

Newbury Manor Marina Limited

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MOORING LICENCE STANDARD TERMS & CONDITIONS

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DEFINITIONS

- “Business Day”** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- “Business Hours”** the period from 9.00 am to 5.00 pm on any Business Day.
- “Deposit”** The deposit (if any) due on signing of the Licence.
- “Initial Period”** The first three months following the Start Date.
- “Joining Fee”** The joining fee (if any) due on signing the Licence.
- The “Licence”** The mooring licence agreement for each Vessel.
- “Licence Period”** The Licence will continue unless terminated by either party in accordance with clause 9 of the Mooring Licence Standard Terms & Conditions.
- “Licensor”** Newbury Manor Marina Limited (Company number 16992430) whose registered office is Ham Manor Marina, London Road, Newbury, RG14 2BP.
- “Marina”** Ham Manor Marina, London Road, Newbury RG14 2BP.
- “Mooring”** A position at the Marina as indicated from time to time by the Licensor.
- “Mooring Fee”** The sum (plus VAT where applicable) per foot per month of overall length of the Vessel, payable to the Licensor monthly in advance and reviewed annually, subject to clause 8.
- “Navigation”** The Kennet and Avon Canal from Bristol to Reading.
- “Owner”** Owner means any person, firm, company or other legal entity (other than the Licensor) who owns or has control of the Vessel.
- “Pontoons”** The fixed and floating walkways and pontoons at the Marina.
- “Start Date”** The first day mooring the Vessel at the Marina.

2. PAYMENT AND LICENCE

- 2.1. In consideration of the Owner paying the Licensor the Mooring Fee, the Licensor grants to the Owner licence to moor the Vessel at the Mooring, PROVIDED THAT:
- 2.1.1 The Owner shall occupy the Mooring as a licensee and no relationship of landlord and tenant is created between the Owner and the Licensor by the Licence.
- 2.1.2 The Licensor shall retain control, possession and management of the Mooring and the Marina and the Owner shall have no right to exclude the Licensor from the Mooring.
- 2.1.3 The Licensor shall be permitted to vary the position of the Mooring at the Marina from time to time at the Licensor's own discretion or for reasons of safety, or good management, or requirements of any relevant authority, after giving not less than 14 days' notice to the Owner, or without notice in case of emergency.
- 2.2 Any notice given under the Licence shall be in writing and shall be:
- 2.2.1 delivered by hand or by pre-paid first-class post or other next working day delivery service:
- a. to the Licensor at its registered office; and
 - b. to the Owner at the address shown on the Licence (or at such other address substituted in writing by the Owner).
- 2.2.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
- a. to the Licensor at office@newburymanormarina.co.uk
 - b. to the Owner at the email address shown on the Licence.
- 2.3 Any notice given in accordance with clause 2.2 will be deemed to have been received:
- a. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

b. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 a.m. on the second Business Day after posting.

- 2.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 2.5 Time for payment is of the essence.
- 2.6 The Licence shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Licence or its subject matter or formation.
- 2.7 Nothing in the Licence shall reduce the Owner's statutory rights as a consumer. For further information about statutory rights, the Owner should contact local authority Trading Standards or the Citizens Advice Bureau.
- 2.8 In the event any provision of the Licence is determined to be void or unenforceable, such determination shall not affect the remainder of the Licence, which shall continue to be in force.
- 2.9 The Licensor will use the Owner's personal information for the purposes of administration and invoicing of mooring fees and may share this information with other group companies, but will not share such information with any third parties without the Owner's consent. The Licensor will use the contact information provided to keep the Owner up to date with information about the Vessel, the Mooring and the Marina. If the Owner leaves the Marina, the Licensor may continue to provide information about the Marina. Any Owner who does not wish to receive such information should contact the Licensor, and will be removed from the contact list immediately.
- 2.10 The Licensor is a data controller for the purposes of the General Data Protection Regulation and the Data Protection Act 2018. A copy of the Licensor's Privacy Policy is available from the Licensor on request.

