

## All use of the Marina Premises is subject to Mayflower Marina Terms & Conditions

These Terms and Conditions ("terms") will be subject to English Law and the jurisdiction of the courts of England and Wales.

### Definitions

Under these terms, the following words will have the following meanings:-

"Application" means the licence application form submitted by You and accepted by Us to which the Licence relates;

"LOA" means the length overall of a vessel, being the furthest point aft to the furthest point forward and shall include but not be limited to, bowsprits, davits, bathing platforms, bumpkins etc;

"Licence" means the licence granted to You to berth a vessel on Our Marina Premises under these terms.

"Licence Fee" means the fee payable by You to Us in accordance with these terms ;

"Marina" means the Mayflower Marina operated by Us and, where the context permits, includes all moorings, or any other vessel berthing facility owned or operated by Us;

"Marina Premises" means the Marina, including its dock walls, and any roads, car parks, paths, buildings and other areas, equipment and facilities owned or operated by Us;

"Us", "We", "Our" etc means Sailport plc (trading as Mayflower Marina) registered in England and Wales with company number 01422153 whose registered office address is at 5th Floor Salt Quay House, 4 North East Quay, Plymouth, Devon, PL4 0BN and, where the context permits, includes Our employees, workers, contractors and agents;

"vessel" means only the vessel described in the Application but includes any replacement or other craft (including rigid inflatable boats, dinghies, tenders, inflatables, auxiliary craft) that we may, in Our absolute discretion, agree in writing with you from time to time is licensed to use the berth.

"You", "Your" etc means the person whose application for a licence for a period of berthing has been accepted by Us to whom the Licence is granted.

These terms, together with Our operating policies and all notices and information sheets issued in connection with them, will apply to You and Your licence to the exclusion of any other terms.

We reserve the right to amend these terms (but not the amount of the Licence Fee (excluding VAT) payable during the period of the Licence) or introduce amended or new notices and/or information sheets where necessary to comply with legal requirements or to the extent that we reasonably consider appropriate for the safety or security or good management of the Marina Premises. Any such changes replacements or additions will be published on the marina office notice board at the Marina Premises and will be effective from publication.

### The Licence

1. (a) We agree to provide to You berthing facilities (as set out in the Application or as otherwise confirmed in writing by Us) in the Marina Premises for Your vessel for the duration of this Licence in consideration for Your paying to Us the Licence Fee. Please note that the berthing licence does not include any right for on shore storage which, if available, is subject to separate agreement.
- (b) The Licence period will be as set out in the Application or as otherwise confirmed in writing by us on grant of the Licence and will be subject to earlier termination as provided in these terms.
- (c) The Licence will not automatically be renewed but will end at the end of the agreed Licence period if not earlier terminated in accordance with these terms.
- (d) Nothing in this Licence entitles You to the exclusive use of any particular berth and We may in our discretion issue revised berth allocations from time to time. The Licence is personal to You and for the agreed vessel and You may not assign or transfer the Licence or loan or share or permit the use of any berth allocated to You by Us to, with or by any other person or use it for any other vessel without Our express prior written consent.
- (e) We are under no obligation to give any consent under condition 1(d), but if we do so then this will be subject to:
  - (i) the owner of such other vessel undertaking in writing to Us to observe these terms;
  - (ii) the owner of such other vessel providing Us with satisfactory evidence of insurance to cover the risks set out in condition 6 below; and
  - (iii) You remaining fully liable to Us in respect of Your obligations under these terms.

