

# PREMIER MARINAS (BRIGHTON) LIMITED

## CONDITIONS OF WET AND DRY BERTHING

### 1 PROVISION OF BERTH

- 1.1 For the duration of this Agreement we will allocate you a berth of the type set out in the Licence Certificate. You must not allow any Boat other than the Boat shown on the Licence Certificate to occupy the berth.
- 1.2 We 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.
- 1.3 We reserve the right to board, move, moor or re berth the Boat for reasons of safety, security, an emergency or to prevent or stop a nuisance.
- 1.4 We reserve the right at any time during the period of the agreement to measure the Boat and charge you additional berthing fees if the Total Overall Length (as calculated as set out in the Licence Certificate) of the Boat appears to be greater than the length stated in the Licence Certificate.
- 1.5 Should you sell your Boat, you may assign your current berthing licence to the new owner, subject to our consent and payment of the prevailing Assignment Fee.

### 2 YOUR OBLIGATIONS

- 2.1 You must observe and perform the Marina Rules and Regulations, copies of which are available from Marina reception. We may change these rules and regulations by placing notices on Marina notice boards and on our website: [www.premiermarinas.com](http://www.premiermarinas.com).
- 2.2 You will be responsible for all actions, proceedings, claims, damages, costs, expenses, losses and liabilities caused by or arising from any damage or injury suffered by any person or to any property where it was caused by an act, failure to act or omission by you, your crew, passengers, guests or persons carrying out work on your Boat by arrangement with you or with your consent. If we suffer any loss due to any such act, failure to act or omission then you will be liable to make payment to us to make good our loss.
- 2.3 If you sell the Boat or lose your right to possession of the Boat, you must immediately notify us in writing. You must include in the notice the date of the change of ownership or right to possession and the name and address of the new owner or person having the right to possess your Boat. Until we receive a notice containing all this information we will treat your Boat as being your property and you will continue to be responsible for all charges in connection with it and bound by the terms of this agreement and the rules.
- 2.4 You must ensure that at all times we have a current postal address and a current email address to which we can send you any notice or details of any matter arising out of this agreement. You must also provide telephone contact details in case of emergency.
- 2.5 If you have a dry sailing berth you must:-
  - Give us at least 24 hours notice of any requested launch;
  - Have available at each launch the appropriate warps and fenders;
  - Maintain any Boat or trailer in a safe working order;
  - Not operate or interfere with any Boat moving machinery at the Marina.
- 2.6 If you have a trailer sailing berth you must:-
  - Maintain your Boat trailer in a safe working order;
  - Only occupy the berth ashore which you are allocated by us;
  - Immobilise the trailer on which your Boat sits and give us a key to the immobilization device.
- 2.7 We cannot guarantee that the water level in the Marina will be sufficient to enable your Boat to safely navigate to, from and within the Marina. You are responsible for checking at all relevant times that there is sufficient water for you to navigate to, from and within the Marina.
- 2.8 You must keep the berth which you are allocated from time to time in a clean and tidy condition. No items of Boat gear, equipment or stores shall be left on pontoons or jetties.
- 2.9 Your Boat must be kept in a seaworthy and reasonably smart condition. Should we have cause to believe you are not sound or seaworthy, we reserve the right to give you notice of our intention to lift the Boat and request that you commission a survey report at your expense, that report to be made available to us within 30 days of the date of our formal request. Your Boat will not be returned to the berth until we are satisfied that the Boat is structurally sound and poses no threat to safety or safe navigation within the Marina.

### 3 OUR RIGHTS AND OBLIGATIONS

- 3.1 For all berths we provide in the Marina the berthing fee includes the following:-
  - Fresh water for use onboard the Boat.
  - Toilets, shower and washbasin in dedicated facilities;
  - Navigable access by water into the Marina (this is subject to the level of the seabed, tides and the draft of your Boat);
  - Receptacles for the deposit of refuse and dirty oil and dedicated receptacles for recyclable materials.
- 3.2 We shall provide as part of the berthing fee in relation to a dry sailing berth:-
  - The items listed in condition 3.1;
  - A number of lifts and launches for your Boat as set out in the Licence Certificate;
  - A berth ashore;
  - A temporary berth afloat for the days of the launch and lift of the Boat.
- 3.3 We will provide as part of the berthing fee in relation to a trailer sailing berth:-
  - The items listed in condition 3.1;
  - A berth ashore.
- 3.4 If you have a dry sailing berth we will endeavour to:-
  - Launch the Boat within 24 hours of receiving a notice under condition 2.5 so long as the notice is received on a Working Day;
  - Launch the Boat as soon as practical in the circumstances if notice is not given under clause 2.5;
  - Lift the Boat at the earliest reasonable opportunity following the return of the Boat to the Marina or notice of cancellation of your request to launch the Boat.
- 3.5 We reserve the right to lift the Boat out of the water if it is in the water in the Marina 36 hours from the launch of the Boat whether or not the Boat has left the Marina during the 36 hour period.

