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TERMS AND CONDITIONS 2018

OFFER OF BERTHING LICENCE

FOR THE PERIOD 1ST APRIL 2018 TO 31ST MARCH 2019 (the "TERM")

Dart Harbour offers to provide the Owner with the services described in Schedule 1 and the accompanying invoice on the Terms and Conditions set out in Schedule 2, 3 & 4 as applicable.

SCHEDULE 1 - SERVICES TO BE PROVIDED BY DART HARBOUR TO THE OWNER DURING THE TERM

1. A licence during the **TERM** for the use of a **BERTH** for the **BOAT** at the mooring allocated by Dart Harbour to the Owner from time to time during the **TERM**.
2. **DEFINITIONS** Wherever the following terms appear in these Conditions and the Agreement they will have the special meanings defined here:

ADDITIONAL CHARGES means charges payable to Dart Harbour for services booked or used by the OWNER which are not included within the BERTHING CHARGE;

AGREEMENT means this Dart Harbour Berthing Licence and/or Private Tackle Mooring Licence, Private Tackle Running Mooring Licence, Private Tackle Commercial Mooring Licence, Private Tackle Commercial Multiple Mooring Licence or occupational licence;

BOAT means the BOAT and/or BOATS named on the Invoice;

BERTH means the space or spaces on water from time to time allocated to the OWNER by Dart Harbour for the BOAT during the TERM the first of which is identified on the invoice;

BERTHING CHARGE means the sums payable to Dart Harbour for the use of the BERTH during the TERM, however described, including any charges for Fundus Rental for private tackle moorings or occupational licences;

BYELAWS means the Dart Harbour Byelaws which are available at the Harbour Office at the current price or which may be viewed and printed at www.dartharbour.org/harbour-Dart Harbour/byelaws;

LENGTH OVERALL (LOA) means the overall length of the space occupied by the BOAT including any fore and aft projections, temporary or permanent including pushpits, pulpits, bowsprits, bumpkins, davits, tilted outboard, rudders etc. Do not rely on manufacturers stated LOA – this may not include pushpits, pulpits, rudders etc;

HARBOUR means all the land, adjacent water and buildings occupied by or under the control of Dart Harbour including slipways, pontoons, mud berths, moorings, or any other facility for launching, navigating, mooring or berthing a Boat;

BERTHING means the facilities made available to the OWNER and the OWNER'S PARTY at the HARBOUR at prevailing tariffs, inc. but not limited to water points and waste and refuse disposal;

LICENCE HOLDER includes any person or corporate body who, as principal or agent, has entered into a Berthing Licence, Private Tackle Mooring Licence, Private Tackle Running Mooring Licence, Private Tackle Commercial Mooring Licence, Private Tackle Commercial Multiple Mooring Licence or an occupational licence with Dart Harbour;

OWNER includes any person or corporate body who, as principal or agent, has entered into a Berthing Agreement or a Private Tackle Mooring Licence, Private Tackle Running Mooring Licence, Private Tackle Commercial Mooring Licence, Private Tackle Commercial Multiple Mooring Licence or occupational licence with Dart Harbour and any charterer, master, agent or other person for the time being in charge of the BOAT, excluding Dart Harbour;

OWNER'S PARTY means the OWNER'S crew, guests, customers or other visitors on the BOAT or at the HARBOUR.

PRIVATE TACKLE MOORING LICENCE means a licence granted by Dart Harbour for the TERM by which the OWNER is licensed to have its own mooring tackle laid at the BERTH and to use that tackle for the BOAT. It includes individual Private Tackle Mooring Licences, Private Tackle Running Mooring Licences, Private Tackle Commercial Mooring Licences and Private Tackle Commercial Multiple Mooring Licences. Schedules 1, 2, 3 and 4 apply to PRIVATE TACKLE MOORING LICENCES.

REGISTRATION FEE means a fee to be paid in advance of the annual renewal to confer the OWNER'S intention to accept the LICENCE for the upcoming TERM. Such fee (if paid) will be deducted from the renewal invoice. See Schedule 3 below.

