



SCHEDULE 2

TERMS AND CONDITIONS – COMMERCIAL LICENCE

1. DEFINITIONS

Wherever the following terms appear in these Conditions, the Agreement and the Company's Regulations they will have the special meanings defined here: **ADDITIONAL CHARGES** means charges payable to the Company for Marina Services booked or used by the Operator which are not comprised within the Charge.

ADDITIONAL SERVICES TARIFF means the Company standard tariff for the Marina which is set out in the tariff section of the applicable Marina page on the Company website at www.mdlmarinas.co.uk/marinas. As an example, the Additional Services Tariff for Bray Marina is available here: <https://www.mdlmarinas.co.uk/marinas/mdl-bray-marina/tariffs/>.

AGREEMENT means the Berthing/Mooring Package Agreement which incorporates these Conditions, the Marina Regulations and the other Schedules attached to this Agreement.

BERTH means the space or spaces on water or land from time to time allocated to the Operator by the Company for the Boat during the term of any Marina Services and Commercial Berthing/Mooring Package Agreement.

BOAT means the boat or boats to be berthed or stored at the Marina in accordance with the Agreement, details of which are set out on the front of this Agreement.

CHARGE means the sum payable to the Company for the use of the Berth during the Term set out on the front of this Agreement.

CODE OF CONDUCT means the rules that apply to any visitor (including the Operator) to a Marina.

COMPANY means Marina Developments Limited and includes any parent, subsidiary or associated companies.

FORCE MAJEURE EVENT means any act or event beyond the Company's reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster, interruption of electricity or water supply or other utilities, or failure of public or private telecommunications networks or actions or failure to act of a third party and any closure of a Marina required by any Government body, Local Authority, other statutory body or emergency services for any reason.

MARINA means all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mudberths, moorings, or any other facility for launching, navigating, mooring or berthing a Boat, sheds, lofts, workshops, hard standing, roadways and car park.

MARINA GUIDE means the guide published by the Company from time to time regarding the use of the Marina.

MARINA REGULATIONS means the regulations and Code of Conduct published by the Company from time to time regulating conduct at the Company's Marinas and setting out the Company's detailed requirements in relation to Safety and Environment, Management, Insurance, Electrical Supply and other matters.

MARINA SERVICES means those facilities and services made available to the Operator and the Operator's employees, agents, visitors or customers at the Marina or other Company Marinas at the prevailing tariffs, including but not limited to: car parking, use of luggage trolleys, electrical hook up points, water points, bunkering, fuelling, facilities, toilets, showers, wash areas, laundry facilities and waste and refuse disposal.

MAXIMUM BERTH METERAGE means the length of the Berth as set out on the front of this Agreement.

OPERATOR includes any person or corporate body who, as principal or agent, who has entered into this Agreement with the Company and any charterer, master, employee, agent or other person for the time being in charge of the Boat, excluding the Company.

TERM means the period of the licence set out on the front of this Agreement.

2. THE LICENCE

2.1. The Company retains all rights of possession in respect of the Berth.

2.2. The licence created by this Agreement shall not be automatically renewed but will end at the conclusion of the Term if not terminated sooner by the Company under the provisions of Clause 11.

2.3. This Agreement and the rights created by it are personal to the Operator and relate specifically to the Boat subject to clause 2.4. It may not be transferred or assigned to a new Operator or to a different Boat, either temporarily or permanently, without the express written consent of the Company.

2.4. Berths used for brokerage, charter or as dealership berths are charged at the Maximum Berth Meterage or, in the event that the Boat is longer than the Maximum Berth Meterage, the length of the Boat. The Operator may use their allocated Berth for multiple Boats so long as they do not exceed the Maximum Berth Meterage. The rafting of boats is prohibited unless prior written consent is provided by the Company. Berths used for multiple Boats and/or Berths which attract a discount on the tariff berthing rate are not entitled to Freedom Berthing or Berthing with Otium benefits unless expressly granted in writing by the Company. All brokers, dealers and charter businesses may make use of the Otium visitor berthing scheme.

