Berthing Licence Agreement Terms and Conditions for Wet and Dry Berthing

1 DEFINITIONS
Where the following words appear in these conditions, the Licence and the Company’s regulations they shall have these meanings:

Company shall mean Naburn Leisure Ltd or any of its agents to whom the application for berthing is made which may be the Licensor, a registered user or occupying party of any part of the Premises, concessionaires, tenancies and assigns for the operation of the boat repair yard, breakwater or other harbour facility.

Harbour shall include a Yacht Harbour, Marina, Mooring or any other facility for launching, navigating, mooring or berthing a vessel.

Premises means all the land, adjacent water and buildings occupied by or under control of the Company, including docks, slipways, pontoons, jetties, decks, quays, piers, mud berths, sheds, lock, workshops, habitation, hardstands and car parks.

Owner shall include any charterer, master, agent or other person for the time being in charge of the Vessel, excluding the Company.

Vessel shall include any form of craft, boat, ship, yacht, dringhy, multihull, or other marine structure which is in the care and control of the Owner.

Length Overall (LO) means the overall length of the space occupied by the Vessel including any fore and after projections, temporary or permanent.

Berth means the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of this Licence.

Alongside Berth means a berth where a Vessel of appropriate draft may be secured, with access to the shore without the need for a dinghy or tender.

Storage Ashore Accommodation means the land space temporarily allocated to the Owner from time to time by the Company for the storage ashore of the Vessel during the term of the licence.

Ponoon means a moored and decked floating structure providing landing or mooring facilities.

2 THE LICENCE
2.1 Berths at the Harbour or Premises shall be licensed for the periods and at the rates of charge from time to time published by the Company at its Premises and in force at the commencement of this licence. Details of the charges applicable to the Berth at the beginning of the licence will be given to each licensee at the time that the licence is granted.

2.2 This licence shall not be automatically renewed but will end at the conclusion of the period agreed if not terminated sooner by the Company or by the Owner under the provisions of Clause 5 or 11.

3 LIABILITY, INDEMNITY AND INSURANCE
3.1 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 Vessel); this extends to loss or damage to Vessels, gear, equipment or other goods left with it for repair or storage, and harm caused in keeping the Premises or equipment.

3.1.1 The Company shall take all reasonable steps to maintain security at the Premises, and to maintain the facilities at the Premises and in the Harbour in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of the Company, Vessels, gear, equipment or other goods are left at the Company’s own risk. The Company reserves the right to refuse entry to any particular Vessel, or to Vessels from a particular company, for whatever reason, and to exclude any particular Vessel or Vessel from any particular part of the Harbour or other facilities.

3.2 The Company shall not be under any duty to salvage or preserve an Owner’s Vessel or other property from the consequences of any defect in the Vessel or property concerned unless it shall have been expressly engaged to do so by the Owner on commercial terms. Similarly the Company shall not be under any duty to salvage or preserve an Owner’s 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 as it shall be entitled to charge the Owner concerned on a normal commercial basis and where, appropriately, to claim a salvage reward.

3.3 Owners or operators 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 £3,000,000.00, and where appropriate, to maintain additional insurance to cover the same.

3.4 Any notice of termination under this Licence shall, in the case of the Owner, be served personally on the Owner or sent by registered post or recorded delivery service to the Owner’s last known address and in the case of the Company shall be served at its principal place of business or registered office.

4 CHANGE OF DETAILS
4.1 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 BERTH ALLOCATION
5.1 The physical layout of every Harbour and Premises and the varying needs and obligations of the Company and its customers requires that the Company retains absolute control of Berth allocation within the Harbour and Premises.

5.2 For the purposes of this Licence, safety or security will be entitled from time to time to reallocate berths, and, whilst we do make reasonable efforts to ensure you can use the same berth you are not entitled to the exclusive use of any particular berth.

5.3 We reserve the right to board, move, moor or un-berth the Vessel for reasons of safety, security, an emergency or to prevent or stop a nuisance.

6 PERSONAL NATURE OF THE LICENCE
6.1 This licence is personal to the Owner and relates to the Vessel described in the application for berthing. 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.

6.2 Within 7 days of any agreement for the sale, transfer or mortgage of a Vessel subject to this licence 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.

7 THE OWNERS OBLIGATIONS
7.1 You must observe and abide by the Marina Rules and Regulations. The Company shall supply the Owner with a copy of the Regulations current at the time of application for a Licence. The Company reserves the right to introduce new regulations and amend existing ones at any time. You must comply with all such rules and regulations, and to amend such regulations as from time to time shall be necessary. Such regulations and any amendments to them shall be binding on the Owner and shall apply to the Berth as well as to all other premises where the Vessel is situated.

