

# **IPSWICH BEACON MARINA**

## **MARINA TERMS AND CONDITIONS AND BERTHING LICENCE**



**ASSOCIATED  
BRITISH PORTS**



## **ABP IPSWICH BEACON MARINA TERMS AND CONDITIONS AND BERTHING LICENCE**

(to be read in conjunction with the completed Application Form or Service Order (as applicable))

### **IMPORTANT ADVICE**

**YOUR ATTENTION IS DRAWN TO SPECIFIC CONDITIONS WHICH EXCLUDE OR LIMIT THE LIABILITY OF ABP (INCLUDING CONDITION 8), ABP'S RIGHT TO DETAIN AND SELL YOUR VESSEL (CONDITION 16) AND WHICH REQUIRE YOU TO INDEMNIFY OR REIMBURSE ABP IN CERTAIN CIRCUMSTANCES (INCLUDING CONDITIONS 17.4 AND 17.5).**

**ABP UNDERTAKES NO OBLIGATION TO EFFECT INSURANCE (AND MAKES NO CHARGE FOR INSURANCE). OWNERS ARE ADVISED TO EFFECT INSURANCE THEMSELVES.**

**ABP RESERVES THE RIGHT TO MAKE CHANGES TO THESE CONDITIONS AT ANY TIME. THE OWNER WILL BE SUBJECT TO THE CONDITIONS FROM THE TIME THAT THE OWNER'S VESSEL ENTERS THE PORT.**

**EXCEPT TO THE EXTENT THAT A BESPOKE WRITTEN AGREEMENT HAS BEEN ENTERED INTO BETWEEN YOU AND ABP, WHERE THESE CONDITIONS ARE INCONSISTENT WITH TERMS AND CONDITIONS THAT PREVIOUSLY APPLIED OR WERE UNDERSTOOD TO APPLY TO THE VESSEL, THESE CONDITIONS WILL PREVAIL.**

**THESE CONDITIONS INCORPORATE ABP'S TERMS AND CONDITIONS OF TRADE. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THESE CONDITIONS AND ABP'S TERMS AND CONDITIONS OF TRADE, THESE CONDITIONS WILL PREVAIL TO THE EXTENT OF SUCH CONFLICT OR INCONSISTENCY.**

### **1. DEFINITIONS & INTERPRETATION**

1.1. In these Conditions, the following words shall have the following meanings:

**"ABP"** means Associated British Ports whose principal office is at 25 Bedford Street, London WC2E 9ES or such other address as may be notified by ABP from time to time;

**"ABP Regulations"** means all rules, codes of practice or other directions or regulations issued by ABP from time to time in relation to the Port;

**"ABP's Terms and Conditions Trade"** means ABP's the standard terms and conditions of trade from time to time in force, the current version of which can be found at <https://www.abports.co.uk/marine-information-and-compliance/abp-standard-terms-and-conditions-of-trade/>;

**"Application Form"** means the Marina's application for a berthing licence, as may be amended from time to time, which once signed by the Owner and by or on behalf of ABP has effect as part of these Conditions;

**"Applicable Laws"** means all applicable law and legislation of any jurisdiction including all or any statutes, rules, regulations, statutory guidance, treaties, directives, decisions, directions, recommendations, codes of practice, guidance notes, circulars, byelaws, orders, notices, demands, regulations or official guidance issued by any Competent Authority which are applicable to the Owner and/or to the Port as the same may be amended or modified from time to time;

**"Berth"** means a berth at the Marina (or shore space) where a Vessel may be secured, with access to the shore, as such berth is allocated by ABP from time to time;

**"Boat Length"** means the overall length of the Vessel calculated including davits, bowsprits, bumpkins, boarding ladders, stern drives, outdrives, outboards, rudders, anchors, pulpits, pushpits and any other extension fore and aft of the Vessel;

**"Car Park"** means the car park at the Port where ABP authorises a Vehicle to be parked from time to time;

**"Charges"** means the Licence Fee, the Residential Use Surcharge, the Commercial Activity Surcharge and all other monetary amounts due from the Owner pursuant to or in relation to these Conditions;

**"Conditions"** means these terms and conditions as may be updated by ABP from time to time;

**"Commercial Activity Surcharge"** means the amount notified as such by ABP to the Owner from time to time;

**"Competent Authority"** means any supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over ABP or the Owner or having responsibility for the regulation or governance of any aspect of the performance of these Conditions and/or any activities carried out at the Port;

**"Dangerous Substances"** means goods or materials of a noxious, hazardous, inflammable, explosive, dangerous or offensive nature or which are in any way likely to cause damage (including without limitation any radioactive substances or materials);

**"End Date"** means the date specified as such on the Application Form and is the date on which the Licence expires (such expiry being automatic and without the need for notice);

**"Environment"** means (whether alone or in combination): (a) ecological systems and living organisms (including humans); (b) air (including air within buildings or other structures and whether below or above ground); (c) land and soil (including buildings and any other structures in, on or under land

and soil, anything below the surface of the land, and land covered with water); and (d) water (including water under or within land or within pipe or sewerage systems);

**"Harbour Master"** means the ABP Harbour Master or Dock Master for the Port, or ABP Marina Manager for the Marina (as appropriate) or their authorised representative;

**"Hazardous Materials"** means any substance in whatever form whether alone or in combination with any other substance known or reasonably believed to be harmful to human health or the Environment, whether or not for that reason it is subject to statutory controls on production, use, storage or disposal;

**"Licence"** means the berthing licence granted to the Owner in Condition 2 of these Conditions together with the completed Application Form;

**"Licence Fee"** means the amount specified as such on the Application Form;

**"Licence Period"** means the period commencing on the Start Date and ending on the End Date or, if the Licence is terminated early, the date of termination of the Licence;

**"Lifting Services"** means the lifting the Vessel or any Owner Property at the Marina by ABP;

**"Losses"** means any loss, damage, liability, demand, claim, recovery, judgment, execution, fine, penalty, charge and any other cost and expense of any nature or kind whatsoever, including any costs of recovery on a full indemnity basis;

**"Marina"** means [Ipswich/Lowestoft/Fleetwood] Beacon Marina at the Port (including the Berth, the Car Park, roadways and all other land, water, quays, buildings and other structures within ABP's statutory harbour jurisdiction or otherwise owned or operated by ABP);

**"Marina Management Office"** means the office at the Marina, the address of which shall be notified by ABP to the Owner from time to time;

**"Owner"** means the owner of the Vessel, being the person specified as the owner of the Vessel on the Application Form or the Service Order (as applicable);

**"Owner Invitees"** means any person or company (including any Contractor, as defined in Condition 11.1) whom the Owner invites onto the Port;

**"Owner Property"** means any gear, equipment, dinghy, luggage, keys (including keys to the Vessel and/or any Vehicle), goods or any other property (other than the Vessel or any Vehicle) which is owned by or in the control and possession of the Owner or any Owner Invitees (including, without limitation, that which is onboard a Vessel or inside the Vehicle);

**"Pollution Incident"** means a discharge of any Hazardous Material to the Environment in breach of any Applicable Laws;

**"Port"** means ABP's Port of [Ipswich/Lowestoft/Fleetwood] (including the Marina) and references to the "Port" are to be construed as if it was immediately followed by the words "or any part of it";

**"Prepayment Meter"** means an electricity meter installed at the Marina which is used by the Owner to pay for electricity in advance;

**"Price List"** means the Marina's price list as may be amended from time to time, the current version of which can be found at <https://www.beaconmarinas.co.uk/> ;