### Licence Fees and other charges (including utilities)

2. (a) The Licence Fee will be calculated by reference to Our published charges prevailing at the time of the grant of the Licence for the type of licence and licence period granted to You. Additional charges may apply for further services, such as vessel movements and winter storage ashore, in accordance with Our published details from time to time or as otherwise agreed with You. The provision by Us of any such additional services is subject to Our agreement and to availability of persons and equipment.
- (b) Unless otherwise stated by Us, the Licence Fee and Our other charges are subject to VAT at the prevailing rate and in the event of any increase or reduction in the rate of VAT We have the right to adjust the amount(s) payable by You accordingly.
- (c) Unless otherwise agreed by Us, the Licence Fee is payable by You in advance for the whole of the Licence period and We reserve the right to charge You at the rate applicable to short term visitors for each day where Your vessel is on the Marina Premises before the Licence Fee is paid in full or for any period of berthing in excess of the agreed Licence period.
- (d) Unless otherwise agreed by Us or expressly set out in our Licence tariffs, You are responsible for all outgoings which may become payable in respect of Your use of Our berthing facilities including fresh water and electricity. Supplies by Us will be charged at Our standard charging rates published at the Marina Premises from time to time and, where not charged through prepayment meters, will be invoiced to You by Us and will be payable on presentation of the invoice or before your vessel leaves the berth (whichever is the sooner).

(e) You may not connect to the electricity or fresh water supplies at the Marina Premises without Our prior consent and We reserve the right to disconnect vessels, vehicles or equipment from any connections where this has been done without Our consent or otherwise in the interests of safety or good estate management.

(f) We are under no obligation to provide electricity or fresh water to any vessel within the Marina and, due to the marine environment and the sensitivity of safety devices, We cannot guarantee the continuity of such supplies where already available.

(g) We will not be liable to you for adverse consequences loss, damage or increased costs to You arising as a result of any non-availability, interruption or failure of such supplies.

### Interest and Lien

3. (a) Any monies payable by you that are not paid on or before the date for payment will attract interest at the annual rate of 4% above base rate for the time being of Barclays Bank plc.
- (b) We have the right to exercise a general lien (i.e. the right to take possession of and prevent You from gaining access to, using or moving a vessel and/or other property including gear and equipment left at the Marina Premises) over any vessel and/or other property whilst in or on the Marina Premises until such time that any sums due to Us in respect of the vessel and/or other such property, whether on account of services provided or work done or damage to Our property or otherwise (including, without limitation, interest and Our costs in enforcing the general lien and obtaining from You payment of any sum due to Us under these terms) are paid.
- (c) We will not have the right to exercise a general lien in accordance with condition 3(b) above unless the sums due to Us exceed £100.

### No Residential or Commercial Use

4. (a) Unless otherwise expressly agreed by Us in writing, the Licence is for Your pleasure use only of the vessel and You must not use any part of the Marina Premises or any vessel occupying a berth provided by Us for residential or commercial purposes.
- (b) Residential purposes includes (but is not limited just to):
  - (i) use of the vessel as the principal or main place of residence by any person; or
  - (ii) any person staying on board the vessel in excess of an average of four nights per week over a ten week period; or
  - (iii) use of the Marina Premises as a mailing address; or
  - (iv) Other use which in Our reasonable opinion, constitutes Your use of the vessel as a place of residence
- (c) Commercial purposes includes (but is not limited just to);
  - (i) embarkation or disembarkation of charter parties, employees or paying guests; or
  - (ii) conducting commercial sales or demonstrations for sale; or
  - (iii) hire of the vessel (provided that the occasional use of the vessel by a personal friend of Yours on payment to You of a contribution towards the actual running costs of the said vessel without profit by You will not be deemed a commercial purpose); or
  - (iv) the private sale of more than one vessel during any one or more periods of six consecutive months of the Licence period.
- (d) If you wish to carry out a private sale of Your vessel from the marina Premises You must:
  - (i) notify Us as soon as possible of the vessel being for sale and the identity of any broker instructed by you in connection with the sale. In the interests of security, We reserve the right to refuse entry to or remove from the Marina Premises any person whom we are not aware of, or do not consider, has a legitimate reason to be on the Marina Premises or attending any vessel;
  - (ii) be present at all times during which the vessel is to be viewed; not display any "For Sale" notice on Your vessel in or on the Marina Premises; and
  - (iii) within seven days of the sale, notify Us in writing of the name and address of the buyer of the vessel. Your Licence is not transferable without Our consent and Your failure to notify Us of a sale will constitute a breach of the terms of Your Licence and may result in the termination of Your Licence.