### 4 BERTHING FEE AND PAYMENT

- 4.1 You must pay the berthing fee to us in the manner set out in the Licence Certificate. The berthing fee will only include the services set out in condition 3.1, 3.2 and 3.3 according to the type of berth.
- 4.2 We are entitled to charge you for all Marina services other than those set out in condition 3.1, 3.2 and 3.3 and may invoice you for all such Marina services on or any time after provision of such services. You must pay us the price of such Marina services according to the terms stated on our invoice. Payment by credit card shall be at our discretion and may be subject to an administration fee.
- 4.3 We will only issue receipts for payment on request.
- 4.4 If you fail to make any payment on the date it is due we will send a further request to you. If you do not pay within 7 days of that letter then without affecting any other right or remedy we may have against you, we shall be entitled to take all or any steps of the following steps:-
  - 4.4.1 Terminate this agreement immediately by giving you notice in writing;
  - 4.4.2 Suspend the provision of any services (including but not only the provision of a berth) to you;
  - 4.4.3 Prevent the Boat from leaving the Marina;
  - 4.4.4 Use any payment made by you to us, no matter what you intended the payment to be used for, to pay for any or all of the services supplied by us or the berthing fee as we think fit;
  - 4.4.5 Charge you interest (both before and after any judgement) on the amount unpaid, at the rate of 2% above the HSBC 3 month LIBOR Rate per annum calculated on a daily basis;
  - 4.4.6 Charge and claim from you the cost of recovering any overdue amount including, but not limited to, legal costs;
  - 4.4.7 Any Boat or Vehicle left at the Marina is subject to the provisions of the Torts (Interference with Goods) Act 1977, which confers on the Company a right of sale exercisable in certain circumstances.

### 5 LIMITATION OF LIABILITY

- 5.1 We do not exclude liability for death or personal injury resulting from our negligence.
- 5.2 We are responsible for losses suffered by you as a result of our breaking this agreement, if the losses are a foreseeable consequence of us breaking this agreement. We are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by us or you such as increased costs or expenses, loss of profit, opportunity, business, contracts, revenues or anticipated savings or for any special indirect or consequential loss of any nature suffered by any person.

### 6 MATTERS OUTSIDE OUR CONTROL

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

### 7 YOUR WARRANTY TO US

- 7.1 You warrant to us that you are the owner of the Boat, have the immediate right to possess the Boat and that the total overall length of the Boat is as stated in the Licence Certificate.
  - 7.2 You shall also maintain at all times a suitable policy of insurance in respect of public liability and third party liability in respect of claims for damage to persons and property. In the case of your Boat, such insurance shall be in the sum of at least £2,000,000.
- ### 8 TERMINATION
- 8.1 The agreement shall start on the Start Date and shall continue until the End Date unless it is ended earlier in accordance with this agreement.
  - 8.2 If you have a 12 month berthing contract you will have been given specially discounted berthing rates for committing to that 12 month period. Therefore if you end the Agreement within that 12 month period the berthing fee for the period of occupation of the berth will be recalculated and the amount due will be the lower of:
    - 8.2.1 The number of days of occupation charged at the daily visitor rates; and
    - 8.2.2 The full amount due under the 12 month berthing contract.
  - 8.3 We reserve the right to charge you a cancellation fee which is sufficient to cover our losses and expenses, but which shall not be more than 4 weeks berthing fees at the prevailing visitors berthing rate.
  - 8.4 Without affecting any right or remedy available to either of us, either you or we will be entitled to end this agreement immediately by notice in writing to the other if:-
    - 8.4.1 The other commits any breach of this agreement and if it can be put right they do not put it right within 7 days of the party in breach being given a notice setting out full details of the breach and the action required to put it right;
    - 8.4.2 The other party being a company passes a resolution for winding up or a Court makes a winding up order in respect of that party or it has a receiver, administrative receiver, manager or administrator appointed over all or any of its undertaking or assets;
    - 8.4.3 The other party being a company ceases or threatens to cease to carry on its business, the other party is unable to pay its debts or becomes insolvent (in the meaning of the Insolvency Act 1986) or makes or proposes to make an arrangement or composition with its creditors.
  - 8.5 Without affecting any other right or remedy to us we will be entitled to end this agreement immediately by notice in writing to you if:-
    - 8.5.1 You have a bankruptcy petition presented or die;
    - 8.5.2 Being a partnership you are dissolved.