**"Residential Use"** is defined in Condition 2A.1;

**"Residential Use Protocol"** means the Marina's residential use protocol form, as may be amended from time to time;

**"Residential Use Surcharge"** means the amount (if any) specified as such in the Residential Use Protocol;

**"Seaworthy"** means in a reasonably fit and good condition to safely move or stay within the Port and that it will remain in a reasonably fit and good condition despite any of the ordinary perils which it may encounter during the Vessel's stay;

**"Services"** means Lifting Services, Storage Services and any other services or facilities provided by or on behalf of ABP in connection with the Owner's or Vessel's use of the Marina;

**"Service Order"** means the Marina's service order form as may be amended from time to time and which, once signed by the Owner and by or on behalf of ABP, has effect as part of these Conditions;

**"Start Date"** means the date specified as such on the Application Form and is the date from which the Licence commences;

**"Storage Services"** means the storage of the Vessel at the Marina by ABP;

**"Vehicle"** means the motor vehicle(s) (with no trailer attached) specified in the Application Form that is/are authorised to park in the Car Park from time to time in accordance with Condition 12; and

**"Vessel"** means the vessel specified as such on the Application Form or Service Order (as applicable).

- 1.2. In these Conditions: (a) unless otherwise provided or unless the context otherwise requires: (i) words in the singular shall include the plural and words in the plural shall include the singular; (ii) the words **"include"**, **"including"** and **"in particular"** are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them; and (iii) the words **"other"** and **"otherwise"** are not to be construed as being limited by any words preceding them; (b) the headings are to be ignored in construing these Conditions; and (c) reference to any statute or statutory provision includes a reference: (i) to that statute or statutory provision as from time to time consolidated, modified, re-enacted (with or without modification) or replaced by any statute or statutory provision; and (ii) any subordinate legislation made under the relevant statutory provision; and (d) the specificity of any particular Condition is without prejudice to the generality of any other Conditions.

- 1.3. These Conditions incorporate ABP's Terms and Conditions of Trade to the extent that they do not conflict with or are inconsistent with these Conditions. In the event of any conflict, the terms of these Conditions will prevail.

- 1.4. These Conditions shall apply to all legal relationships between ABP and any person who visits or uses the Marina in any capacity whatsoever including but not limited to any Owner's use of the Berth (in any capacity authorised in accordance with these Conditions).

## **1B GENERAL OBLIGATIONS OF THE OWNER**

- 1B.1 The Owner acknowledges and agrees that they will, at all times while using the Vessel and/or the facilities at the Marina pursuant to these Conditions:

- (a) use the Vessel and conduct their activities at the Marina, and ensure that any Owner Invitees do the same, in a respectful and considerate manner and in such a way as to minimise any nuisance or disturbance to ABP, any other person in the Marina, any other Vessel using the Marina or the wider Port, or the owners or occupiers of any other berth or land or water within or adjacent to the Marina or the wider Port;
- (b) comply with all ABP Regulations and all other reasonable directions, regulations and instructions given by ABP from time to time in relation to the Port;
- (c) be responsible for:
  - (i) ensuring that its Owner Invitees comply with the obligations in these Conditions.
  - (ii) reporting to ABP and for ensuring that any Owner Invitees report to ABP, all Pollution Incidents and accidents involving injury to any person or damage to any public or private property that occur on the Marina as soon as possible after they occur.

- 1B.2 Notwithstanding any other term of these Conditions, nothing contained in these Conditions shall affect or prejudice the statutory duties, obligations and powers of ABP and/or its Harbour Master or the carrying out by ABP of its undertaking in exercise of its powers.

## **2 BERTHING LICENCE**

- 2.1 Subject to an Application Form being duly signed by the Owner and by or on behalf of ABP, ABP agrees to grant the Owner the right to use the Berth for the Licence Period for the purposes of berthing and mooring the Vessel, subject to the terms and conditions set out in these Conditions.

- 2.2 The Owner acknowledges and agrees that:

- (a) the Owner shall occupy the Berth as a licensee and no relationship of landlord and tenant is created between ABP and the Owner by this Licence;
- (b) ABP retains control, possession and management of the Marina and the Owner has no right to exclude ABP from the Berth or anywhere else at the Marina or Port;
- (c) for the avoidance of doubt, the Owner's use of the Berth is non-

exclusive. During any period when the Berth is not occupied by the Vessel, ABP will be entitled to use the Berth for any ABP or third party vessel during such time;

- d) the licence to occupy granted by the Licence is personal to the Owner in respect of the Vessel and is not assignable and the rights given in Condition 2.1 may only be exercised by the Owner in relation to the Vessel. For the avoidance of doubt, this means that the Owner may not lease, rent or otherwise allow any other person to occupy and/or reside on the Vessel in exchange for payment while it is at the Berth;
- (e) ABP shall be entitled at any time to require the Owner to promptly: (i) move the Vessel from its current Berth to an alternative Berth elsewhere within the Port; and/or (ii) deal with the Vessel in any other way as ABP may reasonably require in the circumstances;
- (f) if the Owner is not present or refuses to comply or promptly comply with a request by ABP as referred to in Condition 2.2(e) above, ABP shall be entitled (using reasonable care and skill) to: (i) board, unmoor, re-berth, and move the Vessel to an alternative Berth elsewhere within the Marina or Port; and/or (ii) carry out emergency works in relation to the Vessel if ABP considers such works to be necessary. The Owner shall pay the reasonable expenses of ABP incurred in carrying out any such activities;
- (g) the Owner must not carry on any commercial activity while using the Berth or any other part of the Marina, unless with the prior written agreement of ABP and subject to any additional terms and conditions of ABP, including (but not limited to) those in Condition 2B;
- (h) if requested by ABP, the Owner shall leave a set of keys at the Marina Management Office for the duration of the Licence Period to enable ABP to access and operate the Vessel in circumstances where ABP deems this reasonably necessary (including under Conditions 2.2(e) and (f));
- (i) if the Owner intends to occupy the Vessel for Residential Use they shall notify ABP prior to the Start Date and the Owner shall ensure that they comply with any and all requirements of ABP in relation to such occupation, including (but not limited to) those set out Condition 2A and Schedule 1 to these Conditions, and with all Applicable Laws in connection with such occupation; and
- (j) the Owner will not discharge marine toilets, sinks and/or bilges within the confines of the Marina or Port.

- 2.3 The Owner shall provide the Marina Management Office with the date(s) of any days during the Licence Period when it will not be using the Berth. Such notice shall be provided as soon as reasonably practicable before such date(s).

- 2.4 Unless otherwise agreed with ABP, all Owner Property must be stowed aboard the Vessel.

- 2.5 The Licence Fee includes the provision of 20(twenty) weeks of Storage Services, on and subject to the terms of Schedule 2. If a Vessel is stored ashore for longer than 20(twenty) weeks) Charges for Storage Service will apply in addition to the Licence Fee.

## **2A RESIDENTIAL USE**

- 2A.1 Where the Owner uses the Vessel as a place of residence at the Berth (**"Residential Use"**), the Owner and (if applicable) any Owner Invitees must:
- (a) comply with the provisions of Schedule 1 in addition to these Conditions; and
  - (b) pay the Residential Use Surcharge (if any) to ABP.

- 2A.2 If the Owner wishes to use or permit Residential Use then the Owner must complete a Residential Use Protocol and obtain ABP's prior written consent for Residential Use by the Owner and any Owner Invitees.