7.2 The Owner must ensure the Vessel is kept in a seaworthy and smart condition at all times whilst moored at the Company’s Premises. If the Vessel is damaged then repair works must be carried out as soon as reasonably possible. Tarps and sheets are allowed as a temporary cover only. For the avoidance of doubt the Company shall be the sole judge of what is considered smart condition.

7.3 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 at all relevant times that there is sufficient water for the purpose of berthing, and, where appropriate, the need for a dinghy or tender.

7.4 The Owner must keep the berth allocated in presentation and tidy condition. No items of the Vessels gear, equipment, stores or any other possessions of the Owner are to be left on the pontoons or jetties unless expressly agreed by the Company.

8 USE OF BERTH BY COMPANY WHEN VACANT
8.1 The Company will use berthing space for its own customers or passengers as required.

9 TERMINATION
9.1 The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of this Licence and or the Marina rules and regulations by the Owner) to terminate this licence in the following manner in the event of any breach by the Owner of this Licence:

9.1.1 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 customers and if the breach is capable of remedy, the Company may serve notice on the Owner specifying the breach and requiring him 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 Owner fails to effect the remedy within that time, or if the breach is not capable of remedy, the Company may serve notice on the Owner requiring him to remove the Vessel from the Harbour or Premises immediately.

9.1.2 If the Owner fails to remove the Vessel on termination of this licence whether under this Condition or otherwise, the Company shall be entitled.

9.1.2.1 To charge the Owner at the Company’s 24 hour rate for overnight visits for each day between termination of this licence and the actual date of removal of the Vessel from the Harbour and Premises and/or

9.1.2.2 To instruct the Owner to provide the Company with all costs reasonably arising out of such removal including alternative berthing fees.

9.1.2.3 Any notice of termination under this Licence shall, in the case of the Owner, be served personally on the Owner or sent by registered post or recorded delivery service to the Owner’s last known address and in the case of the Company shall be served at its principal place of business or registered office.

10 RIGHTS OF SALE AND OF DETENTION
10.1 Where the Company accepts a Vessel, gear, equipment or other goods for repair, refit, maintenance or storage the Company may place the Vessel subject to the provisions of the Tort’s (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 (which includes a Vessel or other property). Such right shall not be exercised unless the Company has given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:

10.1.1 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.

10.1.2 The Company’s obligation as custodian of goods accepted for storage ends on its notice to the customer of termination of that obligation.

10.1.3 The place for delivery and collection of goods shall be at the Company’s Premises unless agreed otherwise.

10.2 Maritime Law entitles the Company in certain other circumstances to bring action against a Vessel 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.

10.3 The Company reserves a general right “(a general lien)” to detain and hold onto the Owner’s 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 has a lien on the Vessel or other property, the Company shall within 24 hour of the Licence expiring as a result of the Company’s termination of the Licence, sell the Vessel or other property under the powers of the Admiralty Act 1873, on behalf of the Company.

11 TERMINATION BY OWNER
11.1 All berthing / storage fees are payable in advance of the commencement date and are non-transferable and non-negotiable.

11.2 This Licence may be terminated on 16 weeks written notice by the Owner to the Company. Following such notice the Company shall prepare an account of all charges due prior to the termination of this Licence.

Please see overleaf for full terms and conditions. Signed in acceptance of terms herein:

Signed by the Owner(s)

