

Berthing Licence Agreement

- 1 **DEFINITIONS**
- Berth:** the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of the Licence.
- Commencement Date:** the date the Licence starts, as set out in the Licence.
- Company, We:** Naburn Leisure Limited, with company number 05873639, whose registered address is in at Naburn, York, YO19 4RW.
- Conditions:** these terms and conditions for wet and dry berthing.
- End Date:** the date the Licence ends as set out in the Licence.
- Length Overall, LOA:** the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.
- Licence:** the licence agreement between You and the Company (which is subject to these Conditions) permitting You to berth the Vessel at the Premises.
- Marina:** York Marina, Naburn, York, YO19 4RW.
- Owner, You:** any charterer, master, agent or other person for the time being in charge of the Vessel.
- Premises:** all the land, adjacent water and buildings occupied by or under control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mud berths, sheds, lofts, workshops, hardstanding, roadways and car parks.
- Vessel:** any craft, boat, ship, yacht, dinghy, multihull, or other marine structure to be berthed under the Licence.
- 2 **THE LICENCE**
- 2.1 Berths at the Marina or Premises shall be licensed at the rates of charge from time to time published by the Company. Details of the charges applicable to the Berth at the start of the Licence will be given to You at the Start Date.
- 2.2 The Licence shall start on the Start Date and will end on the End Date unless terminated earlier under the provisions of Condition 8.
- 2.3 The Licence is personal to the Owner and relates to the Vessel described in the Licence. It may not be transferred or assigned to a new Owner or to a different vessel, either temporarily or permanently, without the express written consent of the Company.
- 2.4 Within 7 days of any agreement for the sale, transfer or mortgage of a Vessel, 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.
- 2.5 No part of the Premises or any Vessel or vehicle situated therein shall be used by the Owner for any commercial purpose, except with the prior written consent of the Company. In the event that a Licence is granted to a commercial operator whose Vessel is operated for hire or reward in the course of trading, special conditions will apply to the Licence, which We will provide. Owners are strictly prohibited from advertising their vessels for rental, hire or accommodation without prior consent from the Company.
- 2.6 It is advisable for any new or inexperienced Owners to complete an RYA inland helmsman course or ICC competent crew. This will give you the relevant training required to operate the Vessel safely.
- 3 **BERTH ALLOCATION**
- 3.1 The Company retains absolute control of Berth allocation. 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. If You cannot access the Berth, You should moor at the D pontoon and inform the Marina reception.
- 3.2 The Company may have the use of the Berth when it is left vacant by the Owner.
- 3.3 Vessels shall be berthed or moored by the Owner in such a manner and position as the Company may require. Vessels shall only be moored to bollards and equipment designated for such purpose. You shall provide the necessary warps and fenders for the Vessel and You shall be responsible for ensuring that all such warps and fenders are adequate and replaced, maintained and adjusted as necessary.
