

Mooring at Rose Narrowboats Ltd - Terms & Conditions

You ("the Owner") have agreed to enter into a contract with Rose Narrowboats Ltd ("the Company") for the use of the Company's Berth at Stretton Stop.

BY ENTERING INTO THIS CONTRACT WITH THE COMPANY YOU WILL BE BOUND BY THESE TERMS AND CONDITIONS. PLEASE READ THESE CAREFULLY AND ENSURE YOU HAVE UNDERSTOOD THEM.

General Conditions

Issue Date May 2020

Definitions

In these General Conditions:

"Annual Berthing Contract" means the Contract where the Annual Subscription Fees apply (and the Contract shall be identified as an Annual Contract on the Contract Invoice)

"Annual Fees" means, in relation to an Annual Berthing Contract, the amount due for your Contract in respect of the Year as set in the Contract Invoice

"Berth" means the water space allocated to the Owner from time to time at the discretion of the Company for the mooring of the Vessel during the term of this Contract

"Commencement Date" means the 1st day of the Month the Vessel has been advised as arriving at the Marina and detailed on the Contract Invoice

"the Company" means Rose Narrowboats Ltd

"the Contract" means these Terms and Conditions and the Contract Invoice

"Initial Contract Term" means the continuous period of twelve Months commencing on the Commencement Date or any part thereof agreed by the Company and the Owner and recorded in writing

"Contract Fee" means the sum paid by the Owner for the Contract

"Contract Invoice" means the contract invoice issued by the Company to the Owner which sets out the fees, and the Contract period relating to the Owner's use of the Berth at the Marina

"Inland Marinas" means a marina connected to the inland canal system, inland docks or rivers.

"Length Overall LOA" means the overall length of the space occupied by the Vessel including any fore and aft projection, temporary or permanent. In the exceptional circumstances where the rudder is moveable by 90 degrees it is not included in the Length Overall (LOA)

"the Marina Manager" means the person or his representative who shall be responsible for the day to day administration at the Marina

"the Marina" shall include the marina, mooring and all other facilities provided by the Company for launching, navigating, mooring, berthing and storage of vessels, vehicles and property and all the land, adjacent water and buildings occupied or under the control of the Company, including boat yard, boat shed, buildings, car park, slipways, pontoons, finger pontoons, quays, piers, docks, jetties, hard-standing and roadways

"Month" means a calendar month

"Mooring and Ancillary Charges Tariff" means the standard charges levied by the Company for the Berth and Services

"the Office" means the Marina office on site at the Marina

"the Owner" means the individual who enters into the Contract and is the owner of the Vessel or Vessels using the facilities of the Marina. Where the Owner is more than one person, all obligations of the Owner under these General Conditions shall be joint and several

"Seasonal Contract" means a contract of 6 months or less

"Services" means the provision of water, refuse disposal, car parking and shower and toilet facilities and any other services agreed to be provided by the Company to the Owner as set out in the Annual Berthing Contract

"Vessel" means the vessel or vessels including but not limited to boats, caravans, trailers and cars, belonging to the Owner using the facilities of the Marina

"Visitor Contract" means a contract of 1 month or less

"Year" means a successive period of 12 months starting on the Commencement Date

Interpretation

All headings are for identification only and shall not form any part of or affect the interpretation of any clause. Words importing the masculine gender shall also include the neuter and feminine gender, words importing the neuter gender shall also include the masculine and feminine gender, words importing the feminine gender shall also include the masculine and neuter gender and words importing the singular number shall also include the plural number where the Owner is more than one person. The undertakings expressed to be made respectively by them shall be deemed to be made jointly and severally.

1. The Contract

1.1 Berths at the Marina shall be licensed for the periods and at the rates and terms applicable from time to time published by the Company at the Marina. Details of the charges applicable to the Berth and details of the Contract are set out in the Contract Invoice

1.2 The Company hereby grants a Licence to the Owner to moor a Vessel subject to the rights of termination set out in Clause 8 and subject to an initial three month probationary period for new Owners during which period the Company may, at its discretion, terminate this licence. Following the three month period, an Owner may terminate the Contract in accordance with Clauses 8.1 and 8.2.

1.3 The Company does not accept a mooring to be classified as a home, the Vessel is the home

1.4 At the end of the Initial Contract Term the Annual Berthing Contract shall continue until such time as either the Company or Owner shall terminate in accordance with clause 8.

1.5 The Owner must notify the Company in writing of the details of any change of name of the Vessel or change of the Owner's name, emergency contact details, address, e-mail address or telephone number. Unless the Company has received notification of any changes the details the Company has on file will be deemed to be up to date and correct

2. Liability, indemnity and insurance obligations

2.1 The Company shall not be liable whether in contract, tort or otherwise, for any loss, theft or any damage suffered by any vessel or vehicle or other property of the Owner, his crew, contractors or visitors, except to the extent that such loss, theft or damage was caused by the negligence of the Company or its agents, in which case the liability of the Company shall not exceed the sum of £50,000

2.2 Any person using any part of the Marina or its facilities for whatever purpose and whether by invitation or otherwise does so entirely at his own risk and the Owner undertakes to bring the contents of this clause to the attention of his family and visitors.

2.3 The Owner shall indemnify the Company from and against all actions, claims, proceedings, expenses and demands made against the Company by third parties in respect of any damage or liability caused by or arising from the wilful act, neglect or default by the Owner or of any person acting for or on behalf of the Owner.

2.4 The Owner shall indemnify the Company for the costs incurred (including the reasonable legal costs of its solicitors) of all actions, claims or proceedings brought against the Owner as a result of any breach of the terms of the Contract.

