

Lossiemouth Marina

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DATED: 01 NOVEMBER 2009

OWNER.....(1)

and

MARINA.....(2)

LICENCE FOR BERTHING, MOORING AND STORAGE ASHORE

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**BERTHING, MOORING AND/OR STORAGE ASHORE LICENCE FOR VESSELS AT
LOSSIEMOUTH MARINA AND BOATYARD**

GENERAL CONDITIONS

1 DEFINITIONS

Where the following words appear in these Conditions, the Licence and the Company's Regulations they shall have these meanings:

Company shall mean the Company or any of its Agents to whom the application for berthing is made which may be one or more of its Associated Companies, Concessionaires, Tenants and Assignees for the operation of the Boat Repair Yard, Brokerage or other Harbour Facility.

Harbour shall include a Yacht Harbour, Marina, Mooring or any other facility for launching, navigating, mooring or berthing a vessel.

Premises means all the land, adjacent water and buildings occupied by or under the control of the Company, including docks, slipways, pontoons, jetties, quays, piers, mudberths, sheds, lofts, workshops, hardstanding, roadways and carparks.

Owner shall include any charterer, master, agent or other person for the time being in charge of the Vessel, excluding the Company.

Vessel shall include any form of craft, boat, ship, yacht, dinghy, multihull, or other marine structure which is in the care and control of the Owner.

Length Overall (LOA) means the overall length of the space occupied by the Vessel including any fore and aft projections, temporary or permanent.

Berth means the space on water or land from time to time allocated to the Owner by the Company for the Vessel during the term of this licence.

Alongside Berth means a berth where a Vessel of appropriate draft may be secured, with access to the shore without the need for a dinghy or tender.

Storage Ashore Accommodation means the land space temporarily allocated to the Owner from time to time by the Company for the storage ashore of the Vessel during the term of the licence.

Pontoon means a moored and decked floating structure providing landing or mooring facilities.

2 THE LICENCE

2.1 Berths at the Marina or Premises shall be licensed for the periods and at the rates of charge from time to time published by the Company at its Premises and in force at the commencement of this licence. Details of the charges applicable to the Berth at the beginning of the license will be given to each licensee at the time that the license is granted.

2.2 This licence shall not be automatically renewed but will end at the conclusion of the period agreed if not terminated sooner by the Company or by the Owner under the provisions of Clauses 8 or 10.

3 LIABILITY, INDEMNITY AND INSURANCE

3.1 The Company shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control (such as extreme weather conditions, the actions of third parties not employed by it or a defect in any part of an Owner's or third party's Vessel); this includes, but without limitation, loss or damage to Vessels, gear, equipment or other goods left with it for repair or storage, and harm to persons entering the Premises or the Marina and/or using any facilities or equipment.

3.1.1 The Company shall take all reasonable steps to maintain security at the Premises, and to maintain the facilities at the Premises and in the Marina in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of the Company, Vessels, gear, equipment or other goods are left with the Company at the Owner's own risk and Owners should ensure that they have appropriate insurance against all relevant risks.

3.1.2 The Company shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of any defect in the Vessel or property concerned unless it shall have been expressly engaged to do so by the Owner on commercial terms. Similarly the Company shall not be under any duty to salvage or preserve an Owner's Vessel or other property from the consequences of an accident which has not been caused by the Company's negligence or another breach of duty on the part of the Company. However the Company reserves the right to do so in appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so it shall be entitled to charge the Owner concerned on a normal commercial charging basis and, where appropriate, to claim a salvage reward.

3.1.3 Owners may themselves be liable for any loss or damage caused by them, their crew and or their Vessels and they shall be obliged to maintain adequate insurance including third party liability cover for not less than £2,000,000 and, where appropriate. Employers' Liability cover to at least the statutory minimum. The Owner shall be obliged to produce evidence to the Company of such insurance within 7 days of being requested to do so by the Company.

4 CHANGE OF DETAILS

4.1 The Owner must notify the Company in writing of the details of any change of names of the Vessel or change of address or telephone number of the Owner

5 BERTH ALLOCATION

5.1 The physical layout of every Marina and Premises and the varying needs and obligations of the Company and its customers requires that the Company retains absolute control of Berth allocation within the Marina and Premises. Accordingly 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 the Company.

6 PERSONAL NATURE OF THE LICENCE

6.1 This licence is personal to the Owner and relates to the Vessel described in the application for berthing. It may not be transferred or assigned to a new Owner or to a different Vessel, either temporarily or permanently, without the express written consent of the Company.

6.2 Within 7 days of any agreement for the sale, transfer or mortgage of a Vessel subject to this licence the Owner shall notify the Company in writing of the name, address and telephone numbers of the Purchaser. Transferee or Mortgagee, as the case may be.