**FOR THE AVOIDANCE OF DOUBT, RESIDENTIAL USE OF A VESSEL IS AT ABP'S SOLE DISCRETION AND ABP IS UNDER NO OBLIGATION TO GRANT THE OWNER OR ANY OWNER INVITEES PERMISSION FOR RESIDENTIAL USE.**

- 2A.3 Notwithstanding whether the Owner has applied for Residential Use, the Berth and the Vessel shall be deemed to be used for Residential Use where any of the following apply:

- (a) the Owner and/or any Owner Invitees use the Vessel as their principal or main place of residence;
- (b) during each period of 12 (twelve) months the Owner and/or any Owner Invitees stay on board the Vessel for more than 21 (twenty one) consecutive days or for more than 180 (one hundred and eighty) nonconsecutive days in total;
- (c) the Owner and/or any Owner Invitees use the Marina Office as their mailing address; or
- (d) in ABP's reasonable opinion, the Owner or any Owner Invitees use the Vessel as a place of residence.

- 2A.4 If, pursuant to Condition 2A.3, the Vessel is deemed to be used for Residential Use without ABP's prior written consent ABP may terminate the Licence in accordance with Condition 3.3(c).

## **2B COMMERCIAL ACTIVITIES AT THE BERTH**

- 2B.1 Use of a Berth for the carrying-on of any commercial activity or providing any commercial service is prohibited save where expressly authorised by ABP in accordance with these Conditions.

- 2B.2 Where the Owner wishes to carry on any commercial activity or service at or using the Berth, it must obtain prior written permission to do so from

ABP and pay the Commercial Activity Surcharge each/year.

- 2B.3 Where the Owner intends to bunker via shoreside barge for the purposes of carrying out any commercial activity that has been approved by ABP in accordance with Condition 2B.2, the Owner shall:
- (a) carry out risk assessments of its activities at the Port and provide operating procedures for approval to the Harbour Master: (i) with the degree of skill and care which would reasonably and ordinarily be expected of a skilled and experienced person carrying out the same type of activity under the same conditions; and (ii) in compliance with Applicable Laws (in particular those concerned with Environmental protection and health and safety);
  - (b) ensure that appropriate action is taken on the basis of those risk assessments and approved procedures;
  - (c) comply with any directions or instructions from ABP in relation to bunkering; and
  - (d) in addition to the Commercial Activity Surcharge, pay bunkering dues in accordance with ABP's tariffs for such activities in force from time to time.
- 2B.4 For the purposes of these Conditions a Berth will be used for the carrying out of a commercial activity or providing a commercial service if ABP reasonably considers that a Berth or Vessel is being used as such.

### 3 TERMINATION

- 3.1 The Licence Fee includes the provision of 20(twenty) weeks of Storage Services, on and subject to the terms of Schedule 2. If a Vessel is stored ashore for longer than 20(twenty weeks) Charges for Storage Service will apply in addition to the Licence Fee.
- 3.2 If a Party terminates the Licence in accordance with Condition 14.1, the Licence Fee will only be payable in respect of the period from the Start Date until the date of early termination.
- 3.2A Subject to the Owner complying with Condition 3.4, if the Owner has paid any of Licence Fee in advance, ABP will, within a reasonable period following the date of early termination, refund that portion of the Licence Fee that relates to the parts of the Licence Period following the date of early termination.
- 3.2B The Owner acknowledges that an annual Licence Fee incorporates a discount on the monthly Licence Fee. Consequently the Owner agrees that, where they pay an annual Licence Fee:
- (a) any refund payable in accordance with Condition 3.2A shall be calculated on the basis of the Owner paying the monthly Licence Fee rate; and
  - (b) where the annual Licence Fee paid by the Owner up to the date of termination is less than the equivalent monthly Licence Fee that would have been payable until the date of termination, the Owner shall pay to ABP an amount equal to the difference between the monthly Licence Fee payable and the annual Licence Fee that has been paid in respect of the Licence Period up to and including the date of termination.
- 3.3 Without prejudice to any rights or remedies which it may have, ABP may terminate the Licence immediately upon written notice to the Owner in the following circumstances:
- (a) the Owner fails to make payment of any Charges, electricity charges or any other monetary amount owing under these Conditions by the due date and within 14 (fourteen) days of ABP requesting that the Owner do so;
  - (b) the Owner commits a breach of any of its obligations under this Licence which is incapable of remedy;
  - (c) the Owner fails, within a reasonable period of being requested to do so and in any event no more than 14 (fourteen) days, to remedy a breach of its obligations under these Conditions which is capable of remedy; or
  - (d) ABP (acting reasonably) has concerns about: (i) whether the Vessel is Seaworthy; (ii) the safety of the Vessel or any persons or property (including the Owner Property) on board the Vessel or in the Marina and/or Port; or (iii) a Pollution Incident occurring in connection with the Vessel.
- 3.4 Notwithstanding any termination or expiry of the Licence, the Owner will pay any sums due to ABP up to and including the date of termination or expiry and the Owner will ensure that the Vessel, any Vehicle and any Owner Property or other goods or waste belonging to the Owner or any Owner Invitee are immediately removed from the Marina and/or Port.
- 3.5 Termination or expiry of the Licence for whatever reason will not affect the rights or remedies of either ABP or the Owner which may have accrued up to the date of termination.
- 3.6 Without prejudice to any other rights or remedies of ABP, if the Owner fails to remove the Vessel from the Marina at the end of the Licence Period, ABP shall be entitled:
- (a) to charge the Owner at ABP's standard rate for overnight visitors for each day between the end of the Licence Period and the actual date of removal of the Vessel from the Marina;
  - (b) at the Owner's risk to remove the Vessel from the relevant part of the Marina and secure it elsewhere; and
  - (c) to recover from the Owner all costs reasonably incurred by ABP in carrying out (a) and (b) above (including without limitation alternative berthing fees), in accordance with Condition 16.

### 4 OBLIGATIONS SPECIFIC TO THE VESSEL

- 4.1 The Owner warrants that the Vessel which it brings into or causes to be within the Marina is Seaworthy and complies with all Applicable Laws and that it will remain Seaworthy throughout the Licence Period.
- 4.2 At all times during the Licence Period, the Owner shall ensure that the Vessel's moorings ropes are fit for purpose.

- 4.3 ABP reserves its right to require the Owner to have the Vessel inspected and tested by a professional and reputable provider to ensure compliance with Conditions 4.1 and 4.2 and the Owner shall provide ABP with information regarding the results of these inspections and tests. ABP may exercise this right no more than once during the Licence Period and upon reasonable prior notice to the Owner.
- 4.4 If the Harbour Master considers that the Vessel has or is likely to become a danger to navigation, or a wreck, ABP may remove and/or salvage the Vessel and recover all of its cost and expenses for doing so from the Owner.
- 4.5 The Owner shall:
- (a) navigate the Vessel at all times in a seamanlike manner and shall ensure that when entering or leaving or manoeuvring in the Port and Marina, the Vessel is navigated at such a speed and in such a manner as to not endanger or inconvenience other vessels in the Port and in conformity with the ABP Regulations and the directions or orders of the Harbour Master and any other Competent Authority;
  - (b) ensure that the Vessel is berthed or moored in such a manner and position as ABP may require from time to time. The Owner is responsible for providing all adequate fenders for the Vessel;
  - (c) ensure that the Vessel complies at all times with the specific requirements of the Marina regarding length, draught, tonnage and any other requirements notified to the Owner from time to time;
  - (d) keep the Vessel in a sound and watertight condition;
  - (e) provide at the Owner's own expense mooring ropes required for the proper mooring of the Vessel at the Berth; and
  - (f) provide and maintain at least one fire extinguisher on board the Vessel, which is approved and manufactured to EN3 standards for portable fire extinguishers. The Owner shall ensure such fire extinguisher is fit for purpose for the Vessel and accessible and ready for immediate use in case of fire.