2.5 Notwithstanding clause 2.1 above the Company will not be liable for:

2.5.1 Losses that were not foreseeable to both parties when the Contract was formed

2.5.2 Losses that were not caused by any breach on the part of the Company, and

2.5.3 Business losses and/or losses to non-consumers

2.6 The Owner shall maintain in full force and effect during the Contract Duration public liability insurance in the minimum amount of £3,000,000.00 for the Vessel and any other property in the Marina in the care, custody and control of the Owner.

2.7 The Owner shall maintain during the Contract Duration a minimum of third party insurance in respect of himself and his Vessel, vehicles, crew, agents, visitors and contractors in a sum of not less than £3,000,000.00 (three million pounds) in respect of each accident or incident including sufficient cover against full foundering, salvage and wreck removal claims. Such insurance shall be affected and maintained by a reputable insurance company authorised under the Financial Services Authority (FSA) to carry on in Britain or in Northern Ireland insurance business of a relevant class or who has corresponding permission under the law of another member state of the European Community. The Owner shall produce the above policy or policies to the Company before any new Contract, including renewal Contracts. The Owner agrees not to do anything that could lead to the above policy or policies being revoked, vitiated or not renewed in the ordinary course.

2.8 The Owner shall not cancel surrender or materially alter the terms of such insurance policy without the prior written consent of the Company which consent will not be unreasonably withheld

2.9 The Owner shall ensure that the Vessel shall at all times be licensed in accordance with Canal and River Trust Licensing or the Environment Agency for use on the inland waterways system. The Owner shall

maintain for the duration of the Contract a RCD (Recreational Craft Directive) or Boat Safety Scheme Certificate for the Vessel which shall evidence that the Vessel has passed a Boat Safety Scheme examination. The Owner shall produce the Boat Safety Scheme Certificate to the Company within 7 days of any request by the Company to view the certificate.

2.10 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 has 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 so it shall be entitled to charge the Owner concerned a normal commercial charging basis (and, where appropriate to claim a salvage reward)

2.11 The Company reserves the right to terminate the Contract, pursuant to clause 8.2 if the Owner cannot prove that the Vessel is insured or certificated in accordance with Clauses 2.5, 2.6 and 2.8 above.

2.12 No warranty or representation is expressed or implied by the Company of the suitability of the Berth for the Vessel or of any berth structure, gear or other facility provided under the terms of this Contract 2.13 In the event any person has an accident on the Marina no matter how the accident may have occurred and whether or not the accident involved the Company's property or injury to a person or damage to a Vessel, property or equipment belonging to the Company or other person, the Owner or other person who shall for the time being have responsibility for the person, Vessel or equipment that caused or was involved in the accident is to report the accident to the Marina office as soon as practicable and in any event no later than 24 hours after the accident took place.

3. Commercial Use

3.1 No part of the Marina or any vehicles or Vessel while situated therein or thereon shall be used by the Owner for any commercial purposes without the prior written consent of the Company.

4. Sale of Vessel

4.1 In the event of a sale by the Owner of any Vessel moored or stored at the Marina, the Owner shall pay to the Company upon request a commission of 2% of the net sale price or value realised or £250 (whichever is the greater) and VAT thereon unless sold through the Company's nominated broker at each marina.

4.2 The Owner shall be permitted to arrange a sale of the Vessel during the term of this Contract. The Owner expressly agrees that he or his authorised agent shall be present at all times when the Boat or its equipment is viewed or demonstrated for the purpose of the sale and in no circumstance shall the Owner display any 'For Sale' or similar notice on or in the Vessel or any other part of the Marina, unless previously agreed with the Marina or the nominated broker. Within seven days of any sale, transfer or mortgage of any Vessel, the Owner shall notify the Company in writing of the name and address of the purchaser, transferee or mortgagee, as the case may be if the new purchaser is remaining at the Marina

5. Condition of the Vessel

5.1 All Vessels must be kept clean and in reasonable repair at all times. Should a Vessel be damaged, then repair works must be carried out as soon as is reasonably possible. Tarpaulins and temporary covers are allowed for no more than 3 months unless authorised by the marina manager

5.2 Vessels berthed must be in possession of the requisite valid Boat Safety certificate or RCD (Recreational Craft Directive) certificate for new craft and a Canal and River Trust Craft Licence and index number which shall at all times be prominently displayed on the Vessel.

5.3 The Company reserves the right to terminate the Contract pursuant to Clause 8.3 if the Owner cannot prove that the Vessel is in possession of the requisite documentation (where applicable) in accordance with clause 5.3 above.

5.4 In addition to the requirements set out in Clause 5.1 the Owner shall ensure that the Vessel remains in an aesthetically pleasing condition whilst it is at the Marina. Any disputes relating to this Clause will be resolved by the Yacht Harbour Association or British Marine Federation appointed representative.

5.5 All Vessels berthed at the Marina must have a minimum level of on board facilities to allow the ability to be self-sufficient and these should include the provisions for potable water storage, black waste collection with toilets connected and wash cubicles and the Company reserve the right to request confirmation from the Owners upon granting/renewal of a mooring Contract that their craft has the required basic facilities prior to occupancy of a Berth in the Marina.

