



ABERDEEN BOAT CLUB

**ALLOCATED MOORING/SPACE
AGREEMENT**

2012



- b) The Club shall retain the right at any time and at its absolute discretion to re-allocate to the Hirer a new Mooring or Allocated Space other than the Allocated Mooring or Allocated Space.
- c) The Club shall have the right at any time and in its absolute discretion to change the position of the Allocated Mooring or Allocated Space.
- d) If the Club re-allocates the Allocated Mooring or Allocated Space, the Hirer shall remove the Vessel to such re-allocated Mooring/boat or Allocated Space within fourteen (14) days of the Club giving notice of such re-allocation to the Hirer. In the event that the Hirer does not remove the Vessel within such fourteen (14) day period, the Club shall be entitled to do so on the Hirer's behalf and in so doing shall act as the agent of the Hirer. Any costs incurred by the Club in connection with moving the Vessel shall be for the Hirer's account and shall be debited to the Hirer's monthly account with the Club.
- e) The Allocated Mooring or Allocated Space is not transferable and may only be used by the denominated Hirer for the keeping of the Vessel for private and/or non-profit making purposes. The Club, in its sole discretion, may allow the Hirer to substitute the Vessel with another vessel ("Substituted Vessel") owned by the Hirer upon such terms and conditions as the Club may impose.
- f) Subject to such additional or varied terms and conditions, the terms and conditions set out in this Agreement shall apply to the Substituted Vessel.
- g) If the small craft or vessel is sold or the ownership structure changed, the Club shall be informed by written notice within two (2) weeks of such sale or change.
- h) The Agreement shall be reviewed annually by the Club.
- i) Each Active Member may only apply for and be allocated one Mooring or Allocated Space with the exception of live-aboard members who may apply for and be granted by the Club, at its absolute discretion, a second Mooring or Allocated Space for his own fully-owned vessel or small craft, which may only be used for recreational and non-profit making purposes.

3) The Mooring and Securing of the Vessel to the Mooring

- a) The Hirer shall be responsible for keeping the two Mooring buoys of the Allocated Mooring in the Typhoon Shelter securely attached together at all times throughout the duration of this Agreement. The Club shall be responsible for the supply and maintenance of the mooring anchor block or blocks, the mooring buoy or buoys connected to it and the chain and/or other attachment between the mooring anchor block or blocks and the mooring buoy or buoys of both 2-point typhoon shelter moorings and swinging moorings.
- b) In the event that the Vessel sinks on the Allocated Mooring, the Hirer shall be responsible to raise the Vessel immediately or for such costs as are incurred in raising the Vessel and for any necessary repairs to the Allocated Mooring and any costs incurred in connection therewith.
- c) It is the responsibility of the Hirer to provide adequate and sufficient lines or other tackle to secure the Vessel to the Allocated Mooring;
- d) The Club shall have the right, but shall be under no obligation, to replace any line or tackle, which the Club may, in its absolute discretion, consider to be inadequate without any prior notice to the Hirer.
- e) Any expense incurred by the Club in connection with such securing of the Vessel shall be at the Hirer's expense and shall be debited to the Hirer's monthly account with the Club.
- f) The Club shall not be liable for any damage caused to or by the Vessel, whether it has replaced any line or tackle or not.

4) Vessel Insurance and Documents for Vessels on Allocated Moorings or Allocated Spaces

- a) The Hirer warrants that the Vessel shall be fully insured at all times against any and all third party risks up to such amount as adequately covers all risks commonly covered under relevant marine insurance policies.
- b) The Hirer shall provide to the Club prior to the first allocation of an Allocated Mooring and within thirty (30) days of each renewal, a copy of the Hirer's valid Certificate of Ownership, the Vessel's valid Full Operating Licence and Certificate

of Insurance; the provision of the latter shall not amount to an acceptance, endorsement or confirmation by the Club of the adequacy of such insurance.

- c) In the event that the Club, in its sole discretion, is of the opinion that the insurance cover is inadequate, the Club may require the Hirer to forthwith arrange for such insurance cover as is acceptable to the Club or alternatively terminate this Agreement in accordance with Clause 6 hereof.