2.5. This Agreement is not intended to confer any benefit under the Contracts (Rights of Third Parties) Act 1999 on any person unless they are named as a party to this Agreement.

2.6. At any time when the Berth is not actually occupied by the Boat the Company shall be free to permit its use by any other boat without paying compensation or giving any discount to the Operator.

2.7. Within 7 days of any agreement for the sale, transfer or mortgage of the Boat the Operator shall notify the Company in writing of the name, address and telephone numbers of the purchaser, transferee or mortgagee, as the case may be.

3. PAYMENT

3.1. Payment should be made to the Company of the Charge in accordance with dates specified on the front of this Agreement and any Additional Charges, together with VAT should be paid upon receipt of invoice. Timely payment is a strict condition of this Agreement.

3.2. The Company is entitled to charge interest on any amount which is overdue by more than 14 days at the rate of 4% above the Bank of England base rate from time to time from the due date until payment of the overdue sum, whether before or after judgment.

3.3. If the Operator elects to pay the Charge by Direct Debit the Operator has declined to pay the Charge at the rate offered to customers who elect to pay the Charge in full and in advance and consents to the payment of the Charge over a minimum 12 month period. No credit facility will be created between the Operator and the Company as a result of this decision.

4. LIABILITY, INDEMNITY AND INSURANCE

- 4.1. 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 a customer's or third party's boat); this extends to loss or damage to boats, gear, equipment or other goods left with it for repair or storage, harm to persons entering the Marina and/or using any facilities or equipment or any cessation or interruption of Marina Services.
- 4.2. Boats, gear, equipment or other goods are left with the Company at the Operator's own risk. The Company provides no warranty with regard to the security of the Marina or any storage facility provided by the Company. Operators must ensure that any property left with the Company is adequately insured against all relevant risks and in addition has been adequately secured against theft by reasonable means, including but not limited to, the use of anti-theft devices.
- 4.3. The Company shall not be under any duty to salvage or preserve an Operator's Boat or other property from the consequences of any defect in the Boat or property concerned unless it shall have been expressly engaged to do so by the Operator on commercial terms. Similarly, the Company shall not be under any duty to salvage or preserve an Operator's Boat or other property from the consequences of an accident which has not been caused by negligence or other breach of duty by the Company. However, the Company reserves the right to do so in any circumstances that are appropriate in its full discretion, 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 Operator concerned for all costs arising out of the salvage or preservation of the Boat or property on a commercial charging basis.
- 4.4. The Company shall not, in any case, have any liability to the Operator or any third party for consequential or indirect losses or for any losses relating to any business of the Operator such as loss of profit or turnover. The Company's total liability to the Operator under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise shall not exceed the total Charges paid by the Operator to the Company in the contract year in which the breaches occurred or £25,000 whichever is the lesser.
- 4.5. The Operator 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 the Operator, the Operator's employees, agents, visitors and customers. If the Company suffers any loss due to any such act, failure to act or omission then the Operator will be liable to make payment to the Company to make good the loss suffered by the Company.
- 4.6. The Operator and its employees, agents, visitors and customers shall themselves be liable for any loss or damage caused by them, their crew, the Boat, or equipment and they shall be obliged to maintain adequate insurance including third party liability cover for not less than £10,000,000, and, where appropriate, Employers' Liability cover to at least the statutory minimum. The Operator shall be obliged to produce evidence to the Company of such insurance within 7 days of being requested to do so by the Company.
- 4.7. The Operator shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:
- 4.7.1. the Operator's breach of the Agreement or any act or omission including any breach of this Agreement or any act or omission by the Operators employees, agents, visitors or customers; and
- 4.7.2. any claims brought against the Company by a third party arising out of or in connection with the Operator's breach of the Agreement
- 4.7.3. or any act or omission including any breach of this Agreement or any act or omission by the Operators employees, agents, visitors or customers.

5. CHANGE OF DETAILS

The Operator must notify the Company in writing of the details of any change of any Boat or its details or change of address or telephone number of the Operator.