SCHEDULE 2 - TERMS AND CONDITIONS RELATING TO ALL BERTHS

1. THE LICENCE

- 1.1. Dart Harbour retains all rights of possession in respect of the BERTH, save in respect of any BERTH over fundus or foreshore which is owned or leased by the OWNER.
- 1.2. The licence created by this Agreement shall not be automatically renewed but will end on conclusion of the TERM unless terminated sooner by Dart Harbour under the provisions of Clause 6 of this Schedule 2.
- 1.3. By paying the invoice of Dart Harbour the OWNER accepts the terms and conditions set out in these Schedules.
- 1.4. The OWNER is referred to any specific technical information and advice associated with different berth types and mooring categories supplied to him/her by Dart Harbour
- 1.5. This Agreement and the rights created by it are personal to the OWNER and relate specifically to the BOAT. It may not be transferred or assigned to a new OWNER or to a different BOAT, either temporarily or permanently, without the express written consent of Dart Harbour. The Agreement is not intended to confer any benefit under the Contracts (Rights of Third Parties) Act 1999 on any person unless they are named as a party to this Agreement.
- 1.6. In the case of an OWNER which is a Company or partnership any change of control affecting more than 20% of the share capital or partnership interest shall be disclosed to Dart Harbour who shall be entitled to satisfy itself that the change of control is a genuine arm's length transaction and not a mechanism to circumvent any mooring waiting list.
- 1.7. At any time when the BERTH is not occupied by the BOAT Dart Harbour shall be free to permit its use by any other boat without paying compensation or giving any discount to the OWNER.
- 1.8. Within 7 days of any agreement for the sale, transfer or mortgage of the BOAT the OWNER shall notify Dart Harbour in writing of the name, address, email and telephone numbers of the Purchaser, Transferee or Mortgagee.

2. PAYMENT

- 2.1. Payment of the BERTHING CHARGE should be made to Dart Harbour in accordance with the dates specified and any ADDITIONAL CHARGES, together with VAT should be paid on receipt of invoice. Timely payment to Dart Harbour of all sums due is a strict condition of the Agreement. Dart Harbour has special statutory rights and powers in relation to late payment. These rights are not affected by the terms of the Agreement.
- 2.2. Dart Harbour reserves the right to charge interest on any amount which is overdue by more than 14 days at the rate of 4% above Barclays Bank Plc base rate from time to time.
- 2.3. Dart Harbour infers that payment of the BERTHING CHARGE implies acceptance of appropriate terms and conditions in this Agreement and terms of business.

3. LIABILITY, INDEMNITY AND INSURANCE

- 3.1. Dart Harbour shall not be liable for any loss or damage caused by any event or circumstance beyond its control (such as, but not limited to, extreme weather conditions, the actions of third parties not employed by it or any defect in any boat, gear, equipment or facility); this extends to loss or damage to Boats, gear, equipment or other goods left at the HARBOUR or the BERTH or any cessation or interruption of BERTHING.
- 3.2. Dart Harbour shall take reasonable steps to maintain the services and facilities at the BERTH in reasonably good working order. Subject to this the BOAT, gear, equipment and other goods are left at the BERTH at the OWNER'S own risk and the OWNERS must ensure that they have appropriate insurance against all relevant risks.
- 3.3. Dart Harbour shall not be under any duty to salvage or preserve an OWNER's Boat or other property from the consequences of any defect in the Boat or property unless it shall have been expressly engaged to do so by the OWNER on commercial terms. Similarly Dart Harbour shall not be under any duty to salvage or preserve an OWNER's Boat or other property from the consequences of an accident for which Dart Harbour is not responsible. However Dart Harbour reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property, navigation or the environment. Where it does so it shall be entitled to charge the OWNER concerned on a normal commercial charging basis.
- 3.4. Dart Harbour shall not, in any case, have any liability to the OWNER or any third party for consequential or indirect losses or for any losses relating to any business of the OWNER such as loss of profit or turnover.
- 3.5. The OWNER and OWNER'S PARTY may themselves be liable for any loss or damage caused by them, their crew or the BOAT and it is a condition of this Agreement that they shall at all times during the TERM maintain adequate insurance including third party liability and public liability cover against the liabilities of the OWNER, and OWNER'S PARTY for not less than £2,000,000 per incident including wreck removal, counter pollution and salvage costs. Further, and, where appropriate, the OWNER shall hold Employers' Liability cover to at least the statutory minimum. The OWNER shall not cancel surrender or materially alter the terms of any part of these insurances without the prior written consent of Dart Harbour.
- 3.6. The OWNER shall, if requested, be obliged to produce evidence to Dart Harbour of all such insurances within 2 days of being requested to do so by Dart Harbour. If the insurances have lapsed or been withdrawn or avoided, then Dart Harbour shall, as agents for the OWNER, have the right to remove the BOAT from the BERTH and either to place it ashore on hard standing or to place it on a mooring or staging or other facility in the Harbour or elsewhere. The costs of any such removal shall be chargeable by Dart Harbour to the OWNER at normal commercial rates.

4. CHANGE OF DETAILS

- 4.1. The OWNER must notify Dart Harbour in writing of the details of any change of name of the BOAT or change of address, telephone number or email address of the OWNER

5. BERTH ALLOCATION

- 5.1. The physical layout of the HARBOUR and the varying needs and obligations of Dart Harbour and users of the HARBOUR require that Dart Harbour retains absolute control of BERTH allocation save in respect of any

BERTH over fundus or foreshore which is owned or leased by the OWNER. Accordingly (with the limited exception referred to in the preceding term) the OWNER shall not be entitled to the exclusive use of any particular BERTH but shall use such BERTH as is from time to time allocated to him by Dart Harbour.

