

PREMIER MARINAS CONDITIONS OF CHICHESTER CANAL BERTHING

Effective from 01.04.2023 v1.1

1 DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

- **Agreement:** the Berthing Licence, these Terms and the Regulations;
- **Berthing Fee:** the amount set out in the Berthing Licence;
- **Berth:** a Canal berth as set out within the Berthing Licence;
- **Boat:** the Boat shown on the Berthing Licence;
- **Boat Length:** the overall length of the Boat calculated including davits, bowsprits, bumpkins, boarding ladders, stern drives, tenders, outdrives, outboards, rudders, anchors, pulpits, pushpits and any other extension fore and aft of the Boat;
- **Canal:** the Chichester Canal between the Chichester to Birdham Road at Birdham and Saltern Lock;
- **End Date:** the end date in the Berthing Licence;
- **Event Outside Our Control:** any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, interruption of electricity supply, or failure of public or private telecommunications network.
- **Local Authority:** Chichester District Council;
- **Marina:** the Marina owned by Us identified in the Berthing Licence;
- **Monthly Berthing Rate:** the rate shown as such in the Price List;
- **Price List:** the list of prices for Marina services and berthing fees available at Marina reception and at: www.premiermarinas.com/legals/pricing;
- **Regulations:** the Marina Regulations issued from time to time;
- **Rules:** the rules set out in the Second Schedule;
- **Sewage Pipe:** a pipe laid in the Canal owned and maintained by You connected to Our wastewater connection for removal of sewage and other waste water products;
- **Start Date:** the start date in the Berthing Licence;
- **Terms:** the Terms and Conditions set out in this document
- **We/Our/Us:** the Premier Marinas group company named in the Berthing Licence;
- **You/Your:** the owner, skipper or person in charge of the Boat.

2 PROVISION OF BERTH

- 2.1 We shall allocate to You a Berth in the Chichester Canal. You must not allow any other boat other than the Boat to occupy the Berth
- 2.2 We may at any time at Our absolute discretion require You to move the Boat to another Berth in the Canal and You shall not be entitled to the exclusive use of any particular berth.
- 2.3 We reserve the right to board, move, moor or re berth the Boat for reasons of safety, security, an emergency or to prevent or stop a nuisance.
- 2.4 We shall give You, the members of Your family and guests, access to the Boat over Our private roads pathways and across the Canal bank at the place at which the Boat is berthed.
- 2.5 We shall provide You for the duration of this Agreement the facilities, privileges and services set out in the First Schedule at the rates set out in Our Price List.
- 2.6 You shall be responsible for the observance of all the terms of this Agreement and for ensuring that Your family, guests, servants and agents comply with these Terms, the Rules and the Regulations and the conduct of persons using the same.
- 2.7 We reserve the right to ask that You or any member of Your party leave the Marina immediately if You or they act recklessly or unreasonably.
- 2.8 Should You sell Your Boat, You may transfer Your rights under this Agreement to the new owner with Our written consent, which will be granted at Our sole discretion, and payment to Us of a facilitation fee, which is twelve percent of the greater of either: the Boat final sale price; or the Boat market value; plus all applicable taxes.

3 THE CANAL

- 3.1 We shall not be under any legal responsibility or liability to hold water in the Canal at any specific level or at all.