- 3.4 The Company takes no responsibility for any fendering fixed by You to pontoons and such fendering can only be attached with the permission of the Marina manager. Fenders attached to Vessels remain your sole responsibility.
- 3.5 Chaining and locking of tenders to pontoons or vacated Berths is strictly forbidden. The Company reserves the right to remove any such tenders or personal water craft.
- 4 **BERTHING FEE AND PAYMENT AND OTHER COSTS**
- 4.1 You must pay the berthing fee to the Company in the manner set out on the Licence. The berthing fee includes:
- 4.1.1 fresh water for use onboard the boat;
- 4.1.2 toilets, showers and washbasins in dedicated facilities;
- 4.1.3 storage ashore (subject to availability);
- 4.1.4 navigable access by water into the Marina (this is subject to the level of the riverbed, seabed, tides, floods and the draft of your boat); and
- 4.1.5 receptacles for the deposit of refuse excluding any hazardous or toxic substances.
- 4.2 The berthing fee does not include the following, which should be arranged with Marina:
- 4.2.1 Lifting and launching charges;
- 4.2.2 shore power and related charges; and
- 4.3 The Company is entitled to charge for all Marina services other than those set out in condition 4.1 and may invoice You for such services on or any time after provision of such services. You must pay our invoices immediately on receipt, and in any event within 14 days of receiving the invoice. Payments by credit card shall be at our discretion and may be subject to an administration fee.
- 4.4 The berthing fee is payable whether the Berth is occupied or not. No refunds will be made to the Owner for any period where the Berth is not occupied. Berthing fees are non refundable or transferable unless otherwise indicated.
- 4.5 If You fail to make payment on the date it is due We will send You a reminder. If You do not pay within 7 days of the date of the reminder, We shall be entitled to take all or any of the following steps:
- 4.5.1 terminate the Licence immediately by giving You notice in writing;
- 4.5.2 suspend the provision of any services, including but not limited to the provision of a berth;
- 4.5.3 prevent the Vessel from leaving the Marina;
- 4.5.4 lift the Vessel on to the Company's hard standing and charge You for this;
- 4.5.5 charge You interest (both before and after any judgement) on the amount unpaid at the rate of 4% per annum above the Bank of England base rate, calculated daily up to the date of actual payment; and
- 4.5.6 charge and claim from You the cost of recovering any overdue amount including but not limited to legal costs.
- 4.6 Any Vessel, vehicle or equipment stored or moored at the Marina is subject to the provisions of the Torts (Interference with Goods) Act 1977, which gives the Company a right of sale exercisable under compliance of the conditions of the act.
- 4.7 If the Owner changes the Vessel during the Licence period the Owner will submit a new mooring application form detailing the new Vessels details. The application will be subject to approval by a Company director before the Vessel is allowed to berth at the Premises.