6. Work to Vessel

6.1 Minor running repairs, works carried out by the Company's staff or nominated service company or minor maintenance works of a routine nature, including but not limited to light sanding, staining, minor painting etc., which does not cause noise, disturbance, disruption or pollution to the Marina or other Marina users, may be carried out to your Vessel without the Company's permission. Extensive external sanding, angle grinding, welding, internal refit, spray-painting etc. are considered Major Works and cannot be carried out within the Marina unless with the Company's prior written consent and in accordance with Clause 6.4. Maintenance may be carried on weekdays between 09.00 and 16.30hrs. The company's facilities must be kept clean and tidy at all times and health and safety legislation adhered to. The owner shall ensure that all waste materials are cleared regularly and disposed in a safe a legal manner. The company reserve the right to charge the Owner for the full cost of any remedial works required as a result of any damage caused by your work.

6.2 Prior written consent for work to be carried out at the marina shall not, without good cause, be withheld where either the work to be carried out is work for which the company would normally employ a sub-contractor or the company is satisfied the work is of a remedial nature and is being carried out under warranty.

6.3 The Owner must ensure that, if asked by the company, suitable risk assessments, method statements and a copy of the contractor's third party liability insurance policy in the sum of £10,000,000 accompanies the request for consent referred to in Clause 6.1. The Owner must ensure that contractors are only employed to carry out such works repairs as they are qualified to undertake and that contractors have the appropriate and requisite accreditations. The company reserves the right to refuse its prior written permission for the work if these requirements are not met to its satisfaction.

6.4 The Owner shall ensure the contractor contacts the Marina office or pre-arranged person on arrival and exit of the site each day, if required to do so by the marina.

6.5 The Owner will only be permitted to undertake works on their Vessel for which they have deemed competencies and experience in the carrying out of the required operation or the use of any power tools, such as welders, grinders or hot cutting equipment that would require professional certification. Operations that require the use of such equipment should be advised to the manager or supervisor for that Marina prior to commencement and be accompanied with a method statement and risk assessment for this task. For the avoidance of doubt, the Company reserves the right to prevent any person from operating such equipment in the Marina if appropriate certification of records of competency cannot be produced when requested by any member of the Company staff.

6.6 Any contractors must follow the Company's registration process, providing copies of assessments, method statements as relevant and their liability policy. Any contractors will only be permitted to work on site once the manager or supervisor for that Marina has authorised all documents and provided a site induction.

6.7 All documents must be submitted annually. Method statements and risk assessments must be resubmitted more regularly should the method of work change. New or additional method statements and risk assessments should also be resubmitted if the Owner or contractors would need to change the method of working or use different materials once work has commenced.

6.8 The Company reserves the right to insist that contractors working on the Vessel on behalf of the Owner leave the Marina if either the Owner or the contractor has failed to comply with this Clause 6.

6.9 The Company also reserves the right withdraw its consent if any work is carried out in contravention of relevant Health and Safety legislation or approved codes of practice.

6.10 In carrying out any work the Owner shall not cause any nuisance and agrees to try his best to ensure that his contractor does not cause any nuisance to the Company and/or to any other users of the Marina and/or to any person residing in the vicinity of the Marina. If the Company received complaints regarding the work of any person using the Marina and/or from any person residing in the vicinity of the Marina, the Company reserves the right to either request a review of the method statement of the contractor so as to minimise or remove the nuisance, or to withdraw its consent for the work.

6.11 In the event that the Company withdraws its consent for the work for any reason set out in this Clause 6, the Owner shall instruct the contractor to leave the Marina immediately and the Owner shall immediately commence restoring the area in which the work was being carried out, into the condition it was in prior to the commencement of the work including undertaking any remediation work that the Company decide is required, and shall complete same within a reasonable time from commencement of the work.

6.12 Prior to changing or modifying a Vessel, the Owner must receive written permission from the Company in order for the Vessel to remain at the Marina. This permission will not unreasonably be withheld.

7. Fees

7.1 The amount due for your Contract is set out in either of the Contract Invoice or Mooring and Ancillary Charges Tariff

7.2 The charges made for a Berth are set out in the Mooring and Ancillary Charges Tariff subject to revision as set out in Clause 7.3.

7.3 Contract fees are calculated inclusive of VAT at the advertised rate on a per Berth rate or Length Overall (LOA) of the Vessel as measured including bowsprits, davits, boarding ladders, sterndrives, tenders, outdrives, anchors, pulpits and pushpits and any other extensions fore and aft of the Vessel shall be included.

7.4 The Company reserves the right to alter its Mooring and Ancillary Charges Tariff having first given to the Owner 28 days' notice in writing of its intention to do so. 7.5 All payments made to the Company are inclusive of VAT or such other tax required to be paid by law at the rate for the time being in force.

7.6 To the extent that the Owner is on an Annual Contract; the annual fees are due for payment in accordance with the Annual Berthing Contract. Invoices in respect of the annual fees will be raised at least two weeks prior to the commencement of the relevant period.

7.7 To the extent the Owner is on a Visitor Contract; the payment of fees are to be made in advance by the Owner upon arrival for the stated duration of that visit.

7.8 All fees are inclusive of berthing fees and the provision of the Services. Items such as pump out (unless specifically included within the Annual Berthing Contract) and electricity supplied are chargeable in addition.

7.9 Where applicable, electricity is provided subject to the following terms and conditions:

7.9.1 A metered electricity supply is available to each berth subject to a charge for units used. Payment shall be made in full by the Owner on receipt of an invoice. Meters will be read on commencement of the Term, on the last day of each month of the Term and on termination of the Term;

7.9.2 An invoice will be raised monthly for the number of units used by the Owner at the applicable rate set out in the Mooring and Ancillary Charges Tariff, which are subject to revision from time to time in accordance with clause 7.3. A service charge will be payable quarterly for the availability and connection to a metered electric supply;

7.9.3 Electricity shall be provided to the Vessel by way of a cable provided by the Owner. The Owner shall ensure that the cable has standard safety connections and the Owner will provide a suitable connection point on the Vessel;

7.9.4 In the event that an Owner leaves the Berth for a period of one week or more but has not terminated the Berthing Contract and intends to return to the berth, the Owner may request the meter to be read on his departure and upon his return. In such event the Company reserves the right to use the meter during the period that any Vessel is away from the Berth.

