



## WATERSIDE MARINA BRIGHTLINGSEA

### TERMS AND CONDITIONS 2021

**All persons or vessels entering into the Marina for whatever purpose shall be deemed to do so in accordance with these terms and conditions.**

#### 1.0 Definitions

**BHC means** the managers of the Marina.

**Berth** means the water space temporarily allocated to the OWNER by BHC for the storage of the Boat.

**Boat** means but is not limited to ship, yacht, dinghy, catamaran, vessel or craft whether or not its principal propulsion shall be by wind or engine.

**Harbour Master** means the person or his representative who shall be responsible for the day-to-day administration of the Marina.

**Marina** means all the seabed and water, bridges, pontoons, finger pontoons and equipment thereon within the perimeter walls of the Marina basin

**OWNER** means any person or persons or corporate body who shall have entered into an agreement with BHC permitting such person or persons or corporate body to moor a Boat in a Berth in the Marina.

**USER** means any person using the Marina for any purpose whatsoever.

#### 2.0 Safety and Environment

2.1 The OWNER acknowledges and agrees that BHC shall have the right without prior notice to require the OWNER to move and reberth the Boat and shall itself have the right to move and reberth the Boat to any new location within the Marina if BHC considers it to be in the interests of BHC or the OWNER or Marina users or visitors.

2.2 BHC shall have the right to board and enter (by force if necessary) to carry out any emergency work on the Boat without prior notice to the OWNER if in BHC's opinion such work be necessary for the safety of the Boat or the safety and or convenience of other Marina users or visitors. The OWNER shall pay on demand BHC's reasonable charges for such work.

2.3 No dangerous inflammable poisonous or noxious substances spirits oil or petrol or other flammable fluid shall be brought into the Marina or stored on the Boat except in properly secured containers expressly designed to contain such substances against leakage.

2.4 No refuelling of vessels is permitted in the Marina.

2.5 The Boat shall be berthed by the OWNER in such a manner and in such location as BHC may require. All necessary warps and fenders shall be provided by the OWNER and the OWNER expressly undertakes and agrees to ensure that the Boat is properly and safely secured and attached to the pontoon at all times. In particular it is the responsibility of the OWNER to check the security of warps and to replace them when necessary.

2.6 The OWNER shall comply with all reasonable instructions of the Harbour Master in connection with all matters relating to the safe and efficient operation of the Marina. Swimming, fishing and crabbing are not permitted at any time within the Marina.

2.7 The OWNER shall navigate and control the Boat in the Marina at all times in a seamanlike manner so as to cause no danger damage or inconvenience to any other person or boat. In particular the Boat shall proceed at a speed which is safe in relation to prevailing conditions and shall at *all* times comply with any speed restrictions displayed from time to time in the Marina.

2.8 The OWNER shall not operate or permit to be operated within the Marina any engine generator other machinery radio or any apparatus so as to cause any noise nuisance annoyance or inconvenience to other Marina users or any person residing in the vicinity of the Marina. The OWNER further undertakes and agrees for himself his family and his visitors using the Boat and the Marina facilities that they shall behave in a considerate manner and in such a way as to cause no nuisance annoyance or inconvenience to any other Marina user.

2.9 The OWNER shall ensure that at all times halyards flags banners and other items attached to the Boat shall be secured so as not to cause any noise nuisance or inconvenience to other Marina users.



2.10 The OWNER undertakes and agrees that no refuse shall be thrown overboard or left on the pontoon jetties or other parts of the Marina. The OWNER further undertakes and agrees that oil petrol tar paint sewage and any other similar noxious substances shall be discharged exclusively into receptacles specifically provided to receive such waste materials. In no circumstances shall such waste materials be discharged into the water or elsewhere in the Marina.

2.11 Animals may only be brought into the Marina provided that they are at all times kept under the control of OWNER and dogs are to be kept on a leash and do not cause inconvenience in the form of noise, fouling of pontoons or the communal areas or otherwise. Animals insofar as is reasonably practical shall be kept aboard the Boat at all times. Strict regulations exist for the control of rabies and BHC reserves the right to require the OWNER to remove any animal from the Marina without prior notice. No animal which has been taken abroad shall be brought into or landed in the Marina without the prior written consent of BHC. BHC reserves the right to report any suspected breach of this clause to the appropriate authorities.

2.12 The OWNER shall not erect any washing line on the Boat or within the Marina.

2.13 The OWNER shall take all necessary and reasonable precautions against the outbreak of fire in or upon the Boat. The OWNER shall provide at least one fire extinguisher in or upon the Boat suitable for the type of engines, fuel and equipment relating to the Boat and of a kind which shall be approved by the appropriate Government Department. Such extinguisher shall at all times be kept instantly ready for use and in good and efficient working order.

2.14 No person shall be permitted to work on the Boat or otherwise in the Marina so as to cause nuisance or annoyance or inconvenience to other Marina users or visitors or damage to other boats and in particular OWNERS shall take steps to ensure that the minimum of dust is caused when cleaning or maintaining the Boat or as a result of any other operations. The OWNER shall himself or otherwise ensure that all waste materials be cleared daily after work on the Boat or otherwise and shall be deposited in suitable receptacles. If the OWNER or any agent of the OWNER shall fail promptly to clear away any such waste BHC shall itself remove such waste and the OWNER shall pay on demand BHC's reasonable costs incurred in collecting and disposing of such waste.

2.15 The OWNER or USER whilst on the Marina is to report in writing to the Harbour Master within 24 hours any injury or accident that occurs within the Marina.

2.16 The OWNER shall ensure that he has read and understood BHC's Health & Safety, Environmental policy, which is available from the Harbour office. BHC reserves the right to amend such policies from time to time without notice.

2.17 The OWNER understands and agrees that BHC has the right to require the OWNER, his family and the visitors to leave the Marina forthwith if any of them shall fail to observe these regulations upon being requested by the Harbour Master to do so.

### **3.0 Management**

3.1 BHC shall have the absolute right to allocate another boat to occupy the Berth without compensation to the OWNER.

3.2 Neither the OWNER nor his agent shall be permitted to construct or complete the construction of any boat within the Marina without the prior written consent of BHC which consent may be granted or refused by BHC at its absolute discretion.

3.3 Dinghies, tenders and rafts shall be stowed aboard the Boat (unless the OWNER has prior consent from BHC)

3.4 The Boat's dinghies shall be clearly marked with the name of the Boat. Any other equipment which is not stored securely in the Boat shall also be clearly marked with the name of the Boat.

3.5 No parts of the Boat or other equipment dinghies gear fittings supplies stores or similar items shall be stored or left upon the pontoons, jetties or otherwise within the Marina without the prior written consent of BHC which consent may be granted or refused by BHC in its absolute discretion.

3.6 BHC expressly reserves the right to introduce new regulations or vary these regulations in order to promote the better administration of the Marina in the interests of Marina users as a whole or to comply with statutes, regulations or bye-laws.

3.7 The OWNER shall not himself nor shall he permit any other person to live aboard the Boat.

3.8 If requested by BHC the OWNER shall deposit keys with the Harbour office giving full access to the interior and locks of the Boat including engine keys.



3.9 The OWNER shall notify the Harbour office prior to his departure by Boat from the Marina together with the anticipated time and date of his return.

3.10 In no circumstances shall the OWNER display or cause to be displayed any "For Sale" or similar notice on or in the Boat or on any other part of the Marina (unless the OWNER has prior consent from BHC).

3.11 The Boat shall be moored in the Berth allocated by BHC from time to time and shall not be moored elsewhere in the Marina without the prior written agreement of BHC.

3.12 The Boat may be used for private purposes only and the OWNER is not permitted directly or indirectly to charter the Boat or otherwise use it or cause it to be used commercially (without the prior written consent of BHC).

3.13 The OWNER shall maintain the Boat in good and clean condition and ensure that the Boat is able to proceed under its own power at all times. The Boat shall leave the Marina at least twice during any period of 12 months if requested by BHC so to do.

3.14 If the OWNER shall fail to remove the Boat at the request of BHC, BHC shall have the right to do so and the OWNER shall pay the reasonable costs and expenses of BHC including but not limited to craneage and storage charges.

3.15 The OWNER is required to notify BHC advising it of any period when the Boat will be absent from its berth. In the absence of this communication, BHC cannot guarantee the Berth to be available upon the return of the OWNER'S boat to its allocated berth.

3.16 The Commissioners deem that these Terms and Conditions have been accepted by any vessel that enters the harbour, or by the payment of berthing and other fees, or by the acceptance of any instruction or offer (in writing or verbally) from BHC staff.

#### **4.0 Insurance**

4.1 The Mooring Holder shall indemnify the Commissioners against any claim or claims arising from the use of the mooring or vessel. Mooring holder are required to take-out third-party risk and wreck removal cover for at least £2M and it is strongly recommended that you insure your vessel for all risks.

4.2 The OWNER shall not cancel surrender or materially alter the terms of such insurance policy without the prior written consent of BHC which consent will not be unreasonably withheld.

4.3 The OWNER on request shall furnish BHC with legible copies of the current insurance certificate and policy of insurance together with copy of receipt for the last premium paid.

#### **5.0 General Conditions**

5.1 All boats are moored at the SOLE RISK of either the Owner or User.

5.2 Fishing, water skiing, speedboat racing, hydro-planing and jet skiing are prohibited within the Marina.

5.3 Luggage trolleys must be returned to the designated trolley storage area after use.

5.4.1 Electricity is provided subject to the following terms and conditions and not included in berthing fees.

5.4.2 BHC cannot guarantee continuous supply as power cuts and breakdowns are not within its control.

5.4.3 Connectors and cables not supplied by BHC shall be approved by BHC.

5.4.4 Overloading will cause trips to activate and immediate reconnection may not be possible, and under no circumstances will be carried out outside normal office hours.

5.4.5 Supply is provided to and for the Boat only. Shared supply is not permitted.

5.4.6 All electricity consumed shall be paid for by the OWNER on demand at the current rate of charges in force at the Marina from time to time.

5.4.7 If payment is overdue the supply may be disconnected and a reconnection charge made.

5.5 Subject to express agreement to the contrary any work date quoted is given in good faith and is not guaranteed.

5.6 Except with the written consent of BHC, which may be withheld at BHC's sole discretion, no part of the Marina or the Boat shall be used by the OWNER for any commercial purposes, including hiring, embarkation of charter parties / sale or demonstration for sale or hire of the Boat, provided that the occasional use of the Boat by a friend of the OWNER on payment to the OWNER of a contribution towards the actual running cost of the said Boat shall not be deemed a commercial purposes as hereunder.



5.7 OWNERS and USERS shall observe the Byelaws of Brightlingsea Harbour Commissioners and Colchester Borough Council and all other rules and regulations affecting the Marina statutory or otherwise.

5.8 The OWNER shall not permit any contractors to work on his Boat whilst in the Marina unless the contractor has provided proof to BHC of Third-Party Liability insurance in the sum of at least five million pounds.

## **6.0 Marina Berths**

6.1 The Commissioners' fee will be demanded by invoice. Where demanded by invoice the fees will be those ruling at date of contract and payment is made within 30 days from the date of invoice. Annual or seasonal mooring invoices not paid by 14<sup>th</sup> April 2021, may result in cancellation of your mooring and reallocation to another on the waiting list.

6.2 The OWNER shall be permitted to arrange a private sale of not more than one Boat (such Boat usually being berthed at the premises BHC) during any one or more periods of 12 consecutive months of the licence granted to the OWNER.

6.3 In the event of a private sale, BHC must be notified of the name and address of the purchaser. The mooring may not be transferred or assigned to another person. You will not receive a refund for unused mooring time. The new owner will be invited to join the mooring waiting list.

6.4 The Commissioners shall be under no obligation to provide mooring or berthing facility to owners who have exchanged their vessel for a larger one. Owners considering an exchange should immediately consult with the harbour office to agree a way forward.

6.5 If you cancel your mooring a refund will not be given. Any changes to mooring arrangements requested by an owner during the period of contract will be subject to an administration charge.

6.6 Electricity, water & WIFI should not be considered as inclusive of berthing charges.

6.7 If you cancel your mooring a refund will not be given. Any changes to mooring arrangements requested by an owner during the period of contract will be subject to an administration charge.

6.8 Any late payments will be subject to an administration fee.

## **7.0 Annual Marina Payment Instalment Contract**

7.1 Standing order payments are only available to marina annual mooring holders and are agreed upon by the Harbour Master. The Harbour Master reserves the right to refuse standing order payments requested by marina annual mooring holders.

7.2 Commissioners' fee will be demanded by invoice. Where demanded by invoice the fees will be those ruling at date of contract. If the standing order payment plan runs from 1<sup>st</sup> April to 31<sup>st</sup> March, the first initial payment is made before 14<sup>th</sup> April. The owner of the vessel is then obliged to set up a standing order making a further fixed 11 payments by the 1<sup>st</sup> of each month.

7.3 BHC will not be issuing reminders. It is upon the mooring holder to keep to the agreed payment plan schedule.

7.4 If any payment is missed throughout the year BHC reserves the right to cancel your standing order payment plan and mooring contract. The vessel will be removed from the marina and the owner of the vessel will be liable for towing charges and you will be liable to pay any outstanding mooring fees in full.

7.5 If the debt is settled in full the vessel can return to the marina.



7.6 If the breach of contract persists BHC reserves the right to become a 'bailee' of the boat under the Torts (Interference with Goods) Act 1977. The sale of the vessel will be used to offset any outstanding debts.

7.7) Once the payment plan has been agreed if the mooring holder changes from summer to annual mid-season then BHC will use the summer pontoon mooring rate plus 9%. The mooring holder will also incur a cancellation charge as stated in our Schedule of Charges.

### **8.0 Special Conditions**

8.1 Property owners in the Waterside development have priority berthing rights. Applicants for berths in the Marina who are not property owners will be given an annual licence for a berth which is subject to a special clause giving BHC the right to serve three months' notice of termination of the licence and vacation of the berth in order to accommodate a property owner. A refund of fees based on the difference between the rates applicable will be made.

### **DISCLAIMER**

These Terms and Conditions, as may be amended from time to time, shall be complied with at all times by the Owner(s) and User(s)

The Commissioners deem that these Terms & Conditions have been accepted by any vessel that enters the harbour, or by the payment of berthing and other fees.

Without prejudice to the foregoing, BHC shall not be under any obligation to take steps to enforce the Terms and Conditions for the benefit of, or at the request of, any Owners(s) or User(s), save to the extent that BHC may in its absolute discretion decide to do so.

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