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- 4.8 If the Vessel is accepted by the Company and is larger than the previous Vessel, the Company will charge the Owner pro-rata berthing fees based on the contract type stated in the Licence. No pro-rata refund will be issued by the Company if the new Vessel is smaller than the original Vessel.
- 4.9 If You are allocated electric on our metered system, connection, meter rental and minimum charges will apply even if no units have been used. If You have asked for electric but find You are not using it You must inform the Company or you will still be charged. Electricity connections are for your Vessel only and must not be disconnected and/or used by other owners under any circumstances. This is theft and will be treated as such.
- 4.10 No refunds or part refunds will be issued by the company where there is a failure by the company in performing its obligations under this agreement due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy.
- 5 OWNER'S OBLIGATIONS**
- 5.1 You must ensure the Vessel is kept in a seaworthy and smart condition at all times whilst at the Premises. If the Vessel is damaged then repair works must be carried out as soon as reasonably possible. Tarpaulins and sheets are allowed as a temporary cover only. The Company shall be the sole judge of what is considered smart condition. The Company reserves the right to carry out any work on the Vessel if, in the Company's opinion, such work is necessary for the safety of the Vessel, the Premises, plant or equipment. You shall pay the Company reasonable charges for any such work.
- 5.2 You must not reside aboard any Vessel nor shall a vessel be used as a houseboat. The restriction shall not prevent residence aboard a Vessel during a period of holiday for the purposes of that holiday.
- 5.3 The Company cannot guarantee that the water level in the Marina will be sufficient to enable your Vessel to safely navigate to, from and within the Marina. You are responsible for checking that there is sufficient water for You to navigate to, from and within the Marina.
- 5.4 You must keep the Berth in presentable and tidy condition. No items of the Vessel's gear, equipment, stores or any other possessions of the Owner are to be left at the Premises unless expressly agreed by the Company. The Company reserves the right to remove and dispose of such items.
- 5.5 The name of the Vessel must be clearly displayed on the Vessel in a prominent position making it easily identifiable. All items of the Vessel's gear, tenders, dinghies, trailers and all other equipment must also be clearly marked with the Vessel's name.
- 5.6 Owners shall promptly report to the Company any damage to the Marina or to any plant or machinery situated at the Marina by any Vessel or any damage done by a Vessel or vehicle by other Vessels or vehicles or any alleged defect in the Marina.
- 5.7 The Owner must notify the Company in writing of the details of any change of names of the Vessel or change of address or telephone number of the Owner.
- 5.8 Owners are prohibited from discharging any kind of waste and sewage with in the Marina confines.
- 6 OWNER'S WARRANTY TO THE COMPANY**
- 6.1 You warrant to the Company that You are the legal Owner of the Vessel and have the immediate right to possess the Vessel.
- 6.2 The Owner confirms that the information supplied in the Licence is correct. The Owner shall inform the Company immediately of any changes to such information.
- 6.3 Vessels berthed at the Marina must have a valid boat safety certificate. The Owner shall supply a copy of the certificate to the Company and/or inform the Company of the certificate's unique reference number if required by the Company.
- 6.4 The Owner confirms that You have a primary residential address in the EU and if required by the Company can prove this, by producing a recent council tax or utility bill.
- 7 LIABILITY, INDEMNITY AND INSURANCE**
- 7.1 The Company shall not be liable for any loss or damage caused by:
- 7.1.1 any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties or any defect in any part of a customer's or third party's Vessel); and
- 7.1.2 Your breach of any of these Conditions.
- 7.2 Condition 7.1 extends to loss or damage to Vessels, gear, equipment or other goods left with it for repair or storage, and harm to persons entering the Premises or the Marina and/or using any facilities or equipment.
- 7.3 The Company shall take all reasonable steps to maintain security at the Premises and to maintain the facilities at the Premises in reasonable working order. In the absence of negligence or breach of duty on the part of the Company, Vessels, gear, equipment or other goods are left with the Company at the Owner's own risk and Owners should ensure that they have appropriate insurance against all relevant risks.
- 7.4 The Company shall not be under any duty to salvage or preserve a Vessel or other property from the consequences of any defect in the Vessel or property concerned unless expressly agreed with the Owner. The Company shall not be under any duty to salvage or preserve a 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 so 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 a normal commercial charging basis and, where appropriate, to claim a salvage reward.
- 7.5 Owners may themselves be liable for any loss or damage caused by them, their crew or their Vessels and they shall be obliged to maintain adequate insurance including third party liability cover for not less than £3,000,000, and, where appropriate, employers' liability cover to at least the statutory minimum. The Owner shall be obliged to produce evidence to the Company of such insurance within 7 days of being requested to do so by the Company.
- 8 TERMINATION**
- 8.1 Either party may terminate the Licence at any time by giving the other party 16 weeks' written notice.
- 8.2 Without affecting any rights under these Conditions, We may end the Licence immediately by giving You written notice if:
- 8.2.1 You fail to pay any amount due under these Conditions on the date it is due; or
- 8.2.2 You breach a material term of these Conditions (and if remediable) You fail to remedy such breach within the time frame set out in the notice We will send You informing of the breach in question; or
- 8.2.3 You (being an individual) are the subject of a bankruptcy petition or order; or
- 8.2.4 You (being a company) stop trading or get into a position whereby You cannot pay your debts and/or an insolvency situation arises (for example a receiver, liquidator or administrator, trustee or someone similar is appointed over any of your assets or You propose to make any arrangement with your creditors or You go into liquidation) or a similar event in a different jurisdiction; or
- 8.2.5 You (being a company) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of your business.