6. BERTH ALLOCATION

The physical layout of every Marina and the varying needs and obligations of the Company and its customers requires that the Company retains absolute control of Berth allocation within the Marina. Accordingly, the Operator 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 it by the Company.

7. CAR PARKING

The Company shall permit the Operator and its employees, agents, visitors and customers to use no more than 2 car parking spaces per Boat at any one time. Where the marina operates a permit system, all vehicles parked on the MARINA must display a current car parking permit. Where applicable, the charge for parking permits is shown on the COMPANY'S tariff and is available from the MARINA Office. The use of additional car parking spaces shall be charged at the prevailing rate as set out in Additional Services Tariff or available at the Marina reception.

8. STORAGE

The Operator must keep all areas of its operations in the Marina clean and tidy and store its equipment in designated landside areas. The Company may clear any items not kept in such designated areas and charge the Operator storage costs at the prevailing rate set out in the Marina Guide and Additional Services Tariff.

9. OVERNIGHT ACCOMMODATION

- 9.1. Where the Operator wishes to charter or otherwise rent out the Boat on an overnight basis at the Marina it must first seek written permission from the Company to do so.
- 9.2. For the purpose of providing this service the Operator may use any intermediary that they wish including Airbnb, Beds on Board etc.
- 9.3. Boats used for overnight accommodation must be placed in to one of MDL's designated areas or operated within the confines of the Operator's berthing pool (if one is provided).
- 9.4. Where the Boat is not used for skippered or bareboat charter, i.e. where the Boat does not leave the Marina, then the Boat will be deemed to be only there to provide accommodation. The Company will make a surcharge equal to £1,251.67 per annum + VAT for all Boats and other floating accommodation types solely operated by the Operator for accommodation. This charge reflects the increase in use of the marina facilities, waste disposal and other services. Parking for overnight accommodation activities also incurs additional charges in some Marinas.
- 9.5. Any boat that does not leave the Marina pursuant to 9.4 must be seaworthy and capable of manoeuvring under its own power so that it can be moved around the Marina should this be necessary.
- 9.6. All Operators must abide by all of MDL's Health, Safety, Environmental and operational processes relating to the use of a boat for commercial overnight accommodation, details for which are available from the marina office.
- 9.7. The Operator warrants that it shall have all necessary permissions for overnight charters, including but not limited to those from the local authority, their insurer and the Company.
- 9.8. Should the Company provide its consent in accordance with clause 9.1 it will provide the Operator with specific operating rules by which the Operator must at all times abide in addition to the rules set out at clause 14.

10. MARINA SERVICES

- 10.1. The Company will make available the Marina Services at the Marina such as toilets, shower facilities and waste disposal. The use of such facilities by the Operator or its employees, agents, visitors or customers shall be permitted on a reasonable use basis.
- 10.2. The Company reserves the right to charge the Operator Additional Charges for the use of the facilities if in its sole opinion the use of the facilities by the Operator or its employees, agents, visitors or customers is excessive or disproportionate to the Charge.

11. TERMINATION

- 11.1. The Company may terminate the Agreement at any time by giving notice in writing to the Operator if:
 - 11.1.1. the Operator commits a breach of the Agreement and such breach is not remediable;
 - 11.1.2. the Operator commits a breach of the Agreement which is capable of being remedied and such breach is not remedied in accordance with clause 11.2; or
 - 11.1.3. the Operator has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 14 days after the Company has given notification that the payment is overdue.
- 11.2. Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Company and/or its other Marina users and if the breach is capable of remedy, the Company may serve notice on the Operator specifying the breach and requiring the Operator to remedy the breach within a reasonable time specified by the Company. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property the time specified for remedy may be immediate or extremely short. If the Operator fails to effect the remedy within that time, or if the breach is not capable of remedy, the Company may serve notice on the Operator requiring it to remove the Boat from the Marina immediately.
- 11.3. The Company may terminate the Agreement at any time by giving notice in writing to the Operator if the Operator:
 - 11.3.1. stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 11.3.2. is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Company reasonably believes that to be the case;
 - 11.3.3. becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 11.3.4. suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 11.3.5. takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 11.3.1 to 11.3.4 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 11.4. The Operator may terminate this Agreement for convenience at any time during the Term provided that the Operator shall pay the Company the Charges due for the remainder of the Term.
- 11.5. Upon termination or expiry of this Agreement the Operator shall remove the Boat from the Berth.
- 11.6. If the Operator fails to remove the Boat on termination or expiry of this Agreement (whether under this Condition or otherwise), the Company shall be entitled:
 - 11.6.1. to charge the Operator 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 Boat from the Marina; and/or
 - 11.6.2. at the Operator'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 Boat from the Marina and thereupon secure it elsewhere and charge the Operator with all costs reasonably arising out of such removal including alternative berthing fees.
- 11.7. Any notice of termination under this Agreement shall, in the case of the Operator, be served personally on the Operator or sent by registered post or recorded delivery service to the Operator's last known address and in the case of the Company shall be served at its principal place of business or registered office.