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Date…………………………………………………………...……………………………………...
12 VESSEL MOVEMENTS
12.1 The Company reserves the right to move any Vessel, gear, equipment or other goods at any time for reasons of safety, security or emergency, and the owner or operators of any Vessel must comply with any such instructions given by the Company.
12.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into an Agreement with the Company.
12.3 Vessels and/or gear shall be moved at the owners expense and without prejudice to the rights of the Company to such charges as they may deem appropriate.
12.4 The Company will not be liable for the cost of moving other vessels to gain access to the launch point for and any attendant expenses, such as crane hire. The Company reserves the right to charge an estimate of such costs and charges for moving them.
12.5 If the Vessel is to be moved for any reason the Owner will be liable for expenses incurred at such a speed or in such a manner as to endanger or inconvene other vessels in the Harbour.
13 ADVISORY NOTICE
13.1 Offensive noises or odours may be carried out without prior written or verbal consent from the Company. Maintenance may only be carried out in accordance with the Company’s brokerage.
14 STORAGE OF DINGHIES, TENDERS AND TRAILERS
14.1 Dinghies, tenders and rafts shall be stored ashore the Vessel unless the Company allocates a separate berth for them.
14.2 The Company confirms that the information supplied on the Licence agreement is correct and undertakes to inform the Company immediately of any changes to this information whilst subject to the terms of the agreement.
14.3 Vessels berthed at the Marina must be in possession of the requisite valid Boat Safety Certificate whilst the Vessel is subject to the terms of the Licence agreement. The Owner shall supply to the Company a copy of the Boat Safety Certificate and return the Company of the Certificate’s unique reference number when required to do so.
14.4 The Owner confirms that they have a primary residential address in the EU and if required to do so by the Company can prove this by way of producing a recent council tax bill or utility bill.
15 TEMPORARY FAILURE OF SERVICES
15.1 No part of the Company's Harbour or Premises or any vessel while situated therein or thereon shall be used by the Owner in a manner which the Company believes to be dangerous or will result in damage to the property or to the equipment of the Company. Where this licence is granted to a commercial operator whose Vessel is operated for hire or reward in the course of trading, special conditions are attached as an appendix.
16 OWNER’S WARRANTY TO THE COMPANY
16.1 The Owner warrants to the Company that they are the legal Owner of the Vessel detailed in the Licence Agreement and have the immediate right to possess the Vessel.
16.2 The Owner confirms that the information supplied on the Licence agreement is correct and undertakes to inform the Company immediately of any changes to this information whilst subject to the terms of the agreement.
17 MEASUREMENT OF VESSELS
17.1 The depth of water in which the Vessel can be moored or stored on the Company’s premises and the length of the Vessel must be agreed with the Company prior to the signing of the Licence agreement.
18 MATTRESSES OUTSIDE OUR CONTROL
18.1 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 commotion, terrorism, or acts or decisions of the law enforcement, no matter how called or otherwise constituted). The Company reserves the right to change the rate to charge for any aspect of these terms and conditions in the event that the nature or extent of the relevant service has changed or is changed as a result of circumstances beyond the Company’s control.
19 REPORTING OF DAMAGE
19.1 The Company will promptly report to the Company any damage done to the Marina or to any part, machinery or fixtures of the Vessel. Any damage will be registered with the Company for insurance purposes. The Company reserves the right to charge the Owner for the cost of any damage to the Moorings Berthing services.
20 DISPLAYING OF NAME
20.1 The name of the Vessel must be clearly displayed on the boat in a prominent position making it easily identifiable.
20.2 The following shall not be allowed on the Vessels gear, tender, dinghies, trailers and all other equipment related to the Vessel but must be clearly marked with the Vessel’s name.
21 NO LIVING ABOARD VESSELS
21.1 No person or persons shall be permitted to 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.
22 CAR PARKING
22.1 Under no circumstances may any vehicle be parked or left so as to obstruct the roadways, walkways, footpaths, steps, stairways, leaping areas or access points at the Marina. In default the Company reserves the right to remove any such vehicle by cranes or vehicle and to charge the Owner for the cost of doing so. The Company shall not be liable to the Owner for any loss, costs, expenses or other charges which may be incurred by the Company in doing so, and shall be entitled to charge the Owner for the cost of moving other vessels to gain access to the launch point for and any attendant expenses, such as crane hire. The Company reserves the right to charge an estimate of such costs and charges for moving them.
22.2 The Contractor must sign in at the Marina office on arrival prior to commencing any work and pay the Company of any person or company who will be undertaking work on the vessel or at the premises.
23 NO MATCHING OF ANY DESCRIPTION
23.1 The Contractor must give the Company the name of any contractor or sub-contractor who will be working on the vessel or at the premises and who will be undertaking work on the vessel or at the premises.
24 PRIVATE SALE OF VESSELS
24.1 The Company reserves the right to sell to a private individual or company any vessel whilst moored or stored at its premises. The Company reserves the right to sell to a private individual or company any vessel whilst moored or stored at its premises.
25 MARINA and HARBOUR REGULATIONS
25.1 The Company reserves the right to charge the cost of recovering any overdue amount including but not limited to legal fees.
26 ACCESS TO PREMISES/WORK ON THE VESSEL
26.1 Subject to Clause 26.2 no work should be done on the Vessel, gear, equipment or other goods whilst on the Premises by the Contractor without the Owner's prior written consent other than minor running repairs or minor maintenance of a muddle 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. External external sanding, angle grinding, welding, internal refit, spray painting, shot blasting are considered major works and cannot be carried out without prior written or verbal consent from the Company. Maintenance may only be carried out between the hours of 9.00 and 19.00 hours. The Company reserves the right to charge you the full cost of any remedial works required prior to the Vessel as a result of the works.
27 HEALTH, SAFETY and the ENVIRONMENT
27.1 Attention is drawn to the Company’s Health, Safety and Environmental policy, as amended from time to time. The Company reserves the right to charge the cost of recovering any overdue amount including but not limited to legal fees.
28.4 In this agreement singular words include the plural and vice versa and words for one gender include any gender.
29 LAW AND JURISDICTION
29.1 This agreement is governed by English law and any dispute arising from this agreement shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.