

## 1. Definitions

1.1. When the following words with capital letters are used, this is what they will mean:

- **Agreement:** the Berthing Agreement, these terms and conditions and any regulations issues by the Marina from time to time
- **Berthing Fees:** the amount set out in the Berthing Agreement
- **We/Us/Our:** Fareham Marina Ltd
- **You/Your:** the named berthholder on the Agreement
- **Boat:** The boat identified in the Agreement
- **Marina:** the Marina owned by Fareham Marina Ltd
- **Start Date:** the date shown on the Berthing Agreement

## 2. Provision Of A Berth

- 2.1. For the duration of the Agreement We will allocate You a berth for Your Boat. You must not allow any other boat to occupy the berth.
- 2.2. You are not entitled to the exclusive use of any particular berth. We will be entitled from time to time to reallocate berths.
- 2.3. We reserve the right to board, move or moor or re-berth the Boat for reasons of safety, an emergency or to prevent or stop a nuisance.
- 2.4. We reserve the right to ask that You or any member of Your party leave the Marina immediately if You or they act recklessly or unreasonably.
- 2.5. We rely on You to provide us with an accurate measurement of the Boat length and Your Berthing Fee is calculated by reference to the boat and allocated berth length. We therefore reserve the right at any time during the period of the Agreement to measure the Boat and charge You additional berthing fees if the Boat length is greater than the length stated in the Berthing Agreement.
- 2.6. You shall not lend or transfer Your berth, nor allow the use of the berth for another vessel.
- 2.7. Should You sell Your Boat, You will need to inform Us in writing (written/text email), within 7 days, giving the name and contact details of the new owner and the required two calendar months' notice that You are vacating the Marina.

## 3. Your Obligations

- 3.1. You will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to a property where it was caused by an act, failure to act or omission by You, Your crew, passengers, guests or persons carrying out work on Your Boat by arrangement with You or with Your consent. If We suffer any loss due to any such act, failure to act or omission then You will be liable to make payments to Us to make good Our losses.
- 3.2. If You sell Your Boat or lose Your right to possession of the Boat, You must notify Us immediately in writing. You must include the date of change of ownership or right to possession and the name and address and contact number of the new owner or person having the right to possess Your Boat. Until We receive this information, We will treat Your Boat as being Your property and You will continue to be responsible for all the charges in connection with it and bound by the terms of the Agreement.
- 3.3. You must always ensure that We have a current postal address, current email address and mobile telephone contact number to which We can send to You any notice or details of any matters arising out of this Agreement, or to be able to contact You in an emergency.
- 3.4. You will display the licence sticker issued by QHM Portsmouth and provided by Us to the port side quarter of Your boat.
- 3.5. You must keep the berth which You are allocated in a tidy condition. No boat gear, equipment or stores shall be left on the pontoon or in the Marina car park.
- 3.6. Your Boat must be kept in a structurally sound and seaworthy condition. If We reasonably believe that Your Boat is not structurally sound and may present a risk to safety at the Marina or a risk to safe navigation in the Marina, We reserve the right to move the Boat to the public slipway where You will have 48 hours to remove it from the water. It may return to berth when

Effective from 01/01/2021

We are satisfied that it is structurally sound and seaworthy and poses no threat to safety or safe navigation within the Marina.

3.7. You will not use Your Boat for any commercial purpose, except where You have sought permission from Us, and We have agreed in writing.

3.8. You must not use Your Boat for any residential purpose. The Boat is deemed to be for residential use if:

3.8.1. The Boat is used as Your principal or main place or residence, or

3.8.2. If anyone stays on-board more than an average or more than 10 nights, per month.

#### **4. Our Obligations**

4.1. We will provide a Berth as specified in the Berthing Agreement

4.2. We will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by an act, failure to act or omission by Us.

4.3. We will protect and respect Your privacy.

#### **5. Berthing Fee And Payment**

5.1. You may pay the Annual Berthing Fee to Us in monthly instalments in amounts set out in the Berthing Agreement. The initial monthly payment must be made in full by the date in the Agreement. All subsequent monthly payments are payable by the 5<sup>th</sup> of each month. You will also need to pay one month's fee as a returnable deposit (on termination of the agreement)

5.2. We are entitled to charge You, in addition to the Berthing Fee, for all Marina services which You use.

5.3. If You fail to pay any instalment of Your Berthing Fee within 30 days of the date, We may serve a final warning in respect of the outstanding sum, requiring You to make payment within a further 7 days. If after the expiry of that 7 days, the outstanding sum has not been paid this will be treated as a repudiation of Your obligations under this

Agreement and We shall be entitled to take any of the following steps:

5.3.1. End this Agreement under condition 9;

5.3.2. Exercise Our rights under condition 10;

5.3.3. Charge You interest on the amount unpaid, at the rate of 4% per annum above the HSBC Bank Plc base rate from the time calculated on a daily basis;

5.3.4. Charge You for the use of the Berth as set out in condition 9.2.2

#### **6. Limitation Of Liability**

6.1. We do not exclude liability for death or personal injury resulting from Our negligence.

6.2. We are responsible for losses suffered by You as a result of Our breaking this Agreement, if the losses are a foreseeable consequence of Us breaking this Agreement. We are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by Us or You. We are also not responsible for increased costs or expenses, loss or profit, opportunity, business, contracts, revenues, or anticipated savings or for any special indirect or consequential loss of any nature suffered by any person.

#### **7. Events Outside Our Control**

7.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.