### 5 SERVICES

- 5.1 Any Services provided by ABP at the Marina (including Lifting Services and Storage Services) shall be conducted in accordance with the terms of these Conditions and Schedule 2.
- 5.2 If the Owner wishes to engage ABP to provide Services to the Vessel, the Owner must complete a Service Order form in advance. ABP shall have no obligation to provide Services if the Service Order form is not completed to its satisfaction.
- 5.3 The provision of Services by ABP will be subject always to:
- (a) the operational requirements of the Marina;
  - (b) availability of ABP personnel and space at the Marina; and
  - (c) the Owner paying relevant Charges in accordance with Condition 6.

### 6 PAYMENT OF CHARGES

- 6.1 In consideration of the grant of rights under the Licence and/or the provision of any Services in accordance with these Conditions, the Owner agrees to pay to ABP the relevant Charges in accordance with these Conditions. The Charges shall be those published in the Price List or as otherwise notified by ABP from time to time.
- 6.2 All Charges shall be paid within 14 (fourteen) days of the invoice date (unless some other time period is specified by ABP).
- 6.3 Unless otherwise stated, all Charges are exclusive of VAT.
- 6.4 All payments due and owing to ABP pursuant to these Conditions will be made without set-off, withholding or deduction of any kind.
- 6.5 Without prejudice to any other rights or remedies which ABP may have under these Conditions, ABP has the right to charge interest at the rate of 4% above the National Westminster Bank plc base rate on all amounts overdue and such interest shall accrue on a daily basis until payment is received.

### 7 ELECTRICITY

- 7.1 ABP shall use its reasonable endeavours to ensure that there is a supply of electricity at the Marina. However, ABP does not guarantee a continuous or uninterrupted power supply and accepts no responsibility for any disconnection or disruption to the supply.
- 7.2 ABP shall charge, and the Owner shall pay, the electricity charges set out in the Application Form in accordance with the following terms:
- (a) ABP shall invoice the Owner for its electricity usage in connection with its usage and/or occupation of the Marina in accordance with the charges set out on the Price List; and
  - (b) the Owner shall pay ABP's invoice within 14 (fourteen) days of the date of the relevant invoice. If the Owner fails to pay any invoices within 14 (fourteen) days of the date of the relevant invoice, ABP reserves its right to exercise its rights in Conditions 6.5 and 16.
- 7.3 Condition 7.2 does not apply if the Owner uses a Prepayment Meter. Instead, the Owner agrees that the following terms shall apply:
- (a) ABP disclaims all liabilities in relation to the operation of the Prepayment Meter and does not warrant its proper functioning; and
  - (b) it is the sole responsibility of the Owner to: (i) create and manage the Owner's Prepayment Meter account; (ii) top up the Prepayment Meter; and (iii) attend to all electricity charges associated with the Owner's use of the Marina and the Prepayment Meter.