4 YOUR OBLIGATIONS

- 4.1 You undertake to observe and perform the Rules at all times.
- 4.2 You must observe and perform the Regulations copies of which are available from www.premiermarinas.com. We may change these Regulations if necessary for the safe and efficient operation of the Marina. We will endeavour to give You at least four weeks' notice of the changes by placing notices on Our website.
- 4.3 You hereby warrant that:
- 4.3.1 You are the owner(s) of the Boat; and
- 4.3.2 You shall maintain at all times a suitable policy of insurance (with a reputable insurer) for public liability and third party liability in respect of claims for damage to persons and property in the sum of at least £3,000,000 for any one event. We require a record of Your current insurer, policy reference number and policy expiry date. You must provide Us with these details whenever the You change or renew the policy. We reserve the right to request a copy of the insurance certificate to confirm these details relate to an active policy; and
- 4.3.3 the Boat Length is as stated on the Berthing Licence.
- 4.4 You may not sub-licence, share or assign the Berth the subject of this Agreement.
- 4.5 You may not permit other persons to use the Boat either by way of charter hire or loan.
- 4.6 You undertake to pay all existing and future rates, taxes, assessments and outgoings imposed or charged upon the Boat or upon the You or Your occupier and also a proper proportion of any rates, taxes, assessments and outgoings imposed or charged upon Us in respect of that part of the Canal occupied by the Boat.
- 4.7 You undertake to pay any applicable harbour dues payable in respect of the Boat to the Chichester Harbour Authorities and to indemnify Us against payment of such dues.
- 4.8 You undertake to repair and keep the Boat in good order and in particular shall ensure that the Boat:-
- 4.8.1 is thoroughly sound and free from leakage at all times;
- 4.8.2 exterior is deep cleaned and/or repainted at least once in any 3 year period;
- 4.8.3 is inspected by a qualified independent marine surveyor at least once in any 5 year period or 10 year period if the hull is constructed of a concrete or similar construction, and can provide evidence of such inspection;
- 4.8.4 has an annual 'Gas Test Certificate' where applicable, and can provide evidence of such certificate;
- 4.8.5 has an 'Electrical Installation Condition Report' every three years or when the Boat's electrical installation is altered in any way, and can provide evidence of such report;
- 4.8.6 has functional Gas, Smoke and Carbon Monoxide alarms fitted.
- 4.9 If We have reasonable cause to believe that a Boat is not thoroughly sound and free from leakage We may give notice to the You requesting that the Boat be lifted and a survey report carried out within 30 days by a surveyor registered with the Yacht Brokers Designers and Surveyors Association at Your expense. The Boat shall not be repositioned at a Berth until any works required by such survey are completed.
- 4.10 In the event of the Boat sinking You shall forthwith arrange for it to be raised at Your own expense and shall ensure that it is rendered watertight before placing the Boat at a Berth allocated by Us.
- 4.11 In the event of any breach of Your obligations under sub-clauses 4.8, 4.9 or 4.10, We will give You written notice and five days to rectify the breach and provide Us evidence Your Boat is compliant with such obligations. If You fail to respond to this notice, or in the event of circumstances which in Our sole opinion represent an emergency where notice cannot reasonably be given, We may without liability to You instruct Our servants or agents to rectify the breach as We deem appropriate, You will be liable for all reasonable costs incurred by Us.
- 4.12 You shall not do or permit to be done anything which may damage or injure the banks of the Canal (including without limitation the digging of gardens lawns, laying of patio or paved areas or paths or planting of flowers and shrubs on the banks) or any bridge over the Canal or lock or to cause or allow the Boat to become an obstruction to other users of the Canal.
- 4.13 You shall not discharge or permit to be discharged into the Canal any waste refuse or other substance including but not limited to chemical or other toilet effluent, oil, petrol, diesel, tar, paint or other noxious hazardous deleterious substance or material.