7.2. We shall have the right by notice in writing to You to terminate this Agreement if at any time the Marina has become so damaged or impeded by events outside Our control that We are unable to continue to provide a berth in accordance with this Agreement.

#### **8. Your Warranty To Us**

8.1. You warrant to Us that You are the owner of the Boat, have the immediate right to possess the Boat and that the Boat Length stated is as stated in the Berthing Agreement.

8.2. You shall always maintain a suitable policy of insurance for public liability and third-party

Effective from 01/01/2021

liability in respect of claims for damages to persons and property in the sum of at least £3,000,000 for any one event. Your insurance will need to include cover against wreck removal and salvage, where appropriate. We require a record of Your current insurer, policy reference number and policy expiration date. You must provide us with these details whenever You change or renew your policy. We reserve the right to request a copy of Your insurance certificate to confirm these details relate to an active policy.

## 9. Termination

9.1 This Agreement shall start on the Start Date and shall continue as a rolling annual agreement unless it is ended earlier in accordance with this Agreement.

9.2 You may end this Agreement by giving Us two months' notice in writing (written/email/text). We will treat the notice as being received on the last day of the month and Your notice period will run from that date. If you end Your Agreement in this way: -

9.2.1 We will confirm the End Date in writing (written/email/ text).

9.2.2 You will be required to continue to make Your monthly payments during Your notice period;

9.2.3 We reserve the right to charge You £85 cancellation fee to cover Our losses and expenses if the Agreement is terminated by You before 12 months of the Start Date.

9.3 Without affecting any other right or remedy We may have, We will be entitled to end this Agreement immediately by notice in writing to You if: -

9.3.1 You commit a serious or repeated breach of this Agreement.

9.3.2 You are unable to pay Your debts or become bankrupt, insolvent, or die.

9.3.3 If You are a company and cease to trade, become bankrupt, insolvent, or pass a resolution for winding up the company.

9.3.4 You provide Us with details which You know to be false when applying for a berth and the false declaration would have reasonably affected Our decision to offer You a berth.

9.4 On termination of the Agreement for any reason You shall within 7 days of the end of the Agreement:

9.4.1 pay to Us all amounts owing to Us

9.4.2 remove the boat from the Marina

9.4.3 return Your Marina gate key (if issued) and parking permit to the Marina office.

## 10. Removal Of Boat

10.1 We reserve the right (after giving at least 7 days written notice) to secure the Boat or remove the Boat from its berth and place it under Our control in a berth of our choice, or ashore if: -

10.1.1 You fail to pay Your berthing Fee in accordance with this Agreement and We have taken the steps set out in condition 5.3

10.1.2 You fail to remove the boat from its berth within 7 days of the end of this Agreement (however that occurs):

10.2 You give Us irrevocable authority to secure or remove the Boat to a berth of Our choice or ashore pursuant to condition 10.1 and You agree to be responsible for Our costs in taking these steps. The costs include securing the Boat, lifting, and storing ashore or on a designated berth.

10.3 If We have removed Your Boat to storage ashore or on a designated berth under clause 10.1, We may give You reasonable notice of Our intention to sell the Boat in accordance with the law. Should We sell the Boat We will pay the proceeds to You (or such person who is entitled to possession of the Boat) less all sums owed by You to Us and any expenses of the sale and any legal costs incurred in respect of the sale.

10.4 This condition 10 will remain in force after this Agreement ends.

10.5 We shall not be under any duty to salvage or preserve Your Boat or other property from the consequences of any defect in Your Boat or property concerned, or consequences of an accident which has not been caused by Our negligence. However, We reserve the right to do so in any appropriate circumstance, particularly where a risk is posed to the safety of people, property, or the environment. If We do take such action You will be charged on a normal commercial charging basis and if appropriate be able to claim a salvage reward.

Effective from 01/01/2021

## 11. Use of mooring when vacant

11.1 When the mooring is not occupied by Your Boat, We shall be free to permit use of the mooring by any other vessel without giving any discount to You. The mooring should be kept clear so as not to cause an obstruction of this right.

11.2 You need to advise the Marina office if You intend to be away from your mooring for longer than 72 hours.

11.8 These Terms are governed by English law. You and We both agree to submit to the jurisdiction of the English courts.

## 12. General

11.1 It is Our intention that all the terms of the contract between You and Us relating to You berthing Your Boat at the Marina are contained in this Agreement.

11.2 In the event of any conflict between the terms of this Agreement and the Marina Handbook, the terms of this Agreement shall apply, but if a clause in the Marina Handbook expands a term of this Agreement or vice versa, both shall apply.

11.3 You shall be treated as having accepted the terms of this Agreement if You have taken a berth at the Marina.

11.4 We reserve the right to charge You berthing fees at the Visitor Berthing Rate for any periods during which You leave the Boat at the Marina when there is no current berthing licence in relation to that Boat between You and Us. We shall invoice You for those fees as per Our current price list. This condition 11.4 will remain in force after this Agreement ends.

11.5 References to persons includes companies, partnerships, and unincorporated associations.

11.6 If You wish to contact Us in writing, or if any clause in these terms requires You to give Us notice in writing, You can send this to Us by hand, or paid postage to 'The Marina Office' at the address set out in the Berthing Agreement. If You contact Us by email You must ensure You have a receipt or acknowledgement that the email was received by the Marina Office. If We have to contact You or give You notice in writing, We will do so by hand or paid postage to Your address in the Berthing Agreement, a copy will also be sent by email.

11.7 If the obligations, undertakings, and warranties by You in this Agreement are undertaken or given by more than one person, then they are given by all person jointly.