5) Rental

- a) The Hirer shall pay to the Club the Deposit on the application for an Allocated Mooring or Allocated Space. The amount of the Deposit may vary from time to time according to the nature of the Allocated Mooring or Allocated Space. The Club shall hold the Deposit whilst the Vessel is being kept on the Allocated Mooring or in the Allocated Space. The Deposit will be returned without interest to the Hirer within thirty (30) days after the termination of this Agreement and the Vessel being removed from the Allocated Mooring or Allocated Space subject to the deduction of any outstanding rental of the Allocated Mooring or Allocated Space and/or any other outstanding fees owed by the Hirer to the Club.
- b) The monthly rental for the Allocated Mooring or Allocated Space shall be HK\$_____, payable monthly in advance, which amount may be varied from time to time by the Club and notified to the Hirer.
- c) The Deposit shall be HK\$_____.
- d) In the event that the Hirer is re-allocated an Allocated Mooring or an Allocated Space different in nature to that previously allocated, the monthly rental may be adjusted accordingly.
- e) In the event that the Hirer fails to pay the rental of the Allocated Mooring or Allocated Space for a period of two (2) months, the Club will issue a written notice to the Hirer and may terminate this Agreement and, at its sole discretion, always acting as an agent of the Hirer:-
- (i) Remove or arrange for the removal of the Vessel from the Allocated Mooring or Allocated Space to such other Mooring or Allocated Space as the Club may deem fit; or

- (ii) Sell or arrange for the sale of the Vessel by auction or by private treaty at the highest price the Club may reasonably obtain from a third party; or
- (iii) Notify the Hong Kong Marine Department that in its opinion the Vessel is abandoned and request a removal of the Vessel by the relevant authorities.

- f) In the event of termination pursuant to Clause 5 e) and subsequent sale of the Vessel, the Club, always acting as the agent of the Hirer, shall be entitled to deduct from the sale price any monies owing and outstanding to the Club by the Hirer, including but not limited to monies owing in respect of the Allocated Mooring or Allocated Space, expenses incurred by the Club in carrying out and effecting the sale and transfer of the Vessel or otherwise and any other monies owing to the Club by the Hirer. The remaining balance of the sale proceeds, once all outstanding accounts in respect of the Vessel and/or the Hirer have been settled, shall be paid to the Hirer. If the sale proceeds are insufficient to cover amounts owed and outstanding by the Hirer to the Club, the Club may take such further measures against the Hirer as it sees fit to recover such amounts.
- g) The Hirer shall not transfer, assign, sub-let or otherwise part with possession of the Allocated Mooring or Allocated Space or any part thereof either by lending, sharing or other means whereby any person or persons not a party to this Agreement uses the Allocated Mooring or Allocated Space for any purpose whatsoever.

6) Termination of this Agreement

- a) The Hirer may terminate this Agreement upon giving the Club two (2) months' notice in writing.
- b) The Club may terminate this Agreement at any time without giving the Hirer a reason for the termination. Without limitation to the aforesaid, the Club may terminate this Agreement if:-
- (i) The Hirer fails to comply with any bye-law, regulation, term or condition imposed by the Club;
- (ii) The Hirer fails to pay the rental for the Allocated Mooring or Allocated Space for two (2) consecutive months;
- (iii) The Hirer fails to provide copies of the Hirer's valid Certificate of Ownership, the valid Full Operating Licence and valid Certificate of Insurance of the Vessel where applicable (see Clause 4 b)) within thirty (30) days of the date of this Agreement or its annual renewal;

- (iv) The Hirer sells or changes the ownership structure of the Vessel or Small Craft;
 - (v) The Hirer fails to effect adequate and sufficient insurance for the Vessel where applicable (see Clause 4 (b)); or
 - (vi) The Hirer fails to maintain the Vessel in a seaworthy condition.
 - (vii) The Hirer is in breach of any of his obligations under this Agreement.
- c) Upon termination of this Agreement, the Hirer shall vacate the Allocated Mooring or Allocated Space within fourteen (14) days by removing the Vessel. In the event that the Hirer fails to remove the Vessel within such time, the Club shall be entitled to board the Vessel and to remove from the Allocated Mooring or Allocated Space to such other Mooring or Allocated Space or to any anchorage as the Club may deem fit. In removing the Vessel under this Clause, the Club shall act as the agent of the Hirer and shall not be liable for any damage done to or by the Vessel. The Hirer shall be responsible for any costs of such removal by the Club.
- d) Joint owners of a Vessel shall be Active Members having a minimum 50% ownership of the Vessel. Where jointly owned Vessels are allocated an Allocated Mooring or Allocated Space, the Club will only recognise the first-named Active Member as the sole person responsible for ensuring compliance with this Agreement and the Club bye-laws. Unauthorised partnerships with non-members may result in unilateral termination of this Agreement. In the case of Vessels which are owned by a company, the Hirer shall provide proof that the company has granted the Hirer the right to use the vessel.
- e) Where a Vessel or Small Craft occupying an Allocated Mooring or Allocated Space has remained unused for a period of six months, or the Mooring has remained vacant for three months, the Sailing and Marine Committee will contact the owner requiring them to give good reason why the Allocated Mooring or Allocated Space agreement should not be terminated.
- 7) Miscellaneous
- a) The Club reserves all rights to impose such fines, as determined from time to time by the General Committee of the Club for breach of any of the conditions set out in this Agreement.
 - b) Authorised personnel of the Club shall have the right to board the Vessel or any other vessel in the Allocated Mooring and Allocated Space at any time.