3. ASSIGNABILITY OF AGREEMENT AND SALE OF THE VESSEL

- 3.1 Subject to the conditions below the Licence shall take effect as from the Start Date.
- 3.2 There is no right to replace the Vessel by another vessel and there is no right for the Owner to use the Mooring for any vessel other than the Vessel.
- 3.3 The Licence is personal to the parties and is not assignable.
- 3.4 The Owner is responsible for the sale of the Vessel, and the Licensor shall have no responsibilities in relation to the sale (for example to market the Vessel for sale, to show prospective new owners the Vessel or to give an opinion on the condition and/or valuation of the Vessel).
- 3.5 The Owner must notify the Licensor of their intention to sell the Vessel, and once the Owner has agreed the sale of the Vessel, they must notify the Licensor of the sale price that has been agreed, and the details of the prospective new owner.
- 3.6 In the event of the sale of the Vessel by the Owner, the Licensor shall have no obligation to grant the new owner of the Vessel a mooring licence.
- 3.7 The Vessel may not be advertised for sale or shown to prospective purchases within the Marina other than through a broker approved by the Licensor. The approved broker(s) may change from time to time, as directed by the Licensor. When a vessel is sold via the approved broker, the Licensor may waive the requirement by the Owner to give the Licensor three month's notice to terminate the Licence as set out in clause 9.1.1.

4. DECLARATION OF FITNESS

- 4.1 By entering into the Licence, the Owner acknowledges that the leisure or residential use of the Vessel carries inherent risks (including, but not limited to, adverse weather conditions), and warrants that they are, and will at all times remain, sufficiently fit and healthy to occupy and operate the Vessel safely in all weather conditions, and to be able to evacuate themselves and their guests from

the Vessel and the Marina safely and without assistance in the event of an emergency.

- 4.2 The Owner must, if requested by the Licensor, complete a medical questionnaire form and/or provide a certificate signed by a qualified medical practitioner confirming that they are fit to use the Vessel.

5. OWNER'S OBLIGATIONS

The Owner hereby covenants with the Licensor:

5.1 **Payments:**

To make the payments due under the Licence as follows:

- 5.1.1 To pay the Mooring Fee to the Licensor monthly in advance on the first day of each month, or such other period in advance as may be agreed with the Licensor.
- 5.1.2 To pay all Value Added Tax that may be chargeable on the Mooring Fee, or any other sum payable to the Licensor.
- 5.1.3 To pay the Joining Fee and the Deposit on or before the Start Date.
- 5.1.4 To pay all Council Tax and charges for water, gas, electricity, telephone and any other charges, fees and taxes which may be due in respect of the Vessel and/or the Mooring.
- 5.1.5 To pay the Licensor interest on any monies owing after their due date for payment, at a rate of 4% per annum above the base rate for the time being of National Westminster Bank PLC or (in the event of said base rate ceasing to exist) such other comparable rate of interest as the Licensor may from time to time specify.
- 5.1.6 To make payments under the Licence by direct bank payment/standing order or direct debit (as directed by the Licensor from time to time)

5.2 **Marina Rules & Regulations:**

- 5.2.1 The Owner agrees to abide by the Marina Rules & Regulations (as in force from time to time).

5.2.2 The Licensor may change the Marina Rules & Regulations from time to time, including for reasons of health and safety, the efficient running of the Marina, environmental issues, local authority requirements or changes in law or regulations. The Licensor will notify the Owner of any changes to the Marina Rules & Regulations.

5.3 **Health, Safety & Environmental Guidelines**

The Owner agrees to abide by the Marina Health, Safety & Environmental Guidelines, as varied or updated from time to time by the Licensor.

5.4 **Subletting and commercial use of the Vessel**

The Owner agrees

5.4.1 Not to sublet the Vessel or any part of the Vessel whilst it is on the Mooring without the prior written consent of the Licensor. In the event that the Licensor provides consent for the letting of the Vessel, the Owner agrees to abide by such relevant additional requirements as may be directed by the Licensor. The Owner's consent for the letting of the Vessel may be withdrawn and rescinded at any point with 28 days' notice.

5.4.2 Not to use or hire out the Vessel for any commercial purpose without the prior approval in writing of the Licensor. The Licensor reserves the right to withdraw such approval with 28 days' notice.