### Vessel Condition and Insurance

5. (a) You must ensure that at all times Your vessel is maintained in a clean and tidy state and in a seaworthy condition.
- (b) The vessel must be berthed or moored by You in a seaman-like manner and in such a configuration and position as We may from time to time require and, unless otherwise agreed by Us, all necessary warps and fenders must be provided and maintained or replaced by You. Vessels must be clearly identifiable by name.
- (c) You must insure Your vessels and vehicles against loss or damage however caused, which insurance must include cover for liability to third parties (including public liability and, where relevant, employer's liability) in respect of Yourself and each of Your vehicles or vessels, Your crew for the time being, and Your agents, servants, visitors, guests and sub-contractors in a sum of not less than £5,000,000 in respect of each accident or damage and must maintain in respect of each vessel adequate removal of wreck insurance. You must produce the policy or policies relating to Your insurance (together with proof of payment of premiums) to Us within 7 days of request.

### General Conditions

#### Visitors and other third parties

6. (a) All persons using any part of the Marina Premises or facilities provided thereon for whatever purpose and whether by invitation or otherwise do so at their own risk unless any injury or damage to person or property sustained within the Marina Premises was

caused by or resulted from the negligence of Ours or those for whom We are responsible.

- (b) You must ensure that at all times while on any part of the Marina Premises Your visitors, employees, workers, contractors and agents (including any charterer, master, skipper, sub-contractor or other person for the time being lawfully in charge of the vessel (other than Us or Our employees or agents)) comply with these terms. You will be liable to Us for any act or omission by any such person which, if it had been done or omitted to be done by You, would amount to any breach of these terms or of the Licence.

#### **Vessel and property movement, storage of equipment and re-allocation of berths**

- (c) Your vessel when entering or leaving or manoeuvring in the Marina must be navigated under power and not be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Marina. You must at all times comply with any speed restrictions and bye-laws relating to the Marina, details of which will be provided by Us on request. You must notify Us when You intend to leave the Marina (giving an indication of Your anticipated date and time of return and details of any motor vehicles left by You in the car park) and must comply with the appropriate navigation and safety signals given by the Marina's Duty Manager.
- (d) You and Your guests are required to park their motor vehicles in such position and in such manner as will from time to time be directed by Us. Caravans, motor homes or tents may not be parked in the car park without Our prior written permission. Only one car per vessel may be parked in the car park free of charge and any car not belonging to the owner of a vessel berthed in the Marina Premises will be charged a parking fee in accordance with Our published rate from time to time. Parking is subject to availability and space is not guaranteed. All vehicles are parked at the owner's own risk.
- (e) Dinghies, tenders and other small craft must be stowed aboard the vessel unless a berth for them is separately provided by Us. No items of boats, gear, fittings or equipment, supplies, stores, or the like may be left upon the pontoons, jetties or car parks without Our prior written consent.
- (f) We have the right to moor, re-berth, move, board, enter, lift ashore, slip or carry out any emergency work on the vessel, if in Our opinion it is necessary for the safety of the vessel or the safety and/or convenience of other users of the Marina Premises or for the safety of Our plant and equipment and You must pay Our reasonable charges for such work. We may also move any vehicle or other property of Yours within the Marina Premises without Your knowledge or consent where such movement is necessary for the proper or efficient operation of the Marina Premises. We will use reasonable endeavours to avoid or minimise damage arising from such movement.
- (g) If at any time during the Licence period the berth previously allocated by Us to You is not used by You for mooring Your vessel, then We will be entitled to moor or permit a third party to moor a vessel at that berth and We will be entitled to all income (if any) arising. You must use all reasonable endeavours to give to Us not less than 24 hours previous notice of Your intention to return Your vessel to the Marina so that we may allocate an alternative berth to You.
- (h) If You wish to make use of Our boat hoist and instruct Us to lift or store your vessel, mast or other equipment You must acquaint Yourself with the conditions of lifting set out in the hoist booking form. All work undertaken by Us will be done so in accordance with our operating policies in force from time to time.