- c) No Hirer shall obstruct the access to or the area of another Hirer's Allocated Space. Craft, cradles, trolleys or other equipment may not obstruct movement of other craft. Immediately after launching, trolleys shall be returned to the hard-standing space allocated. Hirers are responsible for launching and recovering their own craft and trolleys. Care must be taken in the use of any mechanical equipment provided by the Club for use in launching and recovering of craft and no responsibility for damage or injury can be accepted by the Club.
- d) The Club shall not be responsible for any damage done to or by any craft parked on the Club's premises.
- e) No act or omission or any indulgence in the giving of time or otherwise on the part of the Club shall be or shall be deemed to be a waiver by the Club of any of its rights under this Agreement.
- f) Neither the Club nor its officers, employees, servants or agents shall be liable for any breach of this Agreement or terms hereof, nor for any act, omission or negligence. Neither the Club nor its officers, employees, servants or agents make or shall be deemed to have made any representation as to the safety, adequacy or sufficiency of the Allocated Mooring or Allocated Space or any parts thereof or as to the positioning, the safety, adequacy or sufficiency of the Allocated Mooring or Allocated Space or the safety, adequacy or sufficiency of any terms or conditions imposed by the Club pursuant to Clause 2 or otherwise under this Agreement.
- g) The Hirer confirms that he is liable to the Club for all costs incurred pursuant to action taken by the Club in connection with the moving or removal of the Vessel and the Hirer further confirms that he has no claim against the Club, its officers, employees, servants or agents in connection therewith. The Hirer further indemnifies and will keep the Club, its officers, employees, servants and agents fully indemnified against any and all damages, costs disbursements or other expenses which the Club, its officers, employees, servants or agents may incur as a result of any claim or demand made upon them or any civil or other proceedings or action instituted against them or any of them in relation to the Vessel, the Allocated Mooring or the Allocated Space or any vessel kept at the Allocated Mooring or Allocated Space or in relation to any act or omission by the Hirer.
- h) By way of security for his obligations hereunder, the Hirer:-
 - (i) Appoints the Club acting through its General Manager or other officer, each with full power of substitution and each with full power to act alone, to be

his attorney and in his name and on his behalf to execute and as his act and deed or otherwise to do all such assurances, acts and things (including sale or transfer of the Vessel and to effect all relevant applications and registrations with such relevant authorities or government agencies as may be necessary) as a consequence of the Hirer having failed to perform his obligations and the provisions contained herein and generally in his name and on his behalf to execute, seal and deliver and otherwise perfect any deed, assignment or transfer which may in the opinion of the Club be required or deemed proper, necessary or desirable in or for any of the purposes of this Agreement; and

(ii) Ratifies and confirms and agrees to ratify and confirm whatever the Club shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 7 h) (i) and shall indemnify the Club for any costs it may incur and any claims or actions which may be brought against it in connection with the Vessel, including but not limited to legal costs on an indemnity basis.

i) The Club shall have the right from time to time, at its sole discretion, to make regulations and to impose terms or condition in relation to any Club Mooring or Allocated Space and in relation to the use of such Moorings Allocated Spaces. The Hirer shall comply with the regulations, terms and conditions imposed by the Club at all times. In particular, and without limiting the generality of the foregoing, the Club may make regulations concerning precautions to be taken by the Hirer during times of typhoon or other adverse weather conditions. The Club shall take all reasonable steps to bring any new or revised regulations, terms or conditions to the attention of the Hirer. Notices of such matters are posted on the relevant notice-board on the Club premises in any event.

j) In this Agreement the singular includes the plural and any gender includes the male, female and neutral genders.

k) Any provision of this Agreement, which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that any other provision of this Agreement invalid or unenforceable in any other jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby submit to the non-exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto on the day and year first above written.

Executed for and on behalf of)
ABERDEEN BOAT CLUB LIMITED)
By:)
(General Manager))
In the presence of:)
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Executed by)
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In the presence of:)
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