### 8 LIMITATION ON ABP'S LIABILITY

ABP'S LIABILITY IN RELATION TO THE OWNER USING THE MARINA IS SET OUT IN THIS CONDITION 8

- 8.1 Subject to Condition 8.5, ABP shall **not** be liable in respect of any:
- loss, destruction or damage to: (i) the Vessel; (ii) any Owner Property; or (iii) any Vehicle;
  - any act of theft at the Port including theft of or from a Vessel or Vehicle or otherwise in relation to any Owner Property (including, for the avoidance of doubt, any keys to a Vessel which are left at the Marina Management Office in accordance with Condition 2.2(h); and/or
  - any occupation of, or presence on, the Marina by unauthorised persons, unless and to the extent that such is due to the negligence of ABP, in which case Conditions 8.4 and 8.5 shall apply.
- 8.2 Without limitation to the generality of Condition 8.1, the Owner acknowledges that the location of the Berth is in close proximity to a navigational channel and that ship's wash is generated from other vessels using the channel. The Owner further acknowledges that such ship's wash may have an adverse impact on the Vessel while using the Berth including damage caused to the Vessel as a result of such ship's wash and that ABP has no liability to the Owner in relation to this.
- 8.3 Subject to Condition 8.5, ABP shall not be liable to the Owner for any:
- loss of profit (direct or indirect);
  - loss of business, contracts, anticipated savings or depletion of goodwill (direct or indirect);
  - any indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation or indirect economic loss (howsoever caused);
  - the wrongful act, omission and/or neglect or any breach of these Conditions by the Owner or any Owner Invitees; or
  - any failure or inability of the Owner, the Owner Invitees or any other persons (other than ABP) to comply with their obligations under the Applicable Laws or the directions or orders of the Harbour Master or with any ABP Regulations, in each case whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise which arises out of or in connection with these Conditions.
- 8.4 Subject to Condition 8.5, ABP's total aggregate liability in relation to any consecutive 12 (twelve) month period in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising out of or in connection with these Conditions will be limited to the amount which is the lesser of:
- the market value of the Vessel, Vehicle or Owner Property (as applicable) immediately prior to its loss, destruction, damage or theft (as applicable); or
  - £300,000 (three hundred thousand pounds sterling).
- 8.5 Nothing in these Conditions excludes or limits the liability of ABP for death or personal injury caused by ABP's negligence, or for fraudulent misrepresentation, or for any other matter which it would be unlawful to exclude or limit ABP's liability.
- ## 9 FORCE MAJEURE
- ABP shall not be liable to the Owner for any loss or damage or for any failure or delay by ABP in performing its obligations under these Conditions due to an event beyond ABP's reasonable control including (without limitation): (i) war (actual or threatened), revolution, civil or industrial commotion, blockade of the Port; (ii) closure of or damage to the Port or any relevant part of the Port as a result of: explosion, fire, radioactive contamination, cyber-attack, ransomware attack or other cyber security issue, terrorist activity (actual or threatened), natural disaster or severe weather, any action of any Competent Authority, impact by ship or vessel, or impact by aircraft or object dropped or falling from them; (iii) epidemic or pandemic; (iv) insufficient depth of water at the Berth or the approaches to the Berth; (v) the total or partial interruption or failure of ABP's vessel traffic system (including communication links) or any other electronic, computing, information, data or other systems offered at any time by or on behalf of ABP; and/or (vi) any act of ABP which, though deliberate, is reasonably necessary for the safety or preservation of persons and/or the Port having taken reasonable steps to mitigate where reasonably practicable to do so in the circumstances.
- ## 10 SECURITY
- 10.1 The Owner acknowledges and agrees that the use of the Marina (including, for the avoidance of doubt, the Berth) is at the Owner's risk and while ABP provides general security at the Marina, ABP makes no warranty or representation to the Owner that such security will be adequate or sufficient for the security or safekeeping of the Vessel, any Vehicle or Owner Property.
- 10.2 The Owner further acknowledges and agrees that it shall observe and comply with all ABP Regulations including (without limitation) those relating to safety and security at the Port and Marina and shall (without limitation to any other instructions relating to safety and security) ensure that all security gates at the Marina are closed behind them when entering or exiting the Marina.
- ## 11 REPAIR WORK ON THE VESSEL
- 11.1 The Owner may invite a tradesperson (a "**Contractor**") onto the Port solely for the purposes of carrying out routine maintenance and/or minor running repair works to the Vessel, **PROVIDED THAT**:
- the Owner has notified ABP prior to the Contractor arriving at the Port of: (i) the name of the Contractor; (ii) a brief summary of the works being undertaken; and (iii) the expected duration of the works;
  - the Contractor reports to the Marina Management Office and signs in upon arrival at the Marina;
  - the Contractor has fully comprehensive insurance cover with a reputable insurer in place of at least £3,000,000 (three million pounds sterling) per incident and, on request, evidence of such cover is provided to ABP prior to such Contractor carrying out any works;
- the Contractor complies with all Applicable Laws, the ABP Regulations, the obligations on Owner Invitees in these Conditions, and the reasonable instructions and directions of ABP while on the Port; and
  - notwithstanding the generality of Condition 11.1(d) above, the Contractor holds all relevant permits or licences required for the carrying out of the proposed works.
- 11.2 ABP reserves the right to require any Contractor to leave the Marina at any time if it is in breach of any provision of Condition 11.1 or ABP has concerns from a health and safety or security point of view.
- 11.3 The Owner may not carry out non-routine maintenance and/or non-minor running repair works to the Vessel at the Marina unless in accordance with Paragraph 10 of Schedule 2.
- ## 12 CAR PARKING AND USE OF THE VEHICLE
- 12.1 This Condition 12 applies to the use of any Car Park and/or the operation of any Vehicle at the Marina and/or the Port by the Owner or the Owner Invitees.
- 12.2 Unless agreed otherwise in writing with ABP:
- the Owner shall not be permitted to list more than two Vehicles on the Application Form for the purposes of parking at the Marina and/or the Port; and
  - no more than two Vehicles may be parked in any Car Park at any one time; and
  - no Vehicle may be parked in the Car Park (or anywhere else in the Marina or the Port) for any commercial purposes or for overnight accommodation;
  - to the extent possible Vehicles must be parked in a designated parking area; and
  - Vehicles must be parked in such a manner as to not obstruct other users of the Car Park, Marina or Port.
- 12.3 No servicing or repairs may be carried out on any Vehicle in the Marina or the Car Park beyond minor running repairs.
- 12.4 The parking of a Vehicle by the Owner in any Car Park is at the Owner's risk and ABP's liability is limited as set out in accordance with Condition 8.
- 12.5 Vehicle registration details must be provided to ABP by the Owner on the Application Form.
- 12.6 All Vehicles must comply with all Applicable Laws and be fully taxed and insured while at the Marina.
- 12.7 The Owner agrees to pay any applicable charges in respect of parking at the Marina and to comply with all other rules, instructions and signage regarding parking arrangements in and around the Marina.
- 12.8 Where the Marina operates a permit system in relation to the Car Park, all Vehicles parked in that Car Park must display a current permit for that Car Park. Any parking permit or authorisation granted by ABP for the Owner to use the Car Park for parking any Vehicle will automatically terminate at the termination or expiry of these Conditions.
- 12.9 Any breach of this Condition 12 by the Owner, or any Owner Invitee in control of any Vehicle, may attract parking enforcement measures. ABP reserves the right to utilise CCTV and to employ a specialist parking management and enforcement company to ensure compliance with this Condition 12.
- 12.10 The Owner acknowledges and agrees that:
- ABP does not guarantee that the Car Park will be available for use by the Owner or any Owner Invitees during the Licence Period; and
  - any authorisation granted by ABP for the Owner or any Owner Invitees to use the Car Park is granted by ABP in good faith and at its discretion for the purposes of the Owner or the Owner Invitees to have somewhere to park the Vehicle in order for the Owner to exercise the rights granted to it under these Conditions.
- 12.11 Without prejudice to any rights and remedies it may have, ABP has the right to revoke any parking authorisation granted in relation to any Vehicle:
- at any time during the Licence Period at ABP's absolute discretion by giving the Owner seven (7) days prior notice in writing; or
  - with immediate effect by giving the Owner notice in writing if ABP believes that the Owner (or any Owner Invitee) is breaching the terms and conditions set out in these Conditions (including by allowing the Car Park to be used for a Vehicle for general parking rather than for the purposes set out in this Condition 12).
- 12.12 If the Owner fails to remove its Vehicle from the Marina after the expiry or termination of any parking authorisation granted in relation to any Vehicle to the reasonable satisfaction of ABP, then ABP reserves the right (but shall not be obliged) to remove and dispose of (in any way which ABP sees fit) the Vehicle and the Owner will reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in undertaking such removal and shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP in connection with such removal or disposal. ABP shall not be liable, answerable or accountable to the Owner or any Person interested in such items for so doing or for the proceeds (if any) of any such disposal.
- ## 13 NO DUTY TO SALVAGE
- 13.1 ABP shall not be under any duty to salvage or preserve the Vessel or any



Owner Property unless ABP agrees to do so on such terms as may be agreed between the Owner and ABP.

- 13.2 Notwithstanding Condition 13.1, ABP reserves the right to salvage or preserve the Vessel or any Owner Property where ABP reasonably believes that a risk is posed to the safety of people, property, the Marina, the Port or the Environment. In such circumstances, ABP has the right to recover from the Owner the costs of carrying out such works in accordance with ABP's (or its appointed contractor) normal commercial charging basis and, where appropriate, to claim a salvage reward.

#### 14 INSURANCE

The Owner is responsible for maintaining appropriate and sufficient insurance while its Vessel or other property is at the Port or during the provision of any Services during the Licence Period, which may include but is not limited to: (i) personal and property insurance in relation to the Vessel and Owner Property; (ii) third party liability cover for not less than £3,000,000 (three million pounds sterling); and (iii) cover against wreck removal and salvage. The Owner shall produce evidence to ABP of such insurance cover prior to the Start Date and together with the Application Form or Service Order (as applicable).

#### 15 SUBSEQUENT CHANGE OF ADDRESS DETAILS OR CHANGE OF OWNERSHIP

- 15.1 The Owner must notify ABP in writing of the details of any change of name of the Vessel or change of address, email or telephone number of the Owner within seven (7) days of such change.
- 15.2 If there is a change of ownership of the Vessel during the Licence Period:
- (a) the Owner must notify ABP in writing immediately on such change of ownership;
  - (b) subject to Condition 15.2(c) the Owner shall continue to be liable under this Licence in relation to the Vessel until the End Date or the date of termination of these Conditions (if earlier); and
  - (c) if the new owner of the Vessel and ABP enter into a new licence for the Vessel at the Berth prior to the End Date or date of termination of the Licence (if earlier), the Licence shall automatically terminate on the date on which such new Licence between ABP and the new owner is entered into.