7 USE OF BERTH BY COMPANY WHEN VACANT.

7.1 The Company may have the use of the Berth when it is left vacant by the Owner.

8 TERMINATION

8.1 The Company shall have the right (without prejudice to any other rights in respect of breaches of the terms of this Licence by the Owner) to terminate this licence in the following manner in the event of any breach by the Owner of this Licence;

8.1.1 Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Company and/or of the Company's customers and if the breach is capable of remedy, the Company may serve notice on the Owner specifying the breach and requiring him to remedy the breach within a reasonable time specified by the Company. 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, the Company may serve notice on the Owner requiring him to remove the Vessel from the Marina or Premises immediately.

8.1.2 If the Owner fails to remove the Vessel on termination of this licence whether under this Condition or otherwise), the Company shall be entitled

8. 1.2.1 to charge the Owner at the Company's 24 hour rate for overnight visitors for each day between termination of this licence and the actual date of removal of the Vessel from the Marina and Premises and/or

8.1.2.2 at the Owner's risk (save in respect of loss or damage caused by the Company's negligence or other breach of duty during such removal) to remove the Vessel from the Marina and Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.

8. 1.3 Any notice of termination under this Licence shall, in the case of the Owner, be served personally on the Owner or sent by registered post or recorded delivery service to the Owner's last known address and in the case of the Company shall be served at its principal place of business or registered office.

9 RIGHTS OF DETENTION

9.1 Maritime Law entitles the Company in certain circumstances to bring action against a Vessel to recover debt or damages. Such action may involve the arrest of the Vessel through the Courts and its eventual sale by the Court. Sale of a Vessel may also occur through the ordinary enforcement of a decree against the Owner of a Vessel or other property.

9.2 The Company reserves a general right ("a general lien") to detain and hold onto the Owner's Vessel or other property pending payment by the Owner for any sums due to the Company. If the Licence is terminated or expires while the Company is exercising this right of detention it shall be entitled to charge the Owner at the Company's 24 hour rate for overnight visitors for each day between termination or expiry of this licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Marina and Premises. The Owner shall at any time be entitled to remove the Vessel or other property upon providing proper security, for example a letter of guarantee from a Bank reasonably acceptable to the Company or lodgement of a cash deposit with a professional third party agent or with the British Marine Federation, sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs.

10 TERMINATION BY OWNER

10.1 This Licence may be terminated on 16 weeks written notice by the Owner to the Company. Following such notice the Company shall prepare an account of:

10.1.1 All sums owed by the Owner in respect of services or facilities used up to the intended date of departure of the Vessel, and:

10.1.2 The charge that would have been payable by the Owner to the Company in respect of this Licence if the original term of this Licence had ended on the date of expiry of the Notice of

Termination., less

10.1.3 The sum actually paid by the Owner to the Company in respect of this Licence

Where the balance is in favour of the Company the Owner shall be required to pay the balance before removal of the Vessel from the Marina or Premises and where the balance is in favour of the Owner the Company shall pay it to the Owner upon departure of the Vessel from the Marina or Premises.

GENERAL RULES

11 VESSEL MOVEMENTS

11.1 The Company reserves the right to move any Vessel, gear, equipment or other goods at any time for reasons of safety, security or good management of the Marina and Premises.

11.2 A copy of the Company's scale of charges for Vessel movements will be provided to the Owner before they enter into an Agreement with the Company. Where a specific date or tide range for relaunch of the Vessel has been agreed between the Owner and the Company at the time of slipping or lifting out (or arrival by land) this charge alone will be payable for the launch. However where the Owner requests a different date or tide range the Company reserves the right to charge the Owner for the cost of moving other vessels to gain access to the launch point and for any attendant expenses, such as crane hire. The Company will provide the Owner with an estimate of such costs and charges prior to incurring them.

11.3 Vessels shall be berthed or moored by the Owner in such a manner and position as the Company may require and unless otherwise agreed adequate warps and fenders for the Vessel shall be provided by the Owner

11.4 No vessel, when entering or leaving or manoeuvring in the Marina, shall be navigated at such a speed or in such a manner as to endanger or inconvenience other vessels in the Marina.

11.5 Advisory note: Owners, their guests and crew are advised that Vessels are at all times subject to the speed restrictions and byelaws of Harbour and navigation authorities and the requirements and powers of regulatory authorities, including but not limited to the Maritime and Coastguard Agency and The Health and Safety Executive; there are criminal penalties for the breach of such restrictions, requirements and Byelaws.

12 COMMERCIAL USAGE

12.1 No part of the Company's Marina or Premises or any Vessel or vehicle while situated therein or thereon shall be used by the Owner for any commercial purpose, except where the Owner has sought and obtained prior written agreement from the Company. Where this licence is

granted to a commercial operator whose Vessel is operated for hire or reward in the course of trading, special conditions will apply to this licence, as appended.

13 STORAGE.

13.1 Dinghies, tenders and rafts shall be stowed aboard the Vessel unless the Company allocates a separate berth for them.

14 PARKING

14.1 Subject always to the availability of parking space Owners and their crew may only park vehicles on the Premises in accordance with the directions of the Company.