- 8.6 For the purpose of condition 8.4.1 a breach can be put right if the party can comply with the provision within the agreement in all respects other than as to the time of performance.
- 8.7 If we do not enforce this agreement or any part of it or we do not take action against you for breach of this agreement it does not mean that we cannot enforce that or any other provision or take action against you for a subsequent breach.
- 8.8 The rights to end this agreement given by this condition do not affect any other right or remedy we may have in respect of the breach concerned (if any) or any other breach.
- 8.9 The ending of this agreement does not affect any provision of this agreement which is intended to continue after this agreement has ended, or come into force when this agreement ends.
- 8.10 Notwithstanding any other provision in this agreement or the Rules, on termination of the agreement for any reason you shall immediately pay to us all monies owing to us and remove the Boat from the Marina on the date of termination or as soon as is reasonably practicable and in any event within 7 days of termination.

### 9 REMOVAL OF BOAT

- 9.1 In respect of a Marina berth we reserve the right (after giving you at least 7 days written notice) to secure or remove the Boat from its berth and place it under our control ashore in the event that:-
  - 9.1.1 You fail to make any payment on the due date;
  - 9.1.2 You fail to remove the Boat from its berth within 7 days of the termination of this agreement.
- 9.2 You give us irrevocable authority to carry out removals pursuant to clause 9.1, store the Boat, launch or lift it onto a trailer as necessary and you shall be responsible for all costs and charges relating to such actions including all repairs or other work necessary to facilitate such removal or storage, any subsequent launch and/or lift onto a trailer.
- 9.3 Without limiting the provisions of clause 5 our liability in respect of any damage or loss to the Boat caused during or following its removal under clause 9.1 is limited to damage or loss caused by our or our employees negligence. You remain responsible for insurance of the Boat.
- 9.4 If we have removed a Boat to storage under clause 9.2 we may give you 28 days notice of our intention to sell the Boat. Upon the expiry of the 28 day period we may sell the Boat and pay the proceeds to you or such person who is entitled to possession of the Boat less any and all sums owed by you to us and any expenses of sale and any legal costs incurred in respect of the sale.

### 10 GENERAL

- 10.1 In the event of any conflict between the terms of this agreement and the Rules this agreement shall prevail, but if a rule expands the term of this agreement or visa versa, both shall apply.
- 10.2 Even if you fail to sign your Licence Certificate you shall be deemed to have accepted the terms of this agreement if you have taken up a berth at the Marina.
- 10.3 We reserve the right to charge you berthing fees at our prevailing daily berthing rate for any periods during which you leave the Boat at the Marina if there is no current berthing licence in relation to that Boat between you and us. Such fee shall be due and payable when invoiced.
- 10.4 None of your rights or your obligations under this agreement may be assigned, transferred, sub contracted or otherwise disposed of in whole or in part without our prior written consent. We may assign, transfer, sub contract or otherwise dispose of all or any of our rights of the agreement by notice to you provided that such assignment does not affect any of your rights or remedies under the agreement.
- 10.5 A person who is not party to this agreement has no rights under the Contracts (Rights of Third Parties Act 1999) to enforce any terms of this agreement.
- 10.6 This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 10.7 In this agreement singular words include the plural and visa versa and words for one gender include any gender. Reference to persons includes bodies, corporate and unincorporated associations and partnerships.
- 10.8 The headings in these conditions do not affect their interpretation.
- 10.9 Any and all notices served by you or us in respect to this agreement shall be deemed to be sufficiently served when forwarded by hand or sent by first class post to your address, or in the case of notices to us to our registered office address, or such other address as we may have notified from time to time. Notice shall be deemed to have been received if sent by first class post, 2 business days after posting exclusive of the day of posting or if delivered by hand on the day of delivery. In proving service, by delivery by hand, it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee and by post it shall be necessary only to prove the communication was contained in an envelope which was duly addressed and posted in accordance with this clause.
- 10.10 If the obligations, undertakings and warranties by you in this agreement are undertaken or given by more than one person, then they are deemed to have been given by all persons jointly and also by each of them individually.
- 10.11 In these conditions the following words and meanings shall apply:-
  - "Agreement": the Licence Certificate, these terms and conditions and the Rules;
  - "We" or "Us" or "Our": Premier Marinas Limited or a Premier subsidiary company;
  - "Marina": A Marina owned by Premier Marinas Limited or by a Premier subsidiary company;
  - "You" or "Your": the skipper or person in charge of the Boat;
  - "Rules": the Rules and Regulations of the Marina issued from time to time;
  - "Start Date": the date the Boat enters the Marina;
  - "Total Overall Length of the Boat": The Total Overall Length of the Boat shall be calculated including davits, bowsprits, bumpkins boarding ladders, sterntridies, tenders, outridies, outboards, rudders, anchors, pulpits, pushpits and any other extension fore and aft of the Boat;
  - "Boat": the Boat shown on the Licence Certificate;
  - "Working Day": a day (not being a Saturday or a Sunday) when clearing banks are open for business in the City of London.