#### 16 RIGHTS OF SALE AND OF DETENTION & LIEN

ABP'S RIGHTS TO DETAIN AND SELL YOUR VESSEL ARE SET OUT IN THIS CONDITION 16

- 16.1 The Owner acknowledges that ABP has rights under law in certain circumstances to bring action against a Vessel to recover debt or damages. Such action may involve the detaining of the Vessel or the arrest of the Vessel through the courts and its eventual sale by the courts. Sale of a Vessel may also occur through the ordinary enforcement of a judgment debt against the Owner of a Vessel or other Owner Property.
- 16.2 In addition to the rights in Condition 16.1, ABP may exercise upon the Vessel or any other Owner Property a lien (i.e. a right to detain and hold onto the Owner's Vessel or any other Owner Property) in relation to any monies owing to ABP on any account from the Owner. In the event of any such sums not being paid within 21 (twenty one) days of the date of the notice of exercise of any such lien, ABP may sell the Vessel and/or any Owner Property without further notice to the Owner and apply the proceeds towards the satisfaction of all such sums on whatsoever account owing and also all charges, expenses and monies reasonably arising during the exercise of any such lien.
- 16.3 If the Licence or the provision of any Services is terminated or expires while ABP is exercising its right of lien as specified in Condition 16.2 above, ABP shall be entitled to charge the Owner at ABP's standard rate for overnight visitors for each day between termination or expiry of the Licence or the period for the provision of any Services:
- (a) the actual date of payment; or
  - (b) satisfaction of the debt (or provision of security) and removal of the Vessel and/or the Owner Property from the Port.

#### 17 COMPLIANCE WITH LAW

- 17.1 The Owner will at all times keep themselves informed of, and observe and comply with all Applicable Laws and ABP Regulations relevant to the Owner's and Owner Invitees' use of the Port and Marina.
- 17.2 Without prejudice to Conditions 18.1 and 17.1 the Owner will conduct its activities at the Marina at all times in such a way as to:
- (a) prevent any escape of any Owner Property or substance (in whatever form and whether alone or in combination with any other substance) within the possession or control of the Owner or any Owner Invitee from the Vessel or Vehicle or any other area of the Marina or other means of transport in the possession or under the control of the Owner into or onto any area of the Marina; and
  - (b) ensure that no Hazardous Materials or any other substance or material which may cause an obstruction or damage or pollution is permitted to pass or escape into any sewer, drain or watercourse serving the Marina or into the sea contrary to the Environmental Permitting (England and Wales) Regulations 2016 (SI 1154).
- 17.3 If a Pollution Incident should occur as a result of the activities of the Owner or any Owner Invitee at the Port or Marina, the Owner shall, upon becoming aware of the Pollution Incident:
- (a) take immediate steps to prevent further pollution occurring as a result of the Pollution Incident;
  - (b) notify ABP as soon as reasonably practicable and provide ABP with a copy of any notice that has been given to any Competent Authority

in connection with the incident; and

- (c) as soon as reasonably practicable remediate the consequences of the Pollution Incident to the reasonable satisfaction of ABP and/or any Competent Authority, provided that notwithstanding (c) (and without prejudice to any other right or remedy), ABP reserves the right to remediate the consequences of the Pollution Incident itself where it is reasonable in the circumstances for ABP to do so and the Owner shall reimburse ABP in full and on demand for any Losses suffered or incurred by ABP as a result of undertaking such remediation.

#### 17.4 WE DRAW YOUR ATTENTION TO THE INDEMNITY IN THIS CLAUSE:

The Owner agrees to indemnify ABP in full and on demand and hold harmless and keep ABP so indemnified against all any Losses incurred or suffered by ABP as a result of the breach of Conditions 17.2 or 17.3 by the Owner or any Owner Invitee.

#### 17.5 WE DRAW YOUR ATTENTION TO THE INDEMNITY IN THIS CLAUSE:

Subject to any written agreement with ABP to the contrary:

- (a) the Owner will make proper and adequate arrangements for the disposal of all waste in accordance with the requirements of Applicable Laws as often as may be necessary or as reasonably directed by ABP; and
- (b) if the Owner fails to remove waste from the Marina to the reasonable satisfaction of ABP then ABP reserves the right (but shall not be obliged) to remove and dispose of the waste itself and the Owner will reimburse ABP in full for all costs or expenses incurred by ABP in undertaking such removal.

- 17.6 The Owner shall not bring into the Port or Marina, store on the Vessel, store in the Vehicle or store on any other area of the Port, Hazardous Materials or Dangerous Substances without first notifying and receiving permission from the Harbour Master that it will accept such Hazardous Materials or Dangerous Substances. The acceptance of the same by ABP shall be subject to such terms as ABP may stipulate.

- 17.7 The Owner will be responsible for removing any Hazardous Materials or Dangerous Substances from the Marina if reasonably requested to do so by ABP and if the Owner fails to remove any such Hazardous Materials or Dangerous Substances to the reasonable satisfaction of ABP then ABP reserves the right (but shall not be obliged) to remove and dispose of them itself. The Owner shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in undertaking any removal and disposal of such substances or materials and shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP in connection with such removal or disposal.

#### 18 BRIBERY / CORRUPTION, MODERN SLAVERY ANTI-FACILITATION OF TAX EVASION & SANCTIONS

- 18.1 ABP and the Owner shall not, and shall each procure that its representatives (including the Owner Invitees in the case of the Owner) shall not, engage in any activity, practice or conduct which constitute an offence under any applicable:
- (a) anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010; or
  - (b) anti-slavery and human trafficking laws, regulations and codes, including the Modern Slavery Act 2015; or
  - (c) tax evasion facilitation laws, regulations and codes, including the Criminal Finances Act 2017.
- 18.2 ABP and the Owner each warrant that they are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including the lists maintained by the UK Government, the United Nations Security Council, the US Government, the Canadian Government, the European Union or its member states, or any other applicable Competent Authority.
- 18.3 Without prejudice to the generality of Condition 18.2, the Owner further warrants that the:
- (a) Vessel;
  - (b) owners, crew, charterers, operators and/or managers of the Vessel; and
  - (c) Owner Invitees, are in each case not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party.

#### 19 DATA PROTECTION

- 19.1 Without prejudice to Condition 17.1, in relation to the Owner's use of or activities at the Marina, the Owner shall at all times comply with all Applicable Laws and ABP Regulations relating to the security, confidentiality, protection or privacy of personal data.
- 19.2 The Owner acknowledges that surveillance systems such as CCTV, Automatic Number Plate Recognition (ANPR) and body worn camera systems may be used at the Marina (including for the purposes of safety and security). The Owner further acknowledges that the information processed by such systems may include personal data about the Owner or Owner Invitees. This information may be shared by ABP with other persons (including the data subjects themselves, employees, agents or services providers of ABP, police forces, security organisations and persons making an enquiry) and it may be used in any form of proceedings.
- 19.3 The Owner warrants and agrees that it will make the Owner Invitees aware that ABP may process personal data relating to data subjects who may enter or use the Marina (including in relation to the use of any surveillance systems) and as further described in ABP's privacy notice (as amended from time to time), which can be accessed at <http://www.abports.co.uk/support/privacy-notice>.
- 19.4 Unless the context otherwise requires, the terms "process", "personal data" and "data subject" used in this Condition 190 shall be interpreted and construed by reference to any Applicable Laws relating to the security,

confidentiality, protection or privacy of personal data.

## 20 NOTICES

20.1 Any notices in writing that under the terms of these Conditions will be in writing and delivered by hand or sent by pre-paid first-class post or electronic mail:

(a) in case of communications to ABP to:

Address: Ipswich Beacon Marina, New Cut East, Ipswich IP3 0EA  
Email: [ipswichbeacon@abports.co.uk](mailto:ipswichbeacon@abports.co.uk)

or such other address or electronic mail address as will be notified to the Owner by ABP from time to time; or

(b) in the case of the communications to the Owner to:

the Vessel at the Berth, provided that if the Owner is not present at the Vessel at the time of delivery a copy of the notice will also be delivered to:

- (i) the home address specified as such in the Application Form or Service Order (as applicable); or
- (ii) the last address that the Owner notified ABP of in accordance with Condition 15.2;
- (iii) the last known address of the Owner; or
- (iv) the electronic mail address specified in the Application Form or Service Order (as applicable), or as otherwise notified to ABP by the Owner from time to time.