12. RIGHTS OF SALE AND OF DETENTION

- 12.1. The Company accepts the Boat, its gear and equipment or other goods into the Marina subject to the provisions of the Torts (Interference with Goods) Act 1977 ("the Act"). This Act confers a Right of Sale on the Company in circumstances where a customer fails to collect or accept re-delivery of the Boat and/or any other property following termination of this Agreement. Such sale will not take place until the Company has given notice to the Operator in accordance with the Act. For the purpose of the Act, it is recorded that:
 - 12.1.1. the Boat (and or any other property left in the Marina) are accepted by the Company on the basis that the Operator is the owner of the property or the owner's authorised agent and that the Operator will take delivery or arrange collection following termination of this Agreement.
 - 12.1.2. The Company's obligation as custodian of the Boat (and or any other property left in the Marina) ends on expiry of its notice to the Operator of termination of that obligation;
 - 12.1.3. The place for delivery and collection of the Boat (and or any other property left in the Marina) shall be at the Marina unless agreed otherwise.
- 12.2. The Company reserves a general right ("a general lien") to detain and hold onto the Boat or other property pending payment by the Operator of any sums due to the Company.
- 12.3. If the Agreement is terminated or expires while the Company is exercising this right of detention it shall be entitled to charge the Operator 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 Operator and removal of the Boat from the Marina. The Operator shall at any time be entitled to remove the Boat 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.

13. FORCE MAJEURE

- 13.1. The Company shall not have any liability to the Operator for any failure or delay in performance of this Agreement to the extent the same results from a Force Majeure Event for as long as such event means that performance of the Agreement is not possible or is delayed. The Company shall promptly notify the Operator in writing when such Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If such a Force Majeure Event continues for a continuous period of more than three months, the Company may terminate this Agreement by written notice to the Operator.

14. LAWS AND MARINA REGULATIONS

- 14.1. The Operator shall at all times observe and comply with all legislation in force from time to time regarding health and safety together with the Company's Health and Safety Policy. A copy of the Company's Healthy and Safety Policy is available upon request.
- 14.2. The Operator shall notify the Company as soon as practicable of any health and safety incidents or material health and safety hazards at the Marina of which it becomes aware. The Operator must inform the Company of any material breach of health and safety legislation or attendance by the HSE or other government agency.
- 14.3. The Operator shall at all times act reasonably and responsibly towards the Company, its customers and staff in relation to the Marina and shall at all times observe and comply with the Company's Marina Regulations and shall ensure that its employees, agents, visitors and customers are aware of and comply with the Marina Regulations.
- 14.4. The Company shall supply the Operator with a copy of the Marina Regulations and Code of Conduct. The Company reserves the right to introduce new Marina Regulations or update the Code of Conduct on grounds of legal requirement or for the safety or security or good management of the Marina, and to amend such regulations as from time to time shall be necessary. Such Marina 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 Marina, and the Company shall have the same rights against the Operator for a breach of the Marina Regulations as for a breach of the terms of this Agreement.
- 14.5. This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 14.6. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.