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- 8.3 If You fail to remove the Vessel on termination of the Licence, 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 the Licence and the actual date of removal of the Vessel from Premises; and
- 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) remove the Vessel from the Premises, secure it elsewhere and charge the Owner with all costs reasonably incurred out of such removal including alternative berthing fees.
- 8.4 Following any such termination notice, the Company shall prepare an account of all sums owed by You (including Berthing Fees) in respect of services or facilities up to the intended date of departure. An invoice for any amounts owing shall be payable by You within 14 days of receipt of the invoice.
- 8.5 Any notice of termination shall be successfully served if delivered by hand, or if sent by registered post or recorded delivery to the party's address set out in the Licence.
- 9 RIGHTS OF SALE AND DETENTION**
- 9.1 Where the Company accepts a Vessel, gear, equipment or other goods for repair, refit, maintenance or storage, the Company does so subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on the Company in circumstances where a customer fails to collect or accept re-delivery of the goods (e.g. a Vessel and/or any other property). Any such sale will not take place until the Company has given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
- 9.1.1 goods for repair or other treatment are accepted by the Company on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
- 9.1.2 the Company's obligation as custodian of goods accepted for storage ends on its notice to the customer of termination of that obligation; and
- 9.1.3 the place for delivery and collection of goods shall be at the Premises unless agreed otherwise.
- 9.2 Maritime Law entitles the Company in certain other circumstances to bring action 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 judgment debt against the Owner of a Vessel or other property.
- 9.3 The Company reserves a general right ("**General Lien**") to detain and hold onto the Vessel or other property pending payment by the Owner of any sums due to the Company. If the Licence is terminated or expires while the Company is exercising this General Lien 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 the Licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the 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 VESSEL MOVEMENTS AND MEASUREMENTS**
- 10.1 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 Premises. A copy of the Company's charges for Vessel movements will be provided to the Owner before they enter into the Licence.
- 10.2 Where a specific date or tide range for relaunch of the Vessel has been agreed between the parties 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.
- 10.3 No Vessel, when entering or leaving or manoeuvring in the Marina, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels.
- 10.4 Vessels are at all times subject to the speed restrictions and byelaws of Marina 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.
- 10.5 For all purposes the LOA of the Vessel shall be calculated including davits, bathing platforms, bowsprits, bumpkins, boarding ladders, sterndrives, outboard motors, tenders, rudders, anchors, pulpits and pushpits and any other extension fore or aft of the Vessel.
- 10.6 The Company reserves the right re-measure the Vessel at any time whilst at the Premises for the purpose of calculating berthing and service charges. The Company reserves the right to back date any fees should the Owner have supplied the Company with incorrect information in respect of the LOA.
- 11 STORAGE OF DINGHIES, TENDERS AND TRAILERS**
- 11.1 The maximum permitted length of any dinghy or tender in the marina is 3.0m.
- 11.2 Dinghies, tenders and rafts must be able to be stowed aboard the Vessel unless the Company allocates a separate berth for them. If the Company provides a separate berth the Company reserves the right to charge for this.
- 11.3 The company reserves the right to move/remove any dinghies/tenders or other water sports equipment that is occupying/obstructing a vacant berth. Please be considerate to other berth holders.
- 11.4 All dinghies/tenders must display the name of the mother ship or contact details of the owner.
- 11.5 Trailers can only be stored in designated areas, subject to prior approval from the Company. The Owner shall be charged at the prevailing rates should such facility be provided. All trailers must display a tag, available at the Marina office, which is issued on payment. Trailers found not to be displaying a tag may be removed by the Company.
- 11.6 All trailers must display the name of the Vessel and be wheel clamped. A key for the clamp must be left at the Marina office.
- 12 CAR PARKING AND CAMPING**
- 12.1 Under no circumstances may any vehicle be parked or left so as to obstruct the roadways, walkways, footpaths, slipways, craneage or access points at the Marina. The Company reserves the right to clamp or remove any vehicle and to charge the Owner for the cost thereof. The Company shall not be liable to the Owner for any loss, cost or damage suffered or incurred by the Owner where such action is taken.
- 12.2 No tent, caravan or other vehicle adapted for sleeping may remain on the Premises except with prior written consent from the Company. The company operates a Caravan site, prices for which are available on request or on the Company's website.
- 12.3 Car parking is only for berth holders and their crew for short term periods of up to 2 weeks. The Company may charge for longer periods. Long stay car parking must be arranged with the Company in advance.
- 12.4 Under no circumstances can a vehicle without a current road fund licence be left at the Marina. Any vehicle without a current road fund licence or unsuitable for public roads will be reported to the authorities and may be removed. Any costs incurred by the Company in so doing shall be claimed back from the Owner.
- 13 PRIVATE SALE OF VESSELS**
- 13.1 Unless expressly permitted by the Company, the Company strictly prohibits the private sale of Vessels at the Premises. The Company offers a brokerage service for the safe and secure management of Vessel sales.