7.9.5 Electricity cables shall be placed in such a way as not to cause nuisance or danger to persons using Berths and will be tidily fastened;

7.9.6 All Vessels must be equipped with an appropriate circuit breaker and the Company reserves the right to inspect the Vessel, accompanied by the Owner;

7.9.7 Should the Owner not pay electricity charges due to the Company within 28 days of issue of an invoice, the Company reserves the right to serve a disconnection notice. If payment is still outstanding 7 days after issue of the disconnection notice the Company will be entitled to disconnect the supply of electricity to the Vessel without further notice.

7.10 Payment of charges will be accepted by bank transfer, standing order, cheque, cash, debit or credit cards. Customer account number and Vessel name should be used as reference on bank transfers.

7.11 In the event that a cheque presented by an Owner for payment of charges is returned not paid a charge of £50 (Fifty Pounds) plus VAT for each returned cheque will be levied.

7.12 The Company reserves the right to exercise a general lien upon any Vessel and/or other property belonging to the Owner whilst in or at the marina until such time as any money due to the Company in respect of the Vessel and/or other property, whether on account of rental, storage, commission, access or berthing charges, work done, administration charges, legal costs or otherwise shall be paid by the Owner. In the event that the aforementioned lien remains unsatisfied for the specified period of time notified in writing to the Owner by the Company, the Vessel will be sold on brokerage and the proceeds of the sale used to satisfy the monies owed by the Owner to the Company. Any remaining monies after this will be remitted to the Owner.

7.13 Payments made under the Contract shall be made without deductions. The Owner shall pay in advance to the Company all sums owing to the Company under the Contract. The Company reserves the right to levy an administration charge in the sum of £50 plus VAT where applicable from the day after the invoice becomes due. The Company reserves the right to levy an administration charge in the sum of £20 plus VAT where applicable per letter against the Owner in the event that it becomes necessary for the Company or the Company's appointed legal advisors to write to the Owner to seek

7.5 All payments made to the Company are inclusive of VAT or such other tax required to be paid by law at the rate for the time being in force.

7.6 To the extent that the Owner is on an Annual Contract; the annual fees are due for payment in accordance with the Annual Berthing Contract. Invoices in respect of the annual fees will be raised at least two weeks prior to the commencement of the relevant period.

7.7 To the extent the Owner is on a Visitor Contract; the payment of fees are to be made in advance by the Owner upon arrival for the stated duration of that visit.

7.8 All fees are inclusive of berthing fees and the provision of the Services. Items such as pump out (unless

specifically included within the Annual Berthing Contract) and electricity supplied are chargeable in addition.

7.9 Where applicable, electricity is provided subject to the following terms and conditions:

7.9.1 A metered electricity supply is available to each berth subject to a charge for units used. Payment shall be made in full by the Owner on receipt of an invoice. Meters will be read on commencement of the Term, on the last day of each month of the Term and on termination of the Term;

7.9.2 An invoice will be raised monthly for the number of units used by the Owner at the applicable rate set out in the Mooring and Ancillary Charges Tariff, which are subject to revision from time to time in accordance with clause 7.3. A service charge will be payable quarterly for the availability and connection to a metered electric supply;

7.9.3 Electricity shall be provided to the Vessel by way of a cable provided by the Owner. The Owner shall ensure that the cable has standard safety connections and the Owner will provide a suitable connection point on the Vessel;

7.9.4 In the event that an Owner leaves the Berth for a period of one week or more but has not terminated the Berthing Contract and intends to return to the berth, the Owner may request the meter to be read on his departure and upon his return. In such event the Company reserves the right to use the meter during the period that any Vessel is away from the Berth.

7.9.5 Electricity cables shall be placed in such a way as not to cause nuisance or danger to persons using Berths and will be tidily fastened;

7.9.6 All Vessels must be equipped with an appropriate circuit breaker and the Company reserves the right to inspect the Vessel, accompanied by the Owner;

7.9.7 Should the Owner not pay electricity charges due to the Company within 28 days of issue of an invoice, the Company reserves the right to serve a disconnection notice. If payment is still outstanding 7 days after issue of the disconnection notice the Company will be entitled to disconnect the supply of electricity to the Vessel without further notice.

7.10 Payment of charges will be accepted by bank transfer, standing order, cheque, cash, debit or credit cards. Customer account number and Vessel name should be used as reference on bank transfers.

7.11 In the event that a cheque presented by an Owner for payment of charges is returned not paid a charge of £50 (Fifty Pounds) plus VAT for each returned cheque will be levied.

7.12 The Company reserves the right to exercise a general lien upon any Vessel and/or other property belonging to the Owner whilst in or at the marina until such time as any money due to the Company in respect of the Vessel and/or other property, whether on account of rental, storage, commission, access or berthing charges, work done, administration charges, legal costs or otherwise shall be paid by the Owner. In the event that the aforementioned lien remains unsatisfied for the specified period of time notified in writing to the Owner by the Company, the Vessel will be sold on brokerage and the proceeds of the sale used to satisfy the monies owed by the Owner to the Company. Any remaining monies after this will be remitted to the Owner.