15 MARINA and HARBOUR REGULATIONS

15.1 The Owner shall at all times observe the Company's regulations and in particular:

15.1.1 The Owner shall provide and maintain at least one fire extinguisher, which is approved and manufactured to EN3 standards for portable fire extinguishers, and ensure it is fit for purpose for the vessel and ready for immediate use in case of fire.*

15.1.2 Owners shall refuel only at the designated fuelling berth and are to vacate the berth when / the fuelling operation is completed. Where fuel is required to be transferred in portable containers, the Company reserves the right to refuse the use of any container deemed unfit for the purpose.

15.2 The Company shall supply the Owner with a copy of the Regulations current at the time of application for a Licence. The Company reserves the right to introduce new regulations on grounds of legal requirement or for the safety or security or good management of the Marina or Premises, and to amend such regulations as from time to time shall be necessary. Such regulations and any amendments to them shall become effective on being displayed on the Company's public notice board or other prominent place at the Company's Premises, and the Company shall have the same rights against the Owner for a breach of the Regulations as for a breach of the terms of this Licence.

15.3 **Advisory note:** Owners, their guests and crew are advised that their conduct and that of their vessels is likely to be regulated and governed at various times by statutory, local authority and harbour regulations which may be more extensive than those of the Company and the breach of which may result in criminal penalties.

16 ACCESS TO PREMISES/WORK ON THE VESSEL

16.1 Subject to Clause 16.2 no work or services shall be carried out on the Vessel, gear, equipment or other goods while on the Premises without the Company's prior written consent

other than minor running repairs or minor maintenance of a routine nature by the Owner, his regular crew or members of his family not causing nuisance, or annoyance to any other customer or person residing in the vicinity, nor interfering with the Company's schedule of work, nor involving access to prohibited areas.

16.2 Prior written consent will not be unreasonably withheld where:

16.2.1 The work is of a type for which the Company would normally employ a specialist sub contractor: or

16.2.2 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.

16.2.3 Notwithstanding the foregoing, during periods of work by the Company on the vessel, neither the Owner nor his invitees shall have access to the Vessel without the Company's prior consent, which shall not be unreasonably withheld. In the event of such access being permitted it shall be at the Owner or his invitee's own risk.

17 HEALTH, SAFETY AND THE ENVIRONMENT

17.1 Attention is drawn to the Company's Health, Safety and Environmental policy, as amended from time to time. The Company shall supply the Owner with a copy of the Policy current at the time of application for a Licence. Any amendments shall be displayed on the Company's public notice board or other prominent place at the Company's Premises and further copies shall be available on request. The Owner, his regular crew, members of his family and/or any person or company carrying out work on the vessel, with the permission of the Company, must comply with the Company's Health, Safety and Environmental Policy

17.2 The Owner, his crew, members of his family and any person carrying out work on the vessel is responsible for reporting to the Company all accidents involving injury to any person or damage to any public or private property that occur in the Marina or on the Premises as soon as possible after they occur.

17.3 No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Marina or Premises so as to cause any nuisance or annoyance to any other users of the Harbour or Premises or to any person residing in the vicinity and the Owner undertakes for himself, his guests and all using the Vessel that they shall not behave in such a way as to offend as aforesaid. Halyards and other rigging shall be secured so as not to cause such nuisance or annoyance.

17.4 No refuse shall be thrown overboard or left on the pontoons or car parks or on any other part of the Premises, or disposed of in any way other than in the receptacles provided by the Company or by removal from the Company's Marina and Premises. The Company's

further directions regarding waste management shall be posted on the Company's Public Notice Board or other prominent place and copies will be available from the Company on request.

17.5 No dangerous, inflammable, poisonous or noxious substances, oil, petrol, fuel, paint or contaminated bilge water or effluent shall be discharged or allowed to escape into the Marina.

17.6 The standard charge for berthing is based on length overall of the Vessel including fixed projections and may be either by imperial foot or by metre. Measurements will be rounded to the nearest foot or half metre, in the event of dispute over a Vessel's length, the Vessel shall be measured and the company's decision shall be final. The company's year for berthing runs from the 1st April until the 31st March.

17.7 Entry into the Marina by land or water entails acceptance of the published Marina Regulations, Terms of Business and charges.

17.8 The owner shall maintain third party insurance in respect of himself and each of his Vessels and vehicles, his crew for the time being and his agents, visitors, guests and sub-contractors in a sum of not less than £2million in respect of each accident or damage, and in respect of each Vessel, adequate salvage insurance. Such insurance shall be effected and maintained in an insurance office of repute and the Owner shall produce the policy or policies relating thereto to the Company on demand.

17.9 Sailing Vessels shall not manoeuvre under sail alone whilst in the Harbour or in the Marina.

18 LAW AND JURISDICTION

18.1 This Licence agreement shall be governed and construed in accordance with the laws of Scotland and the Owner submits to the exclusive jurisdiction of the Scottish Courts.