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- 4.14 You shall take steps to minimise the risk of release from the Vessel into any environmental medium of any dangerous substance and in the event of any such release to promptly report the same to any proper regulatory authority and Us, and to carry out such remediation clean up and preventative measures as may be required by any regulatory authority or by Us at Your expense.
- 4.15 You shall comply at Your own expense at all times with all relevant Health and Safety Laws and Local Authority requirements and regulations relating to the use or occupation of the Boat.
- 4.16 You shall maintain and keep in good working order Your Sewage Pipe connected to Our wastewater system .
- 4.17 You shall not do or permit any act or conduct on the Boat or Our premises which may constitute a nuisance or which may cause inconvenience disturbance injury or annoyance to persons lawfully on Our premises or the Canal banks and to pay all costs incurred in abating any such nuisance or disturbance.
- 4.18 You shall not use the Boat or Our premises for any dangerous, noisy or offensive occupation or for any illegal or immoral purpose.
- 4.19 You shall inform Us at least 30 days in advance of any change or proposed change in ownership of the Boat and at Our request procure that the new owner should enter into a berthing agreement with Us in respect of the Boat. If We do not wish to enter into a berthing agreement or if the proposed new owner refuses to enter into such agreement then You shall at Your own expense and prior to the completion of the change of ownership remove the Boat from the Canal. The provisions of this clause shall survive termination of this Agreement.
- 4.20 You will not use Your Boat for any commercial purpose, except where You have sought permission from Us, and We have agreed in writing.
- 4.21 You shall indemnify and keep Us indemnified from and against all actions, proceedings, claims, demands, costs, expenses, losses and liabilities occasioned by or arising from any damage or injury suffered by any person whomsoever or any property whatsoever:
- 4.21.1 so far as the same may be caused by any act or default or omission of You or Your crew, passengers, other guests or persons carrying out work on the Boat by Your arrangement or with Your consent; and/or
- 4.21.2 resulting directly or indirectly from any breach by You, Your crew, passengers, other guests or of the provisions of this Agreement.
- 4.22 If You fail to make payment for any services invoiced to You by Us within 30 days of such notice We reserve the right to:
- 4.22.1 disconnect You from such services or otherwise cease to provide such services to You; and
- 4.22.2 levy a reasonable administration fee for reconnection to such services.
- ## 5 BERTHING FEE AND PAYMENT
- 5.1 You must pay the Berthing Fee to us in the manner set out in the Berthing Licence. The Berthing Fee only includes the services set out in the First Schedule.
- 5.2 We are entitled to charge You, in addition to the Berthing Fee, for all Marina services which You use (other than those set out in the First Schedule). The methods of payment which we accept and our payment terms are set out in our Price List.
- 5.3 We will only issue receipts for payment on request.
- 5.4 If You fail to pay Your Berthing Fee within 30 days of the date on which it is due We may serve a final warning in respect of the outstanding sum, requiring You to make payment within a further 7 days. If after the expiry of that 7 days the outstanding sum has not been paid this will be treated as a repudiation of Your obligations under this Agreement We shall be entitled to take all or any of the following steps:
- 5.4.1 end this Agreement under condition 7;
- 5.4.2 exercise Our rights under condition 10;
- 5.4.3 prevent the Boat from leaving the Marina;
- 5.4.4 charge You interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per annum above the HSBC Bank PLC base rate from time to time calculated on a daily basis;
- ## 6 MOVEMENT OF VESSEL
- 6.1 We reserve the right to move the Boat and/or allocate a different berth for any reason and in any circumstances on the giving of 30 days notice (except in an emergency) to You.

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6.2 We shall be responsible for all costs arising from such movement where it exercises its right to move the Boat under clause 6.1.

6.3 except when You are in breach of this Agreement and has failed to comply with any notice served under clause 6 requiring the breach to be remedied.

7 TERMINATION

7.1 This Agreement shall start on the Start Date and shall continue until the End Date unless it is ended earlier in accordance with this Agreement.

7.2 For contracts paid annually in advance –

7.2.1 You have a 12 month berthing contract and You will have been given a specially discounted Berthing Fee for committing to that 12 month period. Therefore if You end the Agreement within that 12 month period (except as allowed in condition 7.4 of this Agreement) no refund will be due.