7.13 Payments made under the Contract shall be made without deductions. The Owner shall pay in advance to the Company all sums owing to the Company under the Contract. The Company reserves the right to levy an administration charge in the sum of £50 plus VAT where applicable from the day after the invoice becomes due. The Company reserves the right to levy an administration charge in the sum of £20 plus VAT where applicable per letter against the Owner in the event that it becomes necessary for the Company or the Company's appointed legal advisors to write to the Owner to seek payment of any overdue payment or to advise of the Company's intention to commence legal proceedings against the Owner. For the avoidance of doubt, the Owner accepts that any administration charge levied against him by the Company in the circumstances set out in this Clause 7 represents a genuine pre-estimation of loss on the part of the Company. In addition to the administration charge the Owner will be liable for the payment of interest at the rate of 5% above the base rate of Lloyds Bank Plc on any sum owing to the Company and which remains unpaid 7 days from the date of the invoice until payment of the debt by the Owner.

7.14 Unless otherwise agreed in writing by the Company, the Company must be in receipt of full settlement for the previous Contract before a new Contract will be issued. Any deviation of this will lead to termination of the Contract under clause 8.

7.15 The Company will only accept payments by a statutory body with express permission.

8. Termination

8.1 In the event the Owner wishes to terminate the Contract at any time, the Owner must give the Company not less than three months' notice in writing.

8.2 Without prejudice to any other rights or remedies that the Company may have, the Company may terminate the Contract immediately by serving written notice on the Owner in the following circumstances:

8.2.1 If the Owner commits a serious breach of any term of the Contract which is capable of remedy but which is not cured within 14 days of the written notice to the Owner, at the Owner's last known address, specifying the breach and requiring its remedy; or

8.2.2 If the Owner commits a serious breach of any term of the Contract which is not capable of remedy and

in the event of a customer being bankrupt

8.3 Upon termination by the Company pursuant to Clause 8.2 above and where the Owner is on an Annual Contract the Company shall, at its absolute discretion, refund to the Owner the unexpired portion as a fraction of days to the full Contract Duration of the mooring/hard standing fees subject to a right of set-off in respect of any monies owed by the Owner to the Company

8.4 Upon expiry of the three months referred to in Clauses 8.1 or 8.2 or upon the Company terminating the Contract pursuant to Clause 8.3 the Owner shall be required to take delivery of his Vessel and remove it from the Marina within 7 days. If the Owner fails to take delivery and remove his Vessel within this period the Company shall be entitled;

8.4.1 To charge the Owner the amount which would have been payable by the Owner to the Company if the Contract had not been terminated for the period between the termination of the Contract and removal of the Vessel from the Marina; and/or

8.4.2 At the Owner's risk (save in respect of loss or damage caused by the Company's negligence during such removal) to remove the Vessel from the Marina and secure it elsewhere and then charge the Owner with all costs arising out of such removal, including alternative berthing fees; and/or

8.4.3 To sell the Vessel by auction and deduct from the sale proceeds:

8.4.4 All costs arising out of such sale, including but not limited to, removal costs, alternative berthing fees, auction fees, administration fees and legal costs; and

8.4.5 Arrears of Subscription Fees, accrued interest and any charges made pursuant to Clause 8.4.1 provided that the Company will account to the Owner thereafter in respect of any net sale proceeds.

8.5 If the Vessel is removed by the Canal and River Trust or other authorised body then the day the Vessel is removed from the Company's Marina, the Contract is deemed terminated.

9. Refund Policy

9.1 Refunds will not be issued for unexpired electricity credit left in service bollards at any time.

9.2 Deposits to secure berths are non-refundable.

10. Rights of the Company to Re-berth and Move Vessels

10.1 The Company reserves the right to moor, re-berth, move, board, enter or carry out emergency work on any Vessel if, in the Company's opinion it is necessary to do so for the purposes of trying to:

10.1.1 avoid damage to the Vessel or to any other Vessel in the Marina; and/or

10.1.2 ensure the safety of other users of the Marina; and/or

10.1.3 ensure the safety of the Company's staff, premises, plant or equipment

10.2 The Company also reserves the right to moor, re-berth or move the Vessel if, in the Company's opinion, it is necessary to do so in order to launch or put afloat any other Vessel.

10.3 The Company also reserves the right to moor, re-berth or move the Vessel, and/or to move any equipment and/or goods belonging to the Owner, if, in the Company's opinion it is necessary for the good management, safety or security of the Marina and/or environmental protection.

11. Mooring, Re-berthing, Moving or Towing (within the Marina) at the Owner's Request

11.1 Subject to payment by the Owner of the Company's reasonable charges (where appropriate) and Berth availability, the Company will moor, re-berth, move or tow any Vessel at the request of the Owner. The Company will not be liable for any damage to the Vessel arising as a result of the mooring, re-berthing, moving or towing save where such damage is caused by any negligence or default on the part of the Company.

11.2 Where the Company complies with an Owner's request pursuant to clause 11.1 above, the Owner agrees to indemnify the Company in full from and against any and all loss, damage or liability (including all legal fees and costs) incurred by the Company as a result of complying with such requests provided that this indemnity will not apply where such loss, damage or liability is as a result of the Company's negligence or default.

12. The Company's Right of Sale

12.1 Any Vessel or other property left at the Marina in breach of the terms of this Agreement will be subject to the provisions of the Torts (Interference with Goods) Act 1977 ("the Act"), which confers on the Company as bailee a right of sale exercisable in certain circumstances.

12.2 In the circumstances where the Act does not apply or where the Company cannot be regarded as a bailee of the Vessel, section 12 and Schedule 1 of the Act are expressly incorporated in these General Conditions except that where the term bailee appears in the relevant provisions of the Act it is to be replaced with the Company and where the term bailor appears it is to be replaced with 'Owner' and where the term

'bailment' appears it is to be replaced with 'General Conditions'

12.3 The Company will not exercise the right of sale described in this Clause 12 until it has given notice to the Owner or has taken reasonable steps to trace him in accordance with the Act.

13. Non-Assignability

13.1 This Contract is personal to the Owner and his Vessel. The Owner must not assign any of his rights or obligations under this Contract to any third party or to any Vessel not named in the Contract signed by the Owner.

14. Non-exclusivity of Berths

14.1 Nothing in these General Conditions shall entitle the Owner to the exclusive use of a particular Berth. Vessels shall be berthed or moored by the Owner in such a manner and position as the Company shall direct unless the Contract taken is Residential and the Contract holder is paying a full Council Tax charge to the Local Authority.

14.2 Once the Company has allocated a Berth to the Owner, the Owner shall not utilise a different Berth unless such a change of location is approved by the Company in writing prior to the Owner taking such action or is necessitated by emergency circumstances.

14.3 The Company reserves the right to use the Berth when it is left vacant by the Owner. The Company shall further have the absolute right to temporarily allocate another Vessel to the berth when it shall not be occupied by the Owner. The Company will not be obliged to account to the Owner for any berthing fees received.

14.4 Where possible and practical, the Owner shall notify the Manager prior to his departure from the Marina together with the anticipated time and date of return to assist the Manager in the proper running of the Marina.

15. Safe Navigation of Vessels in the Marina

15.1 The Owner shall comply with all reasonable instructions of the Manager in connection with all matters relating to the safe and efficient operation of the Marina 15.2 When entering, leaving or manoeuvring in the Marina the Owner must ensure that the Vessel is not navigated at such a speed or in such a manner as to endanger or inconvenience other vessels. Vessels are at all times subject to the speed restrictions and bye laws of the Canal & River Trust.

15.2 The Owner must ensure that his Vessel is navigated by a suitably experienced person who is not under the influence of alcohol or drugs or under the age of 16.

16. Prohibition of Nuisances

16.1 The Owner undertakes on behalf of himself and his crew and guests. That no noisy, noxious or objectionable engines, fires, radios or other apparatus or machinery shall be operated at the Marina so as to cause a nuisance or annoyance to the Company or to any other users of the Marina or to any person residing in the vicinity.

16.2 Engines, generators or other apparatus or machinery must not be operated between the hours of 16.30 and 9.00, except when leaving or entering the Marina, or by prior arrangement with the Marina.

16.3 Vessels are not permitted to move within the Marina during the hours of darkness except in the case of emergency

16.4 Halyards shall be secured so as not to cause a nuisance or annoyance

16.5 No tampering with, theft of, removal of or damage to any part of the Company's premises, apparatus and/or facilities or anti-social behaviour or abuse, verbal or physical towards customers or staff at the Marina shall be tolerated. Immediate termination of this Contract will occur and criminal prosecution may be instigated. The Owner shall be required to remove his Vessel from the Marina and will not be entitled to any refund of unused berthing fees.

16.6 The Owner shall ensure that himself, his crew, contractors and visitors do not cause a nuisance as described in this Clause 16.

16.7 The Owner shall not be permitted to carry, use or store any licensed fire arms upon their property or Vessel while in the Marina. The exception to storage is where the named person has been issued with an approved fire arm certificate from the local police constabulary, but this does not permit use on the Marina, the Owner must ensure a copy of the fire arms certificate is delivered to the Marina Manager at the earliest opportunity.

17. Disposal of Refuse

17.1 No refuse shall be thrown overboard or left on the pontoons, jetties or car parks. Any domestic waste shall be disposed of in the receptacles provided by the Canal & River Trust or by removal from the Marina by the Owner. Non domestic waste such as microwaves, fridges or other electrical household appliances must be removed from the Marina by the Owner. The Company reserves the right to recharge to the Owner the costs relating to the disposal of such items where Owners can be clearly identified.

17.2 Toilet waste must only be disposed of at the Elsan Disposal point or at the pump out stations.

17.3 The Company reserves the right to inspect a Vessel's bilges, holding tanks and other containers of fuels and oils at any reasonable time and in the presence of the Owner and to enter onto a Vessel in an emergency if a Vessel is found to be causing pollution by way of discharge into the Marina from bilges, holding tanks or fuel tanks. The Company will make every effort to contact an Owner in order that he can rectify a problem before an entry onto a boat is effected.

18. Spillages

18.1 The Owner should immediately report any spillage of oil, paint or any other pollutant into the Marina to the Marina Office during opening hours, or out of hours on the following telephone number: 07970 634964.

18.2 The Owner should also take such steps as are reasonably practicable in the circumstances to minimise the spread of the pollutant and warn other users of the Marina of the problem. Costs associated with any clean-up will be charged to the Owner.

19. Stowage and Use of Dinghies

19.1 Dinghies, tenders and other small craft shall not be used in the Marina without the prior permission of the Marina Manager.

20. Storage of Gear

20.1 No fittings, equipment, supplies, stores or any other property belonging to the Owner shall be stored or left at the Marina other than as directed by the Company.

20.2 Except whilst transporting items to or from the Vessel, the Owner must not leave or store any items on the pontoons, pathways, walkways, car parks or anywhere else on the Marina. No ropes, cables, hoses, wires etc. may be trailed across paths or pontoons.

20.3 The Vessel, dinghies, tenders, trailers and cradles shall be clearly marked with the name of the Vessel. Any other equipment which is not stored securely in the Vessel shall also be clearly marked with the name of the Vessel.

21. Vehicle Parking

21.1 Each Contract shall confer on the Owner the right to park one vehicle. The Owner's right shall not extend to commercial vehicles or to vehicles over 2 tonnes gross weight or to vans over a maximum length of 5 meters. Owners are required to park vehicles in such a manner and in such a position as shall be required from time to time by the Company. Untaxed or SORN vehicles are not permitted to be parked on the Company's property.

21.2 Where parking permits are supplied, the Owner must ensure that it is displayed in the Owner's vehicle at all times.

21.3 The Owner is to ensure that only their vehicle which is frequently used is parked within the designated area and this vehicle is not permitted to be used in such a manner as enable provision for overnight accommodation.

21.4 The Company reserves the right to recover from the Owner its reasonable costs that have been incurred in moving, storing or disposing of any vehicle that is in contravention of Clause 21.1

21.5 The prior consent of the Company is required before any additional vehicles are parked on the Company's property. The Company reserves the right to charge for the storage of any vehicles parked upon the Company's property.

21.6 Parking for additional vehicles may be arranged through the Marina office.

21.7 Owner's invited guests must park their motor vehicles in temporary areas as directed by the Company and not in car parks designated for contracted Owners.

21.8 Owners, their crew and invited guests must observe the advised speed limit when driving on any part of the Marina.

21.9 No tent, caravan (motor or trailer) or other vehicle adapted or designed for sleeping may remain in any part of the Marina without the prior written consent of the Company.

21.10 In the event an alarm installed in any vehicle parked within the Marina activates and remains sounding without the Owner deactivating the alarm within a period of 2 hours, the Company reserves the right to

engage an engineer to deactivate the alarm. In such case the Owner shall indemnify the Company for the costs incurred and acknowledges that the deactivation of the alarm is undertaken exclusively at the Owner's risk. The Company will endeavour but shall not be obliged to contact the Owner to warn that action is to be taken to deactivate the alarm.

22. Security

22.1 The Owner, his crew, contractors and visitors are required to ensure that all security barriers and gates are closed and locked after use. It is not permitted to leave gates unlocked, open or ajar at any time. It must be noted that there are some barriers and gates that are allowed to be left open for specific hours of the day but they will always have a notice beside them stating the relevant hours. Owners are required to ensure that where gates and locks are provided that they should be closed and locked to ensure the security of the site.

23. Health and Safety and Fire Precautions

23.1 Whilst on marina property the Owner shall abide by all relevant health and safety regulations, codes of practice and any health and safety guidance issued by the Company.

23.2 The Owner shall take all necessary precautions against the outbreak of fire in or upon his Vessel and the Owner shall observe the statutory and local regulations relating to fire prevention exhibited in the Office. The Owner shall provide and maintain in good working order the minimum number of fire extinguishers of an EU government approved or BSI standard type and size as required by boat safety regulations, in or on the Vessel and readily available for immediate use in case of fire

23.3 The Owner shall not refuel the Vessel in the water, except when moored at the Company's refuelling Berth. No naked flames or mobile electronic devices are allowed in close proximity to the refuelling berth. Residential and high usage owners are permitted to refuel in the water using diesel only.

23.4 The lighting of open fires or use of fireworks is strictly prohibited. Barbecues or portable gas cookers may be used when placed on a suitable stand and only in designated area. No barbecues or cooker may be left unattended or used on any pontoons and all barbecues and cookers should be used only with approved briquettes or gas fitting connectors and they must be properly extinguished or the gas supply terminated. The area around the equipment must be left in a clean and tidy condition and all waste removed.

23.5 No person shall moor or make fast any Vessel in a manner which is incapable of being easily released in case of emergency

23.6 Persons under the age of 16 years invited to the Marina by the Owner are the sole responsibility of the Owner and must remain under the Owner's supervision at all times. They must not be allowed to cause a nuisance to any other user of the Marina as per Clause 16.

23.7 Persons under the age of 12 must wear adequate life jackets and be attended by a responsible adult at all times whilst at the Marina

23.8 Any person at the Marina unable to swim is advised to wear adequate life jackets at all times whilst in the Marina.

23.9 Running/cycling on the pontoons is not permitted

23.10 No water ski-ing, speedboat racing or hydroplaning is permitted in the Marina.

23.11 The use of Jet-skis or other powered personal water craft is strictly prohibited.

23.12 The precincts of the Marina are clearly shown on the plan which may be examined at the Marina office and all adjoining land and water owned by the company is out of bounds.

23.13 The Owner is not permitted to alter the Berth or facilities in any way.

23.14 The Owner may deposit a set of keys with the Manager giving full access to the interior and lockers of the Vessel and including engine keys

23.15 Unless otherwise agreed in writing by the Company, all necessary warps and fenders shall be provided by the Owner, the Company reserves the right to replace warps and re-secure any Vessel in the interests of the safety at the Owner's expense without prior notification.

23.16 The Owner expressly undertakes and agrees to ensure that the Vessel is properly and safely attached to the pontoon at all times, in particular it is the responsibility of the Owner to check the security of the warps and fenders and replace them when necessary. Spare lines should be left accessible for use during times of inclement weather.

23.17 Water to the berths may be turned off subject to weather conditions.

24. Diving, Bathing or Fishing

24.1 Diving or bathing in the waters of the Marina is not permitted

24.2 No fishing is permitted.

25. Washing

25.1 The Owner shall not erect any washing line on the Boat or within the Marina or allow any laundry to be displayed on the exterior of the Boat.

26. Television Aerials, Satellite Dishes and Wind Generators

26.1 Every effort will be made by the Owner to ensure that television and radio aerials, satellite dishes and wind generators are erected in a manner that makes them as inconspicuous as their design allows for whilst the Vessel is in the Marina and approval from the local manager is to be sought prior to installation where such items are to be fixed to a Company structure.

27. Additional Regulations, Rules and Notifications

27.1 The Company reserves the right to amend these General Conditions and/or to introduce other marina specific rules and regulations which are necessary for the efficient and effective running of the Marina. Such amendments and rules and regulations shall become effective on being displayed on the Company's public notice board, in the Office reception or in any other prominent place the Company's office.

27.2 Any such rules and regulations introduced pursuant to this Clause 27 shall be deemed to form part of the Contract and the Company shall have the same rights against the Owner for a breach of these rules and regulations as for a breach of the Contract.

27.3 The Owner shall at all times abide by, and shall try his best to ensure that his crew, contractors and visitors abide by any applicable Canal and River Trust, Environment Agency and any other local authority bye-laws. Any failure to comply is a criminal offence and may result in a fine.

27.4 The Owner further undertakes to abide by any reasonable instructions issued by the Company.

28. Occupation of Vessels

28.1 The Owner shall not live permanently on board the Vessel nor shall they encourage or permit anyone else to do so, without the prior written permission of the Company.

28.2 The Company reserves the right to seek confirmation from the Owners who have a leisure mooring that they are using the mooring in accordance with the Contract and not using the Marina for residential purposes.

28.3 Where appropriate, the Company reserves the right to transfer the Vessel's mooring to a different Grade, including a residential mooring grade and to charge the Owner the difference in mooring fees at any point during the Contract or upon renewal of the contract if it considers that the Owner is using the Marina for residential purposes.

28.4 Where appropriate, if the Owner is given permission in accordance with Clause 28.1 the Owner must immediately notify the Company of the date upon which he wishes to commence his stay on the Vessel and the date upon which he ceased to occupy the Vessel in the manner prescribed by that permission

28.4.1 Where the Owner occupies the Vessel for residential purposes the Owner acknowledges that it occupies the Berth as a licensee only and that no relationship of landlord and tenant exists.

28.5 Where appropriate, the Company reserves the right to recover any charges levied in respect of Council Tax or any other charges from the Owner where these charges have been applied to the Company by the Local Authority and/or Council in respect of the Owner's implied occupation of the Marina as a place of residency, even if the Owner has not purchased a residential mooring contract from the Company.

29. Restriction of Services and Facilities

29.1 The Company will not be liable to the Owner in the event of a temporary failure of any of the facilities and/or services at the marina due to a reason not within the Company's control, but agrees to use its reasonable endeavours to ensure that the affected services and/or facilities are repaired as soon reasonably possible. This is also applicable to scheduled maintenance works.

30. Animals on Board Vessels

30.1 The Owner may not keep any animals on board the Vessel whilst it is in the Marina, other than domesticated animals that have been notified to the Company as being present on the Vessel and approved as suitable to be in the Marina by the Marina Manager using his absolute discretion. The animals approved by the Company as suitable for the Marina must (at the discretion of the marina) at all times remain on a lead of no more than 3 metres in length and/or be under the proper control of the Owner whilst they are at the Marina and must never be allowed to cause a nuisance to any other users of the Marina. The Company reserves the right to ask the Owner to remove any offending animals from the marina immediately if this Clause 30 is persistently breached by the owner.

30.2 Any waste caused by animals in the Marina must be cleared up by the responsible person and disposed of in an appropriate manner. Animal waste should never be discharged into the Marina water at any time. The Company reserve the right to charge any reasonable costs incurred by it in cleaning up after the animals that generate waste and which are not cleared up by that Owner.

30.3 Except with the prior permission of the marina animals are not permitted to enter any Marina buildings, in particular the Marina's Facility Blocks and Chandleries on health and hygiene grounds, the exception being registered assistance animals,.

31. Care of Marina Property

31.1 No alterations may be made to any part of the Marina property unless with the Company's prior written approval. The Company reserves the right to recharge for the costs of any reasonable works carried out by the Company to reinstate any unauthorised alteration made by an Owner.

32. General

32.1 The headings in these General Conditions are for convenience only and shall not affect its interpretation.

32.2 Unless otherwise agreed in writing, the Company's failure to exercise or delay in exercising any right or remedy provided by this Contract does not constitute a waiver of that right or remedy or waiver of any other rights or remedies under this Contract

32.3 The Company shall not be liable for any failure or delay in performing any of its obligations under this Contract caused by circumstances beyond its control

32.4 If any part of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, the validity and enforceability of the remainder of this Contract shall not be affected

32.5 This Contract, the Schedule and any Marina specific rules and regulations introduced by the Company in accordance with Clause 32 constitute the entire agreement and understanding between the company and the Owner with respect to all matters referred to within it and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in these General Conditions.

32.6 No person other than a contracting party may enforce any provision of this Contract by virtue of the Contract (Rights of Third Parties) Act 1999

32.7 Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract. The only remedy available to it for any statement, representation, warranty or understanding set out in this Contract (whether made innocently or negligently) shall be for breach of contract under the terms of this Contract. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

32.8 Any notice given or invoice to be delivered in accordance with this Contract shall be delivered by hand or sent by first class post. In the case of invoices, they may also be submitted by e-mail where an e-mail address has been provided in the Annual Berthing Contract. Any notice or invoice delivered by first class post shall be deemed to have been received 48 hours after it has been posted or placed on the Owner's Vessel

32.9 This Contract shall be governed and construed in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts over any claim or matter relating to this Contract.