6. TERMINATION BY DART HARBOUR

- 6.1. Dart Harbour shall have the right (without prejudice to any other rights in respect of breaches of the terms of this Agreement by the OWNER) to terminate this Agreement in the manner set out in this Clause 6 in the event of any breach by the OWNER of this Agreement;
- 6.2. Having regard to the nature and seriousness of the breach and the risk it poses for the safety of navigation, financial or other security of Dart Harbour and/or of users of the HARBOUR and if the breach is capable of remedy, Dart Harbour may serve notice on the OWNER requiring him to remedy the breach within a specified time. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property the time specified for remedy may be immediate or extremely short. If the OWNER fails to effect the remedy within that time, or if the breach is not capable of remedy, Dart Harbour may serve notice on the OWNER requiring him to remove the BOAT from the BERTH immediately.
- 6.3. If the OWNER fails to remove the Boat on termination of the Agreement whether under this Condition or otherwise, Dart Harbour shall be entitled: to charge the OWNER at Dart Harbour's 24 hour rate for overnight visitors for each day between termination of the Agreement and the actual date of removal of the BOAT from the BERTH; and/or
- 6.4. At the OWNER's risk to remove the Boat from the BERTH and secure it elsewhere and charge the OWNER with all fees and expenses arising out of the removal including alternative berthing fees, craning out and storage charges
- 6.5. Notice of termination shall be served personally on the OWNER or sent by registered post or recorded delivery service to the OWNER's last known address.

7. TERMINATION BY OWNER

- 7.1. Notice of intention to relinquish a BERTH at the end of the current TERM should be given to Dart Harbour **in writing by 31st December** during the TERM;
- 7.2. If an OWNER wishes to relinquish the BERTH during the TERM Dart Harbour will use reasonable endeavours to re-licence the BERTH. However until such time as the BERTH has been re-licenced the OWNER remains responsible for payment of the BERTHING CHARGE. Once Dart Harbour has re-licenced the BERTH an administration charge equal to one month's BERTHING CHARGE will be made and a proportionate refund will then follow. For example, if in June a BERTH is relinquished and re-let from the 1st of July a refund from the 1st August to the 31st March may be applicable (8/12ths of the BERTHING CHARGE paid).
- 7.3. On relinquishment of a BERTH the OWNER will simultaneously relinquish any related tender berth.

8. BYELAWS & REGULATIONS

- 8.1. The OWNER shall at all times act reasonably and responsibly towards Dart Harbour, its staff and users of the HARBOUR and shall at all times observe and comply with the BYELAWS and any GENERAL DIRECTIONS and shall ensure that the OWNER'S PARTY are aware of and comply with the BYELAWS and any GENERAL DIRECTIONS.

9. NAME OF THE BOAT. The BOAT must be named and the name clearly displayed on the hull. Bona-fide tenders must be marked "T/T name of parent vessel".

10. HARBOUR DUES STICKER The prominent display of a current Harbour Dues Sticker is mandatory.

11. APPOINTMENT OF AGENT/EMERGENCY CONTACT

- 11.1. IT IS MANDATORY FOR ALL OWNERS TO APPOINT AN AGENT. This can be a friend or a professional, but they must have agreed to act as the OWNER's agent. A list of professional agents is available from the Harbour Office. An agent is a locally based person who can act on the OWNER's behalf at such times that the OWNER is unavailable to tend the BOAT. The OWNER should visually check the BOAT daily, board and inspect the BOAT at least twice weekly, more often if bad weather is forecast. If the OWNER is unable to carry out these inspections they must arrange for their agent to carry them out for them.

12. OWNER'S REPRESENTATIONS AND WARRANTIES

- 12.1. The licence is granted on the condition that each of the following representations and warranties is and remains true at all times during the LICENCE:
 - 12.1.1. You are the legal and/or beneficial owner of the BOAT or are otherwise lawfully in possession of the BOAT and duly authorised to act as agent on the legal or beneficial owner's behalf and you have full power to enter into this Agreement; and
 - 12.1.2. You are the agent for and the leader of the OWNER'S PARTY and authorised to enter into legally binding relations as agent on behalf of all persons within the OWNER'S PARTY; and
 - 12.1.3. The BOAT and the OWNER are presently and will throughout the TERM be insured against third party and public liability risks for not less than £2M per incident including wreck removal, counter pollution and salvage costs and, if appropriate, for Employer's Liability Insurance in accordance with current legal requirements; and
 - 12.1.4. In the case of a Commercial BERTH the BOAT is presently and will throughout the TERM remain coded by the MCA for commercial use or licenced by South Hams District Council for the carriage of a maximum of 12 passengers in harbour limits; and You will continue to operate the BOAT on a commercial basis during the term of this licence with a view to profit.