7.3 For contracts paid monthly by direct debit –

7.3.1 If You end the Agreement before the End Date, and give Us one calendar months' notice of your intent to end Your Agreement (except as allowed in condition 7.4 of this Agreement) or if we end the Agreement under condition 7.4 we will charge you:

(a) for the number of calendar months of Your occupation of a berth at our Monthly Berthing Rate; and

(b) any additional month's in lieu of notice; less

(c) monthly instalments already made under this agreement

(d) We reserve the right to charge You a £95 cancellation fee which is sufficient to cover our losses and expenses,

7.4 Without affecting any right or remedy available to either of us, either You or We will be entitled to end this Agreement immediately by notice in writing to the other if:

7.4.1 the other party commits a serious or repeated breach of this Agreement and, if it can be put right, they do not put it right within 7 days of the party in breach being given a notice setting out full details of the breach and the action required to put it right;

7.4.2 the other party being a company passes a resolution for winding up or a Court makes a winding up order in respect of that party or it has a receiver, administrative receiver, manager or administrator appointed over all or any of its business or assets;

7.4.3 the other party is unable to pay its debts or becomes insolvent (in the meaning of the Insolvency Act 1986) or makes or proposes to make an arrangement with its creditors.

7.4.4 the other party, being a business, ceases or threatens to cease to carry on its business.

7.5 Without affecting any other right or remedy We may have We will be entitled to end this Agreement immediately by notice in writing to You if:-

7.5.1 You have a bankruptcy petition presented or die;

7.5.2 You are dissolved (if You are a partnership)

7.5.3 You provide us with details which You know to be false when applying for a berth and the false declaration would have reasonably affected Our decision to offer You a berth.

7.6 For the purpose of condition 7.4.1 a breach can be put right if the party can comply with the provision within the Agreement in all respects.

7.7 The rights to end this Agreement given by this condition do not affect any other right or remedy You or We may have in respect of the circumstances allowing You or Us to terminate the Agreement.

7.8 On termination of the Agreement for any reason You shall within 7 days of the end of the Agreement:

7.8.1 pay to us all amounts owing to Us;

7.8.2 remove the Boat from the Marina;

7.8.3 return Your Marina access control key fobs and uPass car passes to the Marina reception.

7.9 If We terminate this Agreement, or if this Agreement is terminated by the arrest of the Boat or by service on the Boat of a Notice pursuant to the Torts (Interference with Goods) Act 1977, then You will have to pay Us any reasonable costs incurred by Us in enforcing Our rights under this Agreement.

8 WAIVER

Services as soon as reasonably possible after the Event Outside Our Control is over.

8.1 The rights and remedies of Us in respect of any breach of the Covenants contained in this Agreement shall not be affected by reason of Us failing to exercise or delaying the exercise of any right or remedy or by any other event or matter whatsoever, except a specific and duly authorised written waiver or release, and no single or partial exercise of any right or remedy shall preclude any further exercise.

9 LIMITATION OF LIABILITY

9.1 We do not exclude liability for death or personal injury resulting from Our negligence.

9.2 In any event and notwithstanding anything contained in these conditions in no circumstances shall We be liable, in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever, and whatever the cause thereof for any increased costs or expenses, for any loss of profit, business, contracts, revenues or anticipated savings, or for any special, indirect or consequential loss of any nature whatsoever suffered by any person.

9.3 Neither Us or Our servants or agents shall be liable for any loss or damage to the Boat or of gear goods and chattels in the possession of You or Your invitees or any third party on the Boat or on Our premises howsoever occurring.

10 EVENTS OUTSIDE OUR CONTROL

10.1 We shall not be liable to You in respect of any delay in performing or for failure to perform Our obligations if the delay or failure results from any necessary repair replacement maintenance of any installations or apparatus or their damage or destruction or by reason of mechanical or other defect or breakdown

10.2 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.