20.2 Communications will be deemed to have been received: - (a) if sent by prepaid first class post, two (2) days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or (b) if delivered by hand, on the day of delivery; or (c) if sent by electronic mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next banking day.

## 21 GENERAL

21.1 These Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

21.2 The Owner submits to the exclusive jurisdiction of the courts of England to settle any dispute or claim that arises out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims) but ABP may enforce these Conditions in any court of competent jurisdiction.

21.3 A person who is not a party to these Conditions may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

21.4 These Conditions supersede any previous written or oral agreement between the parties in relation to the matters dealt with in these Conditions and constitute the whole agreement between the parties relating to the subject matter of these Conditions.

21.5 The rights and powers of ABP under these Conditions are in addition to and not in substitution of the rights and powers of ABP conferred by its current bye-laws or any other statutory legislation which grants ABP rights over the Port.

### SCHEDULE 1

#### TERMS OF RESIDENTIAL USE

**RESIDENTIAL USE OF THE VESSEL AT THE MARINA IS STRICTLY AT ABP'S SOLE DISCRETION AND SUBJECT TO ABP'S PRIOR CONSENT. IF YOU USE YOUR VESSEL FOR RESIDENTIAL USE WITHOUT ABP'S PRIOR CONSENT, OR BREACH ANY TERMS OF THIS SCHEDULE 1, ABP MAY TERMINATE YOUR BERTHING LICENCE WITH IMMEDIATE EFFECT AND REQUIRE YOU TO REMOVE YOUR VESSEL FROM THE MARINA.**

- 1. The terms and conditions of this Schedule shall apply to any Residential Use of the Vessel and any breach of the terms of this Schedule shall constitute a breach of the Licence.
- 2. Only the Owner and any persons named in the Residential Use Protocol are permitted to use the Vessel for Residential Use.
- 3. In consideration of ABP allowing the Owner to use the Vessel for Residential Use, the Owner will pay any Residential Use Surcharge levied to ABP. The Residential Use Surcharge is in addition to any other Charges payable to ABP. The Residential Use Surcharge does not include any charges for electricity or other utilities (if applicable) which shall be payable separately in accordance with the Conditions;
- 4. The Owner will maintain the Vessel in a Seaworthy condition at all times, and in particular shall ensure that the Vessel has a functioning engine and is capable of putting to sea at short notice at any time.
- 5. In addition to its right in Condition 4.3, ABP reserves the right to request that the Owner provide evidence that the Vessel has undergone a satisfactory full structural survey by a competent surveyor within the past five (5) years and the Owner will provide a copy of the survey report to ABP on its request.
- 6. The Owner will, in addition to their obligations in Condition 14, insure the Vessel on a fully comprehensive basis with a reputable insurer. The Third Party and Public Liability element of the insurance cover shall be a minimum of £3,000,000.
- 7. The Owner shall pay any taxes, rates, impositions, assessments, duties and charges presently or at some time in the future directly assessed on them

and shall indemnify ABP in relation to any liability that it may have or be claimed to have in relation to such sums. The Owner shall be wholly responsible for registering for Council Tax and ABP reserves the right, if contacted by the Competent Authority, to confirm that the Vessel is subject to Residential Use and any other information requested as to the nature of the Owner's or Owner Invitee's use of the Vessel in the Marina.

- 8. The Vessel may not be used for Residential Use if such use is paid for (directly or indirectly) by a Competent Authority/Housing Association through a housing benefit or similar scheme.
- 9. The Owner and any Owner Invitees shall not leave any visual indications that the Vessel is used for Residential Use; this may include, but is not limited to items being left on the pier or pontoon (except boarding equipment), washing being hung out or any other indication that ABP, at its sole discretion, considers to be a visual indication of Residential Use.
- 10. The Owner and any Owner Invitees must use onshore toilet and shower facilities and agree not to discharge marine toilets, sinks and/or bilges within the confines of the Marina or Port.
- 11. The Owner and any Owner Invitees agree to abide by ABP's reasonable instructions in relation to Residential Use, including but not limited to any instructions in relation to noise and the placement of surplus equipment.
- 12. The Owner and any Owner Invitees may not keep any pets on board the Vessel except with ABP's prior written consent. The Owner shall ensure that any pets are kept under strict supervision and do not foul any part of the Marina.
- 13. Any solid fuel stoves or heaters on the Vessel will be extinguished immediately at ABP's request if smoke and/or soot deposits are, in ABP's opinion, causing a nuisance to others. The Owner and any Owner Invitee shall abide by any smoke control legislation applicable to the Marina.
- 14. For the avoidance of doubt, nothing in this Residential Use Protocol shall amount to a lease or tenancy or to an agreement to grant any lease or tenancy. ABP reserves absolute discretion as to whether this Residential Use Protocol is extended or renewed on the expiry of the term of Residential Use.
- 15. Unless a new term of Residential Use is agreed between the Owner and ABP, on expiry of the term of Residential Use the Vessel may not be used for Residential Use and any attempt to do so will amount to a serious breach of the Conditions.

### SCHEDULE 2

#### ADDITIONAL CONDITIONS APPLICABLE TO SERVICES PROVIDED BY ABP AT THE MARINA

1. Any works or services carried out on the Vessel by ABP at the Marina shall be conducted in accordance with the terms of the Conditions and this Schedule 2.

#### 2. SERVICES

- 2.1. ABP will only provide the Services upon its receipt and acceptance of a Service Order completed and duly signed by or on behalf of the Owner.
- 2.2. ABP will carry out any Services with reasonable skill and care.
- 2.3. Unless otherwise agreed in writing, ABP has complete freedom in respect of the way in which any Services are carried out. If the Owner gives ABP any specific instructions, ABP reserves the right to deviate from such instructions (whether or not accepted by ABP) in any respect, where it is reasonable for ABP to do so, and the Owner shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in relation to such deviation.

#### 3. LIABILITY

ABP's liability will be limited in accordance with Conditions 6 and 7 of the Conditions, this extends to loss or damage to vessels, gear, equipment or other goods left with us for repair or storage, and harm to persons entering our premises or using any of our facilities or equipment.

#### 4. PRICE AND ESTIMATES FOR SERVICES

- 4.1. In the absence of express agreement to the contrary ABP's price for Services shall be as set out in the Price List or, to the extent that the relevant Services are not referred to in the Price List, based on time and materials expended and Services provided by ABP.
- 4.2. Any estimates for Services to be provided by ABP not referred to in the Price List are subject always to the accuracy of information provided by the Owner, and are usually based only on a superficial examination and will not include the cost of any additional repairs or work found necessary to the Vessel and/or gear or equipment during the work nor the cost of any extensions to the work comprised in the estimate.
- 4.3. ABP will inform the Owner promptly of any proposed increase in estimated prices for Services to be provided by ABP not referred to in the Price List and the reasons therefore, and will only proceed with the work or supply with the approval of the Owner. The Owner shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied, which are not affected by the proposed increase in price.
- 4.4. Charges in respect of the provision of Storage Services in relation to a Vessel shall be payable in accordance with the tariff rates set out in the Price List.