5.4.3 Not without the Licensor's prior written permission to use the Vessel for residential purposes whilst it is on the Mooring, and to supply the Licensor details of the Owner's home address, which must be a different address to the Marina. The Owner must produce evidence to the Licensor of such home address within 7 days of a request to do so.

5.4.4 Use of the Vessel to provide overnight accommodation in exchange for payment or a reciprocal arrangement is deemed to be commercial use.

5.5.5 The Vessel is deemed to be used for residential purposes if any of the following tests are met: the Owner (or anyone else):

- i. uses the Vessel as their main place of residence
- ii. stays on board the vessel for more than 150 nights in any twelve month period
- iii. uses the Marina as their UK postal address

5.4.6 The Licensor is entitled to make use of the Mooring whilst it is left vacant by the Owner.

5.5 Insurance

The Owner agrees:

5.5.1 To insure the Vessel at the Owner's own expense against Property Owners' Liability (including liability to any third parties employed to work on the Vessel) and Public Liability, which must include cover for salvage and removal of wreck by a reputable insurer. The sum insured for these liabilities shall not be less than £5,000,000, or such higher number as directed by the Licensor.

5.5.2 The Owner shall provide proof of insurance by providing the Licensor each year with the name of the insurer, the period of cover, the policy number and the sums insured. The Licensor shall assume no duty to the Owner to check they have insured against the correct risks.

5.6 Indemnity

The Owner shall indemnify the Licensor against all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation and loss of opportunity), fines, expenses and costs (including claims by third parties) incurred by the Licensor as a result of any:

- a) act or omission of the Owner, their guests, agents or contractors, including their activities in or on the Vessel;
- b) defect in the Vessel; or

- c) failure by the Owner to comply with the terms of the Licence, these terms and condition, and or the Marina Rules & Regulations and the Marina Health & Safety Guidelines.

6. FORCE MAJEURE

- 6.1 "**Force Majeure**" shall mean any act or event beyond the Licensor's reasonable control including, without limitation, strike, lockouts or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war, (whether declared or not) or a threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or pandemic or other natural disaster, interruption of electricity or water supply or failure of public or private telecommunications or sewerage networks.
- 6.2 The Licensor will not be liable or responsible for any failure to perform, or any delay in performance of, any of the Licensor's obligations caused by an event of Force Majeure.
- 6.3 If any event of Force Majeure takes place that affects the performance of the Licensor's obligations, the Licensor will notify the Owner as soon as reasonably possible; and
- 6.4 The Licensor's obligations under the Licence and these terms will be suspended and extended for the duration of the Force Majeure event.

7. LICENSOR'S OBLIGATIONS

The Licensor covenants with the Owner:

- 7.1 To maintain and keep in good state of repair the Marina and the Mooring, and in particular but without prejudice to the generality of the foregoing: the pontoons and walkways, the car park, the access gate, the toilets, the electric bollards and lighting, the supply of electricity and mains water, the Marina safety equipment, the trees and landscaping and the sewerage pumping system. For the avoidance of doubt, the Licensor will not be responsible for any wires, cables, pipes or supplies from the bollards or pontoons to any individual vessel.

- 7.2 To provide and maintain such appropriate CCTV & access control systems as is reasonable for the safe and proper operation of the Marina. Such CCTV cameras are operated in the Marina for security and safety purposes and are operated in accordance with the CCTV Code of Practice and the General Data Protection Regulation 2016/679.
- 7.3 To insure the Marina against usual third-party risks to a minimum of £5,000,000 per claim. The Licensor will review the minimum sum insured from time to time and may increase it if it reasonably considers the current minimum sum insured to be insufficient.
- 7.4 To provide, maintain and keep in good repair the utilities supplied to the Mooring, except where these have to be interrupted for the purposes of repair or development or for other reasons beyond the Licensor's control such as interruptions in the supply of services (such as failure of the electrical or water supply to the Marina itself). Please note that during winter conditions, it may be necessary for the Licensor to drain down the Marina water pipes and taps to avoid damage and burst pipes, so it may not be possible to provide water to the berth during periods of cold weather.
- 7.5 To charge for utilities in accordance with the requirements of the law and any relevant utility regulator.