10.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:

10.3.1 We will contact You as soon as reasonably possible to notify You; and

10.3.2 Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our performance of Services to You, We will restart the

11 REMOVAL OF BOAT

11.1 We reserve the right (after giving You at least 7 days written notice) to secure the Boat or remove the Boat from its berth and place it under our control ashore in the event that:

11.1.1 You fail to pay Your Berthing Fee in accordance with this Agreement and we have taken the steps set out in condition 5.4; or

11.1.2 You fail to remove the Boat from its berth within 7 days of the end of this Agreement (however that occurs).

11.2 You give us irrevocable authority to secure or remove the Boat and store it ashore pursuant to condition 11.1 and You agree to be responsible for Our costs in taking these steps.

11.3 If we have removed Your Boat to storage ashore under clause 11.2 we may give You reasonable notice of our intention to sell the Boat in accordance with the law. Should we sell the Boat we will pay the proceeds to You (or such person who is entitled to possession of the Boat) less all sums owed by You to Us and any expenses of sale and any legal costs incurred in respect of the sale.

11.4 This condition 11 will remain in force after this Agreement ends.

12 GENERAL

12.1 In the event of any conflict between this Agreement and the Regulations of the Marina this Agreement shall prevail but if a Regulation expands a term of this Agreement or vice versa both shall apply.

12.2 You acknowledge that They has not entered into this Agreement in reliance on any representations made by or on behalf of Us.

12.3 We reserve the right to assign, transfer, subcontract or otherwise dispose of all or any of Our rights and obligations under this Agreement upon giving 30 days written notice to the Owner.

12.4 We may amend or vary all or any part of the Terms and Conditions by giving 30 days written notice of such changes or variations to You.

12.5 You shall be treated as having accepted the terms of this Agreement if You have taken up a berth on the Canal.

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- 12.6 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 12.7 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 12.8 This Agreement shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 12.9 References to persons include companies, unincorporated associations and partnerships.
- 12.10 The headings in these conditions shall not affect their interpretation.
- 12.11 Any and all notices served by the parties with respect to this Agreement shall be deemed sufficiently given when forwarded by hand or sent by first class recorded delivery post to the address of the addressee as set out in this Agreement (in the case of the You), or to the local office from time to time of Us, or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this condition. Notices shall be deemed to have been received if sent by first class post, two business days after posting exclusive of the day of posting or if delivered by hand on the day of delivery. In proving service, by delivery by hand it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee and by post it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause.
- 12.12 All obligations, undertakings and warranties by You in the Agreement undertaken or given by more than one person are undertaken or given jointly and severally.
- 12.13 In no event shall any delay, failure or omission on the part of either of the parties in enforcing, exercising or pursuing any right, power, privilege, claim or remedy which is conferred by this Agreement or arises under this Agreement or arises from any breach by any of the parties to this Agreement of any its obligations hereunder be deemed to be or be construed as:
- 12.13.1 a waiver thereof of any other such right, power, privilege, claim or remedy in respect of the particular circumstance in question; or
- 12.13.2 operate so as to bar the enforcement or exercise thereof or of any other such right, power, privilege, claim or remedy in other instance at any time or times thereafter.

THE FIRST SCHEDULE

- 1 You may take reasonable quantities of fresh water via a fixed connection or hosepipe from the taps provided by Us for use on the Boat free of charge provided that We shall not be liable to You for any disruption in supply howsoever caused. We reserve the right to make a charge for water usage on the giving of 30 days written notice to You.
- 2 You may park one private motor car during occupancy of the Boat in such car parking area (but not in any particular place in such area) as We may from time to time provide for the parking of cars belonging to the owners of boats using the Canal.
- 3 You may deposit dry rubbish and garbage in the bins provided by the Local Authority at the place designated by Us nearest to the Berth for the Boat.
- 4 You may use the toilet facilities provided by Us including the water closets, showers and water basins free of charge provided that We shall not be liable to You if such toilet facilities are not available due to frost or other accident or defect howsoever caused.
- 5 You may request connection to the Sewage Pipe in the Canal but such connection and associated costs must be paid for by You. We will not be responsible to You for any disruption to the usage of the Sewage Pipe howsoever caused.
- 6 We will maintain and keep clean and tidy during the period of this Agreement the private car parks paths and roadways belonging to Us.
- 7 We will provide such lights as We may in Our absolute discretion consider to be necessary on the private roadway.
- 8 You may request connection to an electricity supply via the bollards on the path/road leading to the Boat. The supply to the Boat will be metered and You will be invoiced monthly by Us. You will be responsible at Your expense for the upkeep and maintenance of the connection from the bollards to the Boat.
- 9 You may request permission to occupy the adjoining land whilst You have current Berthing Licence. We at our absolute discretion, will issue You with a Licence to Occupy agreement. If You do not have a Licence to Occupy, You have no right of access or use of this land.
- 10 Our privacy and customer communications policies on Our website set out the basis on which any personal data We collect from You, or which You provide to Us is handled and stored www.premiermarinas.com/Legals/Privacy-Policy. For