#### **Works, noise, nuisance and contamination**

- (i) No work will be done to the vessel whilst in or on the Marina Premises (unless with Our consent which may be withheld at Our discretion or granted subject to any conditions that We may see fit) other than minor running repairs or minor maintenance of a routine nature by You, Your regular crew, or members of Your family, not causing any nuisance or annoyance to any other users of the Marina Premises or any other premises or any person residing in the vicinity.
- (j) No noisy, noxious or objectionable engines, radio, or other apparatus or machinery may be operated within the Marina Premises nor may animals be allowed within the Marina Premises so as to cause any nuisance or annoyance to Us, to any other users of the Marina Premises or any person residing in the vicinity and You undertake for Yourself, Your guests and all using the vessel that they will not behave in such a way as to offend as aforesaid. Halyards must be secured so as not to cause such nuisance or annoyance.
- (k) No refuse or noxious substances or sewage may be discharged or thrown overboard or left on the pontoons breakwater or car parks or boatyard, or disposed of in any way other than in the receptacles provided by Us or by removal from the Marina Premises. Any sea toilet fitted to the vessel may not be used whilst the vessel is in the Marina.

#### **Fire safety**

- (l) In the interests of safety and in addition to the obligations set out in clause 5, You must ensure that Your vessel's electrical system and the electrical appliances therein and any other devices to be connected to Our supplies are in good condition and are tested and maintained regularly by a qualified electrician. Furthermore, You must ensure that any portable heating appliances are, when in use or still hot, positioned in such a way that they cannot fall over and that no combustible materials are capable of falling on or against Your heating appliance(s).
- (m) You must not undertake any hot work (including but not limited to grinding, welding, burning and brazing) without Our prior written consent.
- (n) You must take all necessary precautions against the outbreak of fire in or upon Your vessel and You must observe all statutory and local regulations relative to fire prevention. You must provide and maintain at least one fire extinguisher of a government approved or BSI standard type and size in or on the vessel in case of fire, which extinguisher must at all times be kept ready for immediate use, in good and efficient working order and within the manufacturer's recommended lifespan. Vessels may not be refuelled on the Marina Premises except from Our supply.

#### **Fishing swimming and other water activities**

- (o) You may only fish from Your vessel (but this may not include casting) whilst it is in the Marina but You may not fish anywhere else within the Marina Premises. Subject to

the grant of a licence, you may fish (including casting out to sea) on the outboard side of the Marina's breakwater.

- (p) Swimming, diving (including commercial diving) and the use of, stand-up paddle boards, fun inflatables, canoes, jet skis or other powered or non-powered personal water craft, within the confines of the Marina is strictly prohibited. This condition does not prohibit the use of a vessel's tender or jet ski within the applicable speed limited purely for the purpose of transiting the waters of the Marina to/from the parent vessel.

#### **Limitations on Our Liability**

7. (a) Nothing in these conditions including the following provisions of this condition 7 seeks to exclude or limit Our liability for any matter which it would be illegal for Us to exclude or attempt to exclude Our liability, including liability for personal injury or death caused by Our negligence or that of Our employees or others for whom We are legally responsible, nor for loss or damage arising from Our fraud or fraudulent misrepresentation.

Except as set out in the preceding condition:

- (b) While we will take reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at the Marina Premises, We will not be liable for the loss, theft or any other damage of whatsoever nature caused to any vessel or vehicle or other tangible property (whether insured or not) belonging to You or others claiming through or against You except to the extent that this is caused by the negligence or deliberate act or deliberate omission of Us or of those for whom We are legally responsible; Your attention is specifically brought to Your obligations under condition 5(b) and condition 6(a).
- (c) We will not be liable to you for any loss or damage caused by events or circumstances beyond Our reasonable control (such as severe weather conditions, the actions of third parties not employed by Us or any defect in a customer's or other third party's property). This extends to loss or damage to vessels, gear, equipment and other property left with Us for work or storage and to harm to persons entering the Marina Premises or the Marina and/or using any facilities or equipment.
- (d) We will not be liable for loss, damage or costs of whatsoever nature suffered by You as a result of any means of granting vessel access to the Marina being inoperative or temporarily inaccessible except to the extent that such inoperation or inaccessibility is caused by Our negligence or that of Our employees or others for whom We are legally responsible.
- (e) Where We are liable to You and You are dealing with Us or using Our facilities or services other than as a consumer:  
(i) we will not be liable to You or any other person for any indirect consequential loss (both of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by Us or any person for whom We are vicariously liable (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise); and  
(ii) all warranties conditions and other terms implied by statute or common law and not expressly incorporated in these terms are, to the fullest extent permitted by law, excluded.
- (f) If We are in breach of contract or otherwise in breach of any legal duty or obligation to You to which these terms relate and have a liability to You that is not excluded by the foregoing conditions of these terms (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise) Our aggregate liability to You will not exceed the higher of £1,000,000 and the amount for which We are effectively insured against such liability. Details of Our insurance cover are available on request.
- (g) The limitation of liability under these conditions is reflected in the level of Licence Fees and other charges charged by Us. In the event that You require a greater extent of liability on Our part, We will be happy to discuss alternative arrangements with You and may be able to offer further insurance protection, subject to Your being responsible for Our additional charges associated with Our assumption of this greater risk and increased insurance costs, but You are recommended to ensure that You have your own adequate insurance for Your vessel, personnel and any person for whom you may be acting and any other losses and damages that may be caused or sustained by them or their use.
- (h) You must inform Us of any accident or incident likely to give rise to a claim occurring on the Marina Premises within 7 days of the date of such accident or incident.
- (i) You will indemnify Us against (i.e. pay for) any loss, damage, expense or costs reasonably incurred by, and all actions claims or proceedings instituted against, Us or Our employees, workers, agents and contractors which may be caused by Your vessel or vehicle or by You or any person for whom you are responsible by law or under these terms except to the extent that this is caused by Our negligence or that of those for whom We are legally responsible.

#### **Termination**

8. (a) In the event of any breach of these terms by You or Your visitors, employees, workers, contractors or agents that, having regard to the nature and seriousness of the breach and the risk it poses for Our financial or reputational status or the security of Our property or Our customers or their property, we consider to be a serious breach or one posing an immediate risk to property or persons, then we have the right to terminate the Licence with immediate effect by serving a written notice on You or Your vessel. For the purposes of these terms a serious breach means serious in the widest sense of the term and not minimal or trivial in its consequences.
- (b) In the case of any other breach (including non-payment of any Licence fees or other charges due) by You or Your visitors, employees, workers, contractors or agents, We will have the right to serve a written notice on You or Your vessel specifying the breach and requiring compliance within a reasonable period, usually 7 days of the notice. If the breach is not rectified within the period specified in the notice or You

commit a further breach of these terms, We have the right to terminate the Licence with immediate effect by serving a written notice on You or Your vessel.