8. REVIEW OF THE MOORING FEE

- 8.1 The Mooring Fee will be reviewed annually on 1 January each year.
- 8.2 The Owner will be notified of the new Mooring Fee on or before the last day of November each year.

9. TERMINATION

The Licence may come to an end in any of the following ways:

- 9.1.1 By the Owner or the Licensor giving the other party notice in writing of their wish to end the Licence. After the Initial Period, either party shall have the right to

terminate the Licence at any time, for any reason, by giving not less than three months written notice to the other party.

- 9.1.2 By the Owner selling or gifting the Vessel or otherwise losing ownership of it.
- 9.1.3 By the Licensor terminating it because the Owner has breached their obligations under the Licence.
- 9.1.4 By the Licensor selling or otherwise disposing of the Marina.
- 9.1.6 Upon the death of the Owner, save that the Owner's estate will be granted a period of 6 months following the death of the Owner to sell the Vessel subject to the provisions of clause 3. If the Vessel has not been sold after 6 months following the death of the Owner, the Licence will terminate and the provisions of clause 10 will apply. For the avoidance of doubt, all of the obligations of the Owner under the Licence (including payments due) will continue until the Vessel has been sold to a new owner, or the Licence has terminated and the Vessel has been removed from the Marina.
- 9.2 The Licensor shall have the right (without any other rights and remedies) to terminate the Licence immediately in any of the following circumstances:
 - 9.2.1 If the Owner fails to make any payments due to the Licensor pursuant to the Licence as they fall due and has failed to remedy such a breach by making the due payment, including any accrued interest, within 14 days of having been served with written notice informing the Owner of the breach.
 - 9.2.2 If the Owner is in material or persistent breach of any of the terms of the Licence and any such breach is incapable of remedy and written notice has been served on the Owner to this effect.
 - 9.2.3 If the Owner is in material or persistent breach of any of the terms of the Licence and, where the breach is capable of remedy, has failed to remedy such a breach within 14 days of having been served with written notice by the Licensor informing the Owner of the breach. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any person or property or to the

environment, the time specified for the remedy in the notice may be reduced and may be immediate or extremely short in duration.

- 9.2.4 In the reasonable opinion of the Licensor the Owner or (their visitors or guests acts in an inappropriate violent or abusive way towards the Licensor or its staff or other users of the Marina or causes unacceptable nuisance or annoyance to the Licensor or to any other users of the Marina.
- 9.2.5 If the Owner is unable to pay its debts or become insolvent (in the meaning of the Insolvency Act 1986) or makes or proposes to make an arrangement with its creditors or (being an individual) has a Bankruptcy Petition presented against them.
- 9.2.6 The Vessel is destroyed or written off.
- 9.3. For the avoidance of doubt, a breach of the Licence will include any breach of the Marina Rules & Regulations, or the Health, Safety & Environmental Guidelines.

10. CONSEQUENCES OF TERMINATION OF THE LICENCE

- 10.1 The Owner will arrange with the Licensor for the disconnection and removal of the Vessel and all other property of the Owner from the Marina within 7 days after termination of the Licence, however that comes about.
- 10.2 If following termination of the Licence the Owner fails to arrange the disconnection and removal of the Vessel through the Licensor, the Licensor shall be entitled to disconnect and remove it after giving the Owner not less than 14 days' notice in writing of its intention to do so.
- 10.3 The Licensor has the right to exercise a general lien over the Vessel or her gear or equipment whilst in the Marina until such time as any monies due to the Licensor from the Owner are paid. The Licensor shall have a power to sell the Vessel. If the Licensor sells the Vessel the Licensor will pay the proceeds to the Owner, less all sums owed to the Licensor by the Owner and any expense of sale and any legal costs incurred in respect of the sale.
- 10.4 The Licensor may charge the Owner reasonable storage fees from the date when the Licence ends until the date the Vessel is removed from the Marina.