the purposes of the relevant data protection legislation (consisting of the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation) the data controller is 'Premier Marinas Limited, Swanwick, Hampshire SO31 1ZL'. In performance of this Agreement with You, We can contact You with important information about the Marina, Your Boat and any situation which may impact on the use of Your Boat. Other communications with You will be based on the contact preference choices You make, you can update these at any time via Our website or by contacting Us.

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THE SECOND SCHEDULE

- 1 All persons using Our premises must comply with these Rules.
- 2 No Boat may be berthed or anchored in the Canal in any place other than in the berth allocated from time to time by Us.
- 3 No Boat shall be careened in the Canal nor shall the bottom of the Boat be cleaned in the Canal except with the express permission of Us in writing.
- 4 Our permission must be obtained for the employment of any contractor other than You and members of Your family or Our servants to undertake work on any Boat, vehicle or other property on Our premises or while afloat in any of Our berths. That permission may be granted or withheld at Our absolute discretion. Contactors must always comply with Our registration and sign-in process.
- 5 All watersports are prohibited in the Canal including but not limited to dinghy sailing, rowing, canoeing, waterskiing, water scooting and sailboarding.
- 6 No person shall cause any obstruction on any roadway footpath or bank of the Marina or the Canal or in the Canal itself or leave or deposit any equipment, boats (other than the Boat) or rubbish thereon including without limitation dinghies, floating platforms or tenders.
- 7 The banks, slipways, pontoons and quays are to be kept clear clean and tidy and all garbage and rubbish shall be placed in bins provided by the Local Authority. No rubbish or waste material may be deposited in the Canal or the Marina.
- 8 No washing lines may be put up ashore.
- 9 No fishing is allowed from the banks of the Canal or the Marina without Our prior written permission.
- 10 No swimming for pleasure is allowed in the Canal or Marina.
- 11 All pets and domestic animals must be kept under proper control. No pets or domestic animals may be kept aboard Boats used as houseboats without Our prior written permission.
- 12 We reserves the right to prevent any Boat leaving the Canal unless and until all outstanding sums due to Us have been paid.
- 13 All persons using Our private roads shall observe the speed limits in force when it is safe to do so, and should at all times drive with extreme care.
- 14 Caravans, campervans or tents may not be stationed or erected in the car park or elsewhere on Our premises.
- 15 No structure may be erected on the banks of the Canal without Our prior written permission. Structure includes but is not limited to sheds, greenhouses, huts, fences, walls, hedges and trees. We have the right to remove any structures which are erected in breach of this clause.
- 16 No Boat berthed in the Canal under the agreement may be sub-let to any person without Our prior permission in writing, such permission not to be unreasonably withheld. In the event of such permission being granted, You accept responsibility for the observance of the terms and conditions of this Agreement by the sub-tenant.
- 17 These Rules may be revised, altered or amended from time to time by Us. Upon such notice of amendment being displayed at Our offices and served on You it shall be deemed to be incorporated therein.
- 18 No interior or exterior alterations affecting the outward appearance of the Boat may be made without Our prior approval in writing.