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Please remove the Vessel from the Premises if you wish to sell it privately.

13.2 Owners are not permitted to display a "for sale" notice on the Vessel or advertise the vessel whilst at the Marina other than those of the Company's brokerage.

13.3 Vessels changing ownership under private sales will not retain the mooring unless agreed in writing with the Company beforehand.

13.4 If the Vessel is sold privately whilst at the Premises, the Company reserves the right to;

13.4.1 charge a commission on the selling price of the Vessel;

13.4.2 estimate the selling price for the purpose of calculating the full brokerage commissions if the selling price is not confirmed by the Owner; and

13.4.3 terminate the Licence.

13.5 If permission for a private sale is granted it is the Owner's responsibility to be present at all times during which the Vessel is being viewed.

13.6 The Owner will still have to pay the Company's brokerage rates if the Vessel is sold privately to a purchaser who was introduced to the Owner by the Company to the Company's broker.

14 ACCESS TO PREMISES/WORK ON THE VESSEL

14.1 Subject to Condition 14.4 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 customer or person residing in the vicinity, nor interfering with the Company's schedule of work, nor involving access to prohibited areas.

14.2 Maintenance may only be carried out between the hours of 0900 and 2000 hours. The Company reserves the right to charge You the full cost of any remedial works required to the Marina as a result of any such work.

14.3 Extensive external sanding, angle grinding, welding, internal refit, spray painting, shot blasting are considered major works and cannot be carried out without prior written of the Company.

14.4 Prior written consent will not be unreasonably withheld where:

14.4.1 the work is of a type for which the Company would normally employ a specialist sub-contractor; or

14.4.2 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.

14.5 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.

14.6 Owners may use other contractors and bona fide tradesperson other than the Company to carry out work on the Vessel for maintenance purposes subject to complying with the following conditions:

14.6.1 prior written consent has been given by the Company;

14.6.2 the contractor must carry out suitable risk assessments for the work to be undertaken and provide the Company with a copy of its third party liability insurance showing a policy cover of not less than £3,000,000; and

14.6.3 the contractor must sign in and out at the Marina office and pay the Company a contractors fee of £100 per day. The Company reserves the right to charge this fee to the Owners account if the invoice goes unpaid by the contractor. Any charges may be made retrospectively in light of any work undertaken that was not made aware to the Company at the time the work was undertaken.

15 RULES AND REGULATIONS

You, your family, any crew and any person carrying out work on the Vessel must observe and abide by the Marina rules and regulations and

any health, safety and environmental policy in place from time to time, copies of which will be provided to you. The Company reserves the right to introduce new regulations at any time. Such regulations and any amendments to them shall become effective on being displayed on the Company's public notice board, website or other prominent place at the Premises. Any breach of the Regulations will be treated as a serious breach of these Conditions.

16 GENERAL

16.1 We will not be liable for delay in performing or failure to perform our obligations if the delay or failure results from any cause or circumstance beyond our reasonable control (including, but not limited to, acts of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government authority (including refusal or revocation of Licence or consent), fire, explosion, flood, fog or bad weather, power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles, default of suppliers or sub contractors, theft, malicious damage, strike, lock-out or industrial action of any kind).

16.2 In the event of any conflict between these Conditions and the Marina rules and regulations, these Conditions shall prevail.

16.3 These Conditions are subject to and governed by the law in England and Wales. The parties shall submit to the non-exclusive jurisdiction of the Courts of England and Wales.

16.4 You are prohibited from subletting your mooring, or subletting your boat, either in full or in part, while within the Marina.

Signed in acceptance of these terms:

Owners Signature	
Date	

Office Use:

RENEWING - contract confirmed on Havenstar

NOT RENEWING – contract deleted on Havenstar

Invoice checked and created

Receipt Sent to customer

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