuse must be placed in the appropriate receptacles provided by the Company. Such waste shall be limited to domestic waste off Vessels only.
- 9.2. Oil, petrol, tar, paint, sewage or any other similar toxic or noxious substances and waste must be disposed of in the specially provided receptacles. If such receptacles are not provided, the Owner must dispose of such waste in a responsible manner away from the Marina. No waste shall be discharged into the water or left on the Marina.

10. ELECTRICITY SUPPLY

- 10.1. Electricity is supplied for the use of the Vessel alone and must not be shared with any other Owner, User or Vessel.
- 10.2. The Owner shall not attempt to connect or reconnect to the electricity supply without having first received consent from the Company.
- 10.3. Electricity consumed must be paid for on demand at the prevailing rate charged by the Company from time to time. Non-payment within 28 days will result in the supply being terminated and a reconnection charge being levied. The Company shall charge VAT for this utility at the domestic rate in force, currently five per cent.
- 10.4. The supply of electricity is subject to factors outside the Company's control. The Company does not guarantee a constant supply and does not accept liability for any interruption in supply, unless it is a result of the Company's negligence.
- 10.5. We would like to inform you that all electricity and the electricity bollards will be controlled from the Marina office. Therefore, it is the responsibility of the Owner to inform the Company's office by telephone, in person or by email, when they vacate their Berth, and on return. This will avoid any third party being able to plug into a supply, and any resulting charges, as the Owner is responsible for the electricity supplied to the bollard on their allotted Berth.
- 10.6. To set up an electricity account please complete a simple form available from the Control Tower and deliver back to the Control Tower for action. Alternatively please call us on 01983 539994 or email info@island-harbour.co.uk. Connection and reconnection to the electricity supply will only be carried out within office hours.
- 10.7. The Company makes no assurances as to the suitability of the Vessel to accept the supply of electricity. It is the responsibility of the Owner to assess the Vessel's suitability or connection to the electricity supply. The Company does not accept any responsibility for any loss or damage arising out of the supply of electricity.
- 10.8. The Owner shall indemnify and keep indemnified the Company for any loss caused to the Company resulting from the Owner's use of the electricity supply.

11. RIGHTS OF THE COMPANY TO MOOR, REBERTH, MOVE, BOARD, ENTER AND CARRY OUT WORK ON THE VESSEL.

- 11.1. For the safety or convenience of the Marina, Vessels and Users, the Company shall have the absolute right to moor, re-berth, move, board, enter and carry out work on any Vessel. The Owner shall pay on demand the Company's reasonable charges for mooring, re-berthing, moving, boarding, entering and carrying out work on that

Vessel.

- 11.2. The Company, within its absolute discretion, reserves the right to disconnect or remove and store any equipment deposited by the Owner which the Company deems to constitute a possible hazard to other Users.

12. THE COMPANY'S LIEN

The Company has the right to keep hold of a Vessel, its gear and equipment and any other goods pending payment in full of all sums due to it in respect of services rendered. During a period of retention the Company reserves the right to charge for storage, hard standing and berthing at the Company's normal commercial rates.

13. RIGHT OF SALE

- 13.1. Where the Company accepts Vessels, gear and equipment for storage afloat or ashore it does so subject to the provisions of the Torts (Interference with Goods) Act 1977 ("the Act"). The Act confers a right of sale on the Company in circumstances where the Owner fails to collect or accept redelivery of the Vessel. Such sale will not take place until we have given notice to the Owner in accordance with the Act. For the purposes of the Act it is recorded that:

13.1.1. Vessels are accepted by us on the basis that the Owner is the legal and beneficial owner of the Vessel or the Owner's authorized agent and that he will take delivery or arrange, collection when the storage period expires;

13.1.2. The Company's obligation as custodian of Vessels ends on the Company giving notice to the Owner of termination of that obligation;

13.1.3. The place for collection of the Vessel shall be at the Company's premises unless agreed otherwise; and

13.1.4. In certain other circumstances the Company may be entitled to have Vessels, gear and equipment sold through the Court for non-payment of monies due to the Company.

14. SUSPENSION, CANCELLATION & TRANSFER OF BERTH

- 14.1. Should the Owner of the vessel choose to cancel the Licence at any time, he or she may do so by providing three months' notice in writing and fulfilling any other requirements as are provided for in the Cancellation Policy. Upon such termination, the Company will recalculate the mooring period at a weekly rate from the date of the Annual Licence.

- 14.2. If ownership of the Vessel is transferred, and the new owner wishes to continue to berth in the Marina, the new owner must request consent from the Company.

- 14.3. Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Licence, and pay any sums then due to the other, immediately on giving notice to the other if the other party commits a material breach of any of the terms of this Licence and (if such a breach is remediable) that party fails to remedy that breach within 30 days of being notified in writing of the breach.

15. LIABILITY

- 15.1. In circumstances where there is more than one person who may be considered to be the Owner, all liabilities and obligations attaching by nature of this agreement or by process of law shall be joint and several.

- 15.2. This clause 15 sets out the entire financial liability of the Company to the Customer in respect of:

15.2.1. Any breach of this Agreement; and

15.2.2. Any representation, statement or tortious act or omission (including negligence).

- 15.3. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.

- 15.4. Nothing in this Agreement limits or excludes the liability of the Company:

16.4.1. For death or personal injury resulting from negligence; or

16.4.2. For any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company.

- 15.5. The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the Licence Fee

16. DISCLAIMERS

- 16.1. Nothing in this agreement shall create the relationship of landlord and tenant.
- 16.2. All Owners and Users use the marina at their own risk. The Company takes no responsibility for loss or damage to the Vessel, belongings, vehicles or personal property on or in the marina, unless the same arises by virtue of the negligence of the Company, its servants or agents.
- 16.3. No guarantee is given nor responsibility accepted for the suitability of any berth, gear or other facilities provided.
- 16.4. Where the Company is unable to perform any of its obligations by virtue of fire, flood, storm, explosion, terrorism, malicious damage and any other act omission or state of affairs beyond the control of the Company, the Company shall be relieved of all such obligations and the Owner and/or User shall not be entitled to compensation or damages for the Company's failure to or delay in performing the same.
- 16.5. It is a term of the Licence that the Company's obligations, if any, to the Owner or User terminate upon the expiry or determination of this Agreement. The Licence is subject to the provisions of the Tort (Interference with Goods) Act 1977 and the Company reserves its right to exercise a power of sale with no liabilities as trustees arising thereunder.

17. SEVERABILITY

If any provision of these Conditions is deemed for any reason to be invalid, void or deleted, these Conditions shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, the Company and the Owner shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision.

18. NOTICES

- 18.1. Any notice to the Owner shall be deemed properly served when sent by first class or registered post to the address supplied by the Owner in his Application Form (or subsequently amended and acknowledged in writing by the Company).
- 18.2. Any notice to the Company shall be sent by prepaid registered post addressed to the Company at its head office. Notice by any other method shall not be deemed effective unless and until the Company acknowledges same in writing.

19. DISPUTE RESOLUTION

The Company will always endeavour to resolve disputes in a prompt and amicable manner.

20. VARIATION

Subject to the foregoing provisions of these Conditions, no variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

21. RIGHTS OF THIRD PARTIES

This Licence is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

22. ENTIRE AGREEMENT

Each of the parties acknowledges and agrees that, in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in these Conditions.

23. GOVERNING LAW AND JURISDICTION

- 23.1. This Agreement and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 23.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Licence or its subject matter.