

## TERMS AND CONDITIONS

### Grant of Licence

1. Port Marlborough grants the Licensee;
  - (a) A Boat Parking Licence in respect of the compound described in the Particulars
  - (b) The right to enter the compound
  - (c) The right to have access between the compound and launching ramps and the right to use launching ramps

### Financial Obligations

2. The Licensee has the following financial obligations:
  - (a) To pay the licence fee specified in Particulars
  - (b) To reimburse Port Marlborough for, or meet the cost of, any work or services undertaken or arranged by Port Marlborough resulting from:
    - (i) An emergency, or
    - (ii) Rectification of Licensee's default
3. The licence fee is specified in the Particulars. This licence fee may be reviewed by Port Marlborough at annual intervals effective from 1 October next following. Notice in writing of any altered licence fee shall be given by Port Marlborough to the licensee. If the licensee does not wish to accept the reviewed licence fee then the licensee may within one month of being notified of the reviewed licence fee terminate the licence by notice in writing to Port Marlborough.

### Obligations of Licensee

4.
  - (a) To use the compound for boat parking and storage purposes only
  - (b) To avoid causing any nuisance or annoyance to other Licensee's or occupiers of any property potentially affected by the Licensee's nuisance or annoyance.
  - (c) To comply with any Marina Rules adopted by Port Marlborough.
  - (d) To comply with any signs relating to particular Marina Rules.
  - (e) To comply with directions given by any authorised employee of Port Marlborough.
  - (f) Not to obstruct any waterway, roadway, walkway, launching ramp or the compound itself.
  - (g) Must display a current Warrant of Fitness / Certificate of Fitness and Registration.
  - (h) Clearly display the name or other identification of the vessel.
  - (i) Notify Port Marlborough of any change of address of the Licensee.
  - (j) Not to damage any part of the marina or any vessel or other property in the marina.
  - (k) To notify Port Marlborough as soon as practicable of any damage to any vessel, vehicle or other property in the marina.
  - (l) Not to allow any effluent whether treated or not or rubbish or other pollutant to enter marina waters and in the case of any accidental entry to take immediate steps of a kind appropriate in the circumstances to rectify the discharge or entry.
  - (m) To park the boat and trailer only in the park specified in this Agreement.

- (n) To return the trailer and towing vehicle to the specified park after the launching of the vessel.
- (o) To always ensure the compound gates are locked after entry or egress.
- (p) To avoid creating a wake while moving any vessel within the marina.
- (q) Not to live aboard any vessel in the marina or in the compound.
- (r) Not to store petrol or other flammable liquids or materials in the boat except as maybe contained in the fuel tanks of the boat and to at all times take all reasonable steps to minimise the hazard of fire (particularly when handling fuel) and to keep proper fire extinguishers available on the vessel.
- (s) To keep any dog brought into the area on a leash at all times and to immediately clear up and safely dispose of any solid waste matter left by any such dog.
- (t) Not to spray paint, grind steel or undertake any maintenance activity that may pollute Marina waters or cause damage to other property or vessels.
- (u) To generally observe the standards and practices reasonably to be expected of a competent responsible and considerate Licensee in these circumstances.

#### **Assignment**

- 5. (a) This Licence is personal to the Licensee and is not transferable by the Licensee. Port Marlborough may assign its rights and obligations under this Licence and thereafter this Licence shall continue in full force between the assignee and the Licensee as if the assignee was originally named as a party to this Licence in place of Port Marlborough.
- (b) The Licensee will meet all of the obligations of the Licensee notwithstanding that the compound parking space may not be occupied

#### **Termination**

- 6. Termination of this agreement shall occur after the giving of notice set out in the Particulars, subject to earlier termination in accordance with clause 6.
- 7. Port Marlborough may terminate this agreement, with immediate effect, if a serious breach (as reasonably judged by Port Marlborough) of Licensee's obligations has occurred.
- 8. On termination:
  - (a) Any financial obligations which accrued to the Licensee before or as a result of termination shall continue until met.
  - (b) Any vessel shall immediately be removed from the compound unless Port Marlborough has affixed a Notice of Lien to the vessel relating to any outstanding financial obligations. In such case the vessel shall be removed as soon as the financial obligations have been satisfied.
  - (c) Port Marlborough's casual storage rates shall apply until the vessel is removed.
  - (d) Port Marlborough may remove the vessel from the compound if the Licensee has failed to do so.

#### **Lien**

- 9. (a) Port Marlborough shall have a right of lien or charge in respect of any vessel or other property in or about the compound for the purpose of recovering all moneys due whether on account of non payment of fees, non payment of other moneys due to Port Marlborough, recompense for damage done or otherwise howsoever.

- (b) Port Marlborough may establish its lien or charge by giving notice in writing to the Licensee upon any default which may result in a financial entitlement to Port Marlborough from the Licensee arising.
- (c) Upon the Licensee having received or having been deemed to have received the notice of lien or charge the vessel or other property shall be under the exclusive control of Port Marlborough and may not be removed, entered upon or physically dealt with by the Licensee in any respect.
- (d) In order to recover moneys due, Port Marlborough may sell the vessel or other property by such fair means as Port Marlborough considers appropriate. Moneys received from such sale shall be allocated:
  - (i) First in payment of any sales costs including those of Port Marlborough.
  - (ii) Secondly in payment of all moneys due to Port Marlborough.
  - (iii) Thirdly in payment of any moneys due to any security holder in respect of the vessel or other property known to Port Marlborough.
  - (iv) Finally as to any balance to the Licensee.
- (e) In the event of the Licensee committing a default, Port Marlborough may remove any vessel or other property off the compound on the basis that Port Marlborough shall act with all reasonable care but shall otherwise attract no liability in respect of such actions. Any costs incurred shall be a charge against the vessel or other property and may be recovered in the same manner as if such costs were licence fees in arrears.

#### **Exclusion of Liability**

- 10. This licence has been agreed to by Port Marlborough and accepted by the Licensee on the following conditions:
  - (a) The Licensee accepts all of the risks associated with the keeping of the vessel and associated equipment in the compound and accepts that Port Marlborough shall have no responsibility or liability for any loss of or damage to the vessel or any other property in or about the compound whether belonging to or in the possession of the licensee or any other person unless such loss or damage is attributable to the negligence of Port Marlborough or its employees.
  - (b) The Licensee indemnifies Port Marlborough against any liability or threatened liability arising against it by reason of the granting of this Licence or by reason of any action or inaction on the part of the Licensee or any other person for whom the Licensee has responsibility. This indemnity extends to protect Port Marlborough from any liability or obligation that may be incurred by it as a result of any pollutant entering the water by reason of any action or inaction on the part of the Licensee or any other person for whom the Licensee has responsibility.
  - (c) This clause will continue to have effect in circumstances where the Licence has been terminated because of the default of the Licensee or where the Licensee has failed to remove the Licensee's vessel or other property out of the compound following termination of the Licence.

#### **Dispute Resolution**

- 11. In the event of any dispute arising in relation to this Licence it shall be determined by a single arbitrator to be agreed upon by the parties or in default of agreement to be appointed by the District Law Society having jurisdiction in the District of Marlborough.