



Mgarr Marina
Gozo - Malta

ANNEX I – Marina Rules and Regulations

1. DEFINITIONS

- a. **'Berth'** means a space on the water allocated to the Owner from time to time by the Company for the mooring of the Vessel during the term of the Berthing License Agreement.
- b. **'Berthing License Agreement' / 'Agreement'** means the Agreement executed by and between the Company and the Owner, whereby the Company grants to the Owner, which for the avoidance of doubt shall include this **'Annex I'** and all other Annexes hereto.
- c. **'Berthing Fees'** means the fees payable by the Owner to the Company as consideration for the granting of the License by the Company to the Owner, which fees are payable on the terms and with the modalities specified in **'Annex II – Berthing Fees'**
- d. **'Company'** means Harbour Management Limited, its officers, employees, agents, representatives, and mandatories.
- e. **'Concession Agreement'** means the Concession Agreement for the Rehabilitation, Operation and Transfer of Mgarr (Gozo) Marina entered by and between the Company and the Authority for Transport in Malta on the 26th of May 2010.
- f. **'Facilities'** means any buoys, moorings, wharves, jetties, piers, pontoons, slipways, pumps, walkways, boats and fittings or appurtenances connected there with, and any property movable or immovable provided at the Marina.
- g. **'Length Over All (LOA)'** means the overall length of the space occupied by the Vessel, including any fore and aft projections and tenders, temporary and/or permanent.
- h. **'Marina'** means the Mgarr (Gozo) Yachting Centre, including its berths, moorings, quays, pontoons, walkways, breakwaters, slipways, jetties, piers, sheds, workshops, hardstanding, roadways and car parks, and any other property, movable and/or immovable under the control of the Company within the Mgarr (Gozo) Yachting Centre's premises.
- i. **'Owner'** shall include the owner, captain, charterer, agent or other person vested lawfully with the command of the Vessel.
- j. **'Parties'** means the Company and the Owner.
- k. **'Period'** means the period of time from Commencement date to End date as stipulated on Page 1 of the Berthing License Agreement.
- l. **'User'** shall include the Owner and all other persons within the Marina, who utilise the Marina and any of the Company's services at the Marina.
- m. **'Vessel'** shall mean the Vessel indicated on Page 1 of the Berthing License Agreement.



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2. THE LICENCE

- 2.1 The Company hereby grants to the Owner, who accepts, a licence to berth the Vessel at the Marina, ('the **Licence**'), on and subject to the terms and conditions contained in the Agreement. The License is personal to the Owner and may not be assigned, transferred, sub-licensed whether temporarily or permanently, without prior written consent of the Company, which shall only be granted at the discretion of the Company.
- 2.2 No vessel other than the Vessel shall be entitled under the Licence to use the Berth.
- 2.3 Within seven (7) days of any agreement for the sale, transfer or mortgage of the Vessel, the Owner shall notify the Company in writing of the name, address and telephone numbers of the purchaser, transferee, or mortgagee, as the cause may be.
- 2.4 The Licence does not grant to the Owner any right to lay-up or store the Vessel ashore at the Marina. Any services provided by the Company to the Vessel other than those contained in this Agreement will form the object of a separate agreement between the Parties, and the Company shall be entitled to charge for such services.
- 2.5 Nothing in this Agreement shall be construed as granting to the Owner any leasehold rights over the berth or any