- 4.5. If the Owner holds a 12 month annual Berthing Licence and the Berthing Licence terminates early for any reason, the full tariff rate shall be payable in respect of any use of the hard-standing (whether during the period in which the Berthing Licence was held or after its early termination), and such amount shall be payable on the date of termination of the Berthing Licence.
- 5. DELAYS**
- The time for completion of the Services is given in good faith but is not guaranteed. ABP shall not be responsible for any delay in completion of the Services or for the consequences of any such delay, unless it arises from its wilful acts or omissions or from its negligence.
- 6. VESSEL MOVEMENTS**
- ABP reserves the right to move the Vessel and any Owner Property for any reasons that it considers necessary, including but not limited to, health and safety, security or good management of ABP's business, the Marina, or the Port.
- 7. PAYMENT**
- 7.1. In consideration of the provision of the Services by ABP or, where applicable, for the use by the Owner of ABP facilities, the Owner agrees to pay ABP the Charges determined in accordance with Paragraph 4.
- 7.2. Unless otherwise agreed between ABP and the Owner the price of Services, work and goods shall be payable in accordance with Condition 6.
- 7.3. If the Owner fails to pay any Charges for the provision of Services by ABP when due ABP may, at its sole discretion and in addition to any other rights or remedies available to it, cease to provide the relevant Services with immediate effect.
- 8. RETENTION OF TITLE / RISK**
- 8.1. Title to all goods, equipment and materials supplied by ABP to the Owner shall remain with ABP until the Owner has paid for such goods, equipment and materials in full.
- 8.2. Risk in all goods, equipment and materials supplied by ABP to the Owner shall pass to the Owner at the time of supply.
- 9. GUARANTEE**
- 9.1. Advice on whether an Owner is "a consumer" or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of Solicitors (who may charge).
- 9.2. Where the Owner is also a consumer they have certain minimum statutory rights regarding the return of defective goods and claims for Losses. These rights are not affected by these Conditions or this Schedule 2.
- 9.3. Where ABP supplies goods or provides Services to a partnership or company or to an Owner who is acting in the course of a business or a commercial operation (a "**Business Customer**") then:
- (a) No article supplied by ABP to the Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply, the Business Customer has sufficiently explained the purpose for which it is required and made it clear that it is relying on our skill and judgement;
  - (b) No proprietary article specified by name, size or type by a Business Customer shall carry any such express, or implied term, but ABP will assign to the Business Customer any rights it may have against the manufacturer or importer of that article; and
  - (c) ABP accepts no liability to indemnify a Business Customer against any loss of profit or turnover which it, or its customer, or any other person, may sustain in consequence of the failure of any faulty or unfit article supplied by ABP.
- 10. ACCESS TO MARINA/WORK ON THE VESSEL**
- 10.1. Subject to the terms of Paragraph 10.2, no work shall be done on a Vessel or Owner Property while at the Marina, without ABP's prior written consent, other than minor running repairs or minor maintenance of a routine nature by the Owner or Owner Invitees not causing nuisance, or annoyance to any other customer or person residing in the vicinity, nor interfering with ABP's schedule of work, nor involving access to prohibited area.
- 10.2. Prior written consent will not be unreasonably withheld where:
- (a) the work is of a type for which ABP would normally employ a specialist sub-contractor; or
  - (b) the work is being carried out under warranty by the manufacturer and/or supplier of the Vessel, or any part of the equipment to which the warranty relates.
- 10.3. The Owner agrees to ensure that neither the Owner nor any Owner Invitees shall have access to the Vessel during periods of work by ABP on the Vessel without ABP's prior consent, which shall not be unreasonably withheld.
- 10.4. The Owner further agrees to ensure that no lifting equipment (including cranes and low loader vehicles) shall be brought onto the Marina by or on behalf of the Owner nor any Owner Invitees except where ABP have given its prior consent to the Owner. Such consent is conditional upon the Owner:
- (a) agreeing with ABP in advance a fee payable to ABP in consideration of ABP allowing the lifting equipment to be brought onto the Marina and such fee shall be determined in accordance with the provisions of Paragraph 3; and
  - (b) providing ABP in advance with a Risk Assessment Method Statement, a lift plan and a corresponding insurance policy to ABP's reasonable satisfaction.
- 10.5. All Owner Property (including support blocks and cradles) brought onto the Marina by the Owner and/or Owner Invitees in order to carry out work on a Vessel or other property in accordance with this Paragraph 10 must be removed from the Marina as soon as reasonably practicable and, in any case, within 24 hours after completing such work.
- 10.6. Where Vessel or other Owner Property has been stored in a compound at the Marina in order to carry out work on it in accordance with this Paragraph 10, the Owner undertakes to clean the compound as soon as reasonably practicable and, in any case, within 24 hours after completing such work such that the compound is returned to the same condition as it was prior to the work. If the Owner fails to clean the compound to ABP's reasonable satisfaction within the stipulated timeframe, then ABP reserve the right (but shall not be obliged) to clean the compound itself and the Owner shall reimburse ABP in full and on demand for all costs and expenses incurred by ABP in undertaking such cleaning.
- 10.7. All hull washing carried out by ABP will be charged at the published tariff rate. Where the Owner wishes to wash the hull of its Vessel at the Marina themselves, the following shall apply:
- (a) the Owner must obtain ABP's prior written consent;
  - (b) the Owner shall only carry out the wash within the designated wash down bay at the Marina;
  - (c) the Owner must agree that the wash will be completed within the agreed time frame as set out in the tariff;
  - (d) ABP will grant consent for self-washing to be completed subject to acceptance of terms and pricing laid out in the tariff;
  - (e) granting Owner access to and the use of the designated wash down bay and the applicable fee shall be determined in accordance with the provisions of Paragraph 4.
- 11. RIGHT OF SALE**
- 11.1. If ABP accepts the Vessels, or any Owner Property, including without limitation any gear equipment or other property for repair, refit, maintenance or storage it does so subject to the provisions of the Torts (Interference with Goods) Act 1977 (the "**Act**"). This act confers a right of sale on ABP in circumstances where the customer fails to collect or accept re-delivery of the relevant goods (which includes the Vessel and/or any other Owner Property). Such sale will not take place until ABP has given notice to the customer in accordance with the Act.
- 11.2. For the purpose of the Act it is recorded that:
- (a) goods for repair or other treatment are accepted by ABP on the basis that the Owner is the owner of the goods, or the Owner's authorised agent and that they will take delivery or arrange collection when the Services have been completed;
  - (b) ABP's obligation as custodian of goods accepted for storage ends on its notice to the Owner of termination of that obligation;
  - (c) the place for delivery and collection of goods shall be at the Marina unless agreed otherwise.
- 11.3. In addition to the rights in Paragraph 11.1, ABP's right of sale and of detention and lien in Condition 16 shall apply.
- 12. SUB-CONTRACTING**
- ABP may sub-contract all or any part of the Services on such terms that any such terms as it considers necessary, including giving the sub-contractor the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, contained in the Conditions or this Schedule 2. Where ABP sub-contracts the performance of any Services it shall remain responsible to the Owner for the performance of such Services.
- 13. SAFETY DURING LIFTS**
- Any person remaining on board a Vessel during lifts into or out of the water at the Marina must wear a lifejacket. If any person fails to wear a lifejacket during a lift, ABP shall be entitled to terminate the lift immediately and ABP reserve the right to charge the Owner any fees relating to the lift notwithstanding such termination of the lift.
- 14. PROVISION OF LIFTING SERVICES THE ROYAL NATIONAL LIFEBOAT INSTITUTION ("RNLI")**
- Where ABP is providing any Lifting Services to the RNLI, the obligation of the Owner to have insurance in accordance with Condition 14 is waived by ABP.