- (c) Upon termination of this Licence in accordance with conditions 8(a) or 8(b) above, We may refuse to provide any further services at Our sole discretion and You must remove Your vessel and all other property and effects belonging to You or under Your control from the Marina Premises immediately on termination of the Licence. We will not be obliged to make any refund to You of any of the Licence Fee.
- (d) We also have the right to suspend or terminate this Licence by the giving of written notice to You if at any time the Marina Premises are, in our reasonable opinion, so damaged, impeded, or interfered with by any cause (whether or not insured against by Us) as to render it unlikely that We will be able to continue to provide a berth or mooring in accordance with the Licence. This condition applies equally in respect of damage, impedance and interference arising from natural causes, weather conditions, riots, civil commotion, fire, explosion, terrorism or war and other causes. We shall not be liable to you for any failure to provide berthing or other service to you during any period of suspension of the Licence under this condition nor will any refund or rebate of Licence Fee be due to you during such period of suspension unless we are able to recover for loss of the Licence Fee under our insurance cover. In the event that any period of suspension continues for 14 days or more, you may give us notice to terminate the Licence with immediate effect. In the event of termination of the Licence by you or by Us in accordance with this condition, We will refund to You part of the Licence Fee in proportion to the unexpired period of the Licence.
- (e) You have the right to terminate the Licence at any time by serving written notice on Us specifying a termination date. In the event of Your terminating this Licence in accordance with this condition 8(e), You will remove Your vessel from the Marina Premises on or before the effective termination date set out in your notice.
- (f) On termination of Your Licence under condition 8(e) and subject to your removing the vessel and all other property and effects belonging to You or under Your control, We will charge or refund to You (as appropriate) a sum equal to the difference (if any) between the Licence Fee originally payable and the berthing or licence fees that would have been charged had the Licence been granted at the outset for a period ending on the termination date. We will also be entitled to charge You a cancellation fee of one month's Licence Fee at the rate payable immediately prior to you providing notice to us under clause 8(e), being an estimation of our reasonable administrative costs and losses arising from the early cancellation including additional costs to be incurred in publicising offering and granting a replacement licence and loss of licence fees for any vacant period arising as a result of Your cancellation. If Your licence is replaced by Us with a suitable alternative licence taking effect before the end date of Your original Licence period, a further refund representing Our estimation of the losses that have been recovered by the new Licence may be made to You.
- (g) If you fail to ensure removal of Your vessel and all other property and effects belonging to You or under Your control by the effective termination date of Your Licence, we will be entitled to charge You the higher of:
  - (i) the short term visitor charges that would normally be chargeable by Us for each day or part day your vessel or other property remains on the Marina Premises after that date; and
  - (ii) the Licence Fee that would have been payable by You to Us if the Licence had not been terminated on the termination date but had been granted for the period ending on the date of final removal of the vessel and all other property and effects belonging to You.

#### **Rights and obligations following termination of the Licence**

- 9. (a) Termination of the Licence, however caused, will not release either of You or Us from any liability to the other that has arisen before the date of termination or which is intended under these terms to survive termination of the Licence.
- (b) Any obligation of Ours towards Your vessel or goods left at the Marina Premises ends upon the expiry or lawful termination of the Licence and We accept no responsibility for loss or damage to any vessels or goods left at the Marina Premises out of licence and without Our consent save insofar as such loss or damage is caused by Our negligence or that of employees or others for whom We are legally responsible.
- (c) If You fail to remove the vessel on termination of the Licence in accordance with condition 8 or otherwise, We are entitled:
  - (i) at Your risk (save in respect of loss or damage caused by Our negligence or that of employees or others for whom We are legally responsible during such removal) to remove the vessel from the Marina Premises and thereupon secure it elsewhere and charge You with all reasonable costs arising out of such removal including alternative berthing fees; and/or
  - (ii) to give notice to You in accordance with the provisions of the Torts (Interference with Goods) Act 1977 and to sell the vessel and/or other property by the best method of sale reasonably available in the circumstances. The proceeds of the sale after payment of the said money due and the expenses of the sale (if any) will be paid to the owner of the vessel and/or property. Should the money due exceed the sale proceeds then any shortfall in the money due will be payable by You.

#### **Miscellaneous terms**

- 10. (a) Any indulgence granted by Us and any failure by Us to insist upon strict adherence to the terms of this Licence will not constitute a waiver of any of Our rights or remedies nor be deemed to be a waiver of any subsequent default by You.
- (b) These terms and the information that you provide to us from time to time are subject to Our privacy notice in force from time to time a copy of which is available on our website <https://www.mayflowermarina.co.uk/> or from the Marina Premises office and which we may amend from time to time, effective on publication of the amended version.
- (c) These Terms are governed by English law. You and We both agree to submit to the jurisdiction of the English courts. However, if You are a resident of Northern Ireland You may also bring proceedings in Northern Ireland, and if You are a resident of Scotland, You may also bring proceedings in Scotland.