- 10.5 If an independent surveyor confirms to the Licensor that the Vessel is not capable of selling for a sum sufficient to cover the costs of removal and sale, plus any other sums which the Owner may owe to the Licensor, then the Owner authorises the Licensor to dispose of the Vessel as it sees fit and the Owner will repay to the Licensor the costs it incurs (acting reasonably) in the removal and disposal of the Vessel. Otherwise, the Licensor may, on not less than one month's written notice to the Owner, sell the Vessel at the best price reasonably achievable in the circumstances.
- 10.6 Where the Licensor sells the Vessel, it will account to the Owner for the sale proceeds received, less (a) the Licensor's reasonable costs of storage (b) the Licensor's reasonable costs of disconnection, removal and disposal or sale and (c) any other sums due from the Owner to the Licensor."
- 10.7 Where the Licensor has validly terminated the Licence, the Licensor will repay to the Owner any Mooring Fees and other charges which the Owner has paid the Licensor for any period after the Licence terminates, less any sums properly due to the Licensor.
- 10.8 The Licensor shall have the right to use the Deposit to cover any sums properly due to the Licensor under the Licence, or to cover any damage, or compensation for damage to the Marina or its fixtures and fittings for which the Owner may be liable, and if no such sums are due, then the Licensor shall return the Deposit to the Owner within 28 days of the termination of the Licence.
- 10.9 The Licensor may retain the Vessel in the following circumstances:
- 10.9.1 To cover any damage, or compensation for damage, to the Marina or its fixtures and fittings for which the Owner may be liable, subject to an apportionment or allowance for fair wear and tear, insured risks, and repairs that are the Licensor's responsibility;
- 10.9.2 The reasonable costs incurred in compensating the Licensor for, or for rectifying or remedying any breach by the Owner of their obligations under the Licence; and/or

10.9.3 If there are any unpaid sums due from the Owner to the Licensor on termination of the Licence.

10.10 Termination of the Licence shall not affect the rights of either party in connection with any breach of any obligation under the Licence which existed at or before the date of termination.

II. **LIMITATION OF LIABILITY**

II.1 Subject to clause II.2, the Licensor is not liable for:

II.1.1 the death of, or injury to the Owner, their guests or invitees to the Marina; or

II.1.2 damage to any property belonging to the Owner, their guests or other invitees to the Marina; or

II.1.3 any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Owner, their guests or other invitees to the Marina in the exercise or purported exercise of the rights granted under clause 2 of the Licence.

II.2 Nothing in clause II.1 shall limit or exclude the Licensor's liability for:

II.2.1 death or personal injury or damage to property caused by negligence on the Licensor's part or on the part of the Licensor's employees or agents; or

II.2.2 any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

III.3 The Owner should inspect the Mooring prior to the commencement of the Licence, and the Mooring shall be taken by the Owner in its present state and the Owner shall be deemed to be aware of any defects existing at the date of the Licence.

II.4 No liability shall attach to the Licensor in respect of damage to the Vessel caused by any part of the Marina, unless such damage shall have been caused by a failure on the part of the Licensor to comply with their obligations under the Licence.

- 11.5 The Licensor will not be responsible for any loss damage delay whatsoever due to or consequent upon any strike, lock-out, labour stoppage, dispute of non-delivery of materials, fire, explosion, theft, accident, flood, storm, war, terrorism, civil commotion, storage or vessels not under their control.
- 11.6 Notwithstanding anything contained in the Licence the Licensor shall not be liable to the Owner nor shall the Owner have any claim against it in respect of any interruption in the performance of any of the Licensor's obligations by reason of necessary repair or maintenance of any installation or apparatus or damage thereto or destruction thereof by fire, water, act of God or any other cause beyond the Licensor's control or by reason of mechanical or other defect, or breakdown, or frost or other inclement conditions, or unavoidable shortage of fuel, material, water or labour, provided the Licensor takes all such steps as are reasonably necessary to keep such period of interruption to a minimum.
- 11.7 The Licensor is not responsible for and cannot guarantee the water level within the Marina, and is not responsible for the consequences of fluctuating water levels.

12. ENTIRE AGREEMENT

The Licence, including the Marina Rules & Regulations, the Marina Health, Safety & Environmental Guidelines and these Mooring Licence Standard Terms & Conditions (as amended from time to time) contain the entire agreement between the Owner and the Licensor. The Owner and the Licensor agree that the other party shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Licence. The Owner and the Licensor shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Licence.