SCHEDULE 3 - TERMS AND CONDITIONS FOR DHNA LEISURE BERTH HOLDERS (CATEGORY A, B, C AND MAIN BOAT PONTOON BERTHS) (EXCLUDING DINGHY PONTOONS, RACK BERTHS, MUD BERTHS AND COMMERCIAL BERTHS)

- 1.1. Mooring licences commence on 1 April and expire on 31 March of the following year unless the LICENCE is for an alternative period. Except that if before the expiry date:-
 - 1.1.1. Dart Harbour has sent to the OWNER a retention letter and request for a REGISTRATION FEE; and,
 - 1.1.2. the OWNER has within the period specified by Dart Harbour, paid the REGISTRATION FEE indicating that he/she wishes the LICENCE to continue; and
 - 1.1.3. Dart Harbour has subsequently sent to the OWNER an invoice demanding the LICENCE fee (less the REGISTRATION FEE) for the year commencing immediately after the expiry date; and
 - 1.1.4. the balance of the LICENCE fee demanded is paid before the due date,
 - 1.1.4.1. then the LICENCE shall be deemed to run for a further 12 months period (or such alternative specified period) immediately following the expiry date.
- 1.2. Unless a LICENCE is renewed as mentioned in paragraph 1.1 above then it will expire on the expiry date of the 31 March or such alternative date as is specified.

SCHEDULE 4 - ADDITIONAL TERMS AND CONDITIONS FOR PRIVATE TACKLE MOORING LICENCES AND PRIVATE TACKLE COMMERCIAL MOORING LICENCES

1. The terms and conditions of this Schedule apply in addition to those of Schedules 1 and 2, as applicable.
2. Berth Allocation. The physical layout of the HARBOUR and the varying needs and obligations of Dart Harbour and users of the HARBOUR require that Dart Harbour retains absolute control of BERTH allocation. Accordingly the OWNER of a PRIVATE TACKLE MOORING LICENCE (other than one situated on fundus or foreshore owned or leased by the OWNER) may be required to reposition or relay the tackle at another position in the HARBOUR during the TERM at the direction of Dart Harbour. In such event Dart Harbour will, to the extent practicable, offer to effect the movement at cost.
3. Private Running Mooring Licence, Private Mooring Licence, Commercial Mooring Licence
 - 3.1. Licences for running moorings attached to private property to which there is no public right of access will normally be issued to the property owner (who may not be the end user of the mooring) unless the property owner notifies Dart Harbour in writing that the licence is to be issued to a nominated third party.
 - 3.2. The mooring shall be lifted for inspection or otherwise inspected at the expense of the licence holder on an annual basis or as and when Dart Harbour directs and the licence holder shall promptly effect all necessary repairs and replacements. Dart Harbour shall have the right to require at any time the production of a certificate from a competent mooring contractor or appropriate surveyor as to the adequacy of the mooring and the state of the maintenance thereof.
 - 3.3. The mooring is to be kept in good order. If the mooring falls into a state of disrepair it will not be re-licensed. Failure to remove the unlicensed mooring from the river within fourteen days of the expiry of a licence will result in Dart Harbour lifting the mooring at the Owner's expense. In congested areas Dart Harbour shall have the right to insist upon the use of weighted line.
 - 3.4. In the event that a business that uses a licensed mooring is to be sold to a new owner Dart Harbour is to be notified in writing in advance and will normally issue a new licence to the new owner of such a business providing that Dart Harbour's conditions for re-issue are met.

SCHEDULE 5 - ADDITIONAL TERMS AND CONDITIONS FOR PRIVATE TACKLE COMMERCIAL MULTIPLE MOORING LICENCES

1. The terms and conditions of this Schedule apply in addition to those of Schedules 1, 2 and 4, as applicable:
2. In the event that a business that uses multiple licensed moorings is to be sold to a new owner Dart Harbour is to be notified in writing in advance and will normally issue new licences to the new owner of such a business providing that the Dart Harbour's conditions for re-issue are met and the moorings are re-licensed to the new owner en bloc. Any moorings that the new owner does not wish to assume will be relinquished.
3. Each BERTH and each space on a pontoon will be licensed for one vessel only. Each BERTH and each space on a pontoon requires a separate licence.
4. Each BERTH and space on a pontoon are to be marked with appropriate identification of the BERTH or space on a pontoon which must be unique to the LICENCE HOLDER.

The BERTHS and spaces on a pontoon may only be used by BOATs the details of which have been given to Dart Harbour prior to the use of any mooring or BERTH. A visiting vessel may use a BERTH or space on a pontoon on condition that it is not left unattended for more than 18 hours out of 24 hours and does not remain within the HARBOUR for longer than 14 days without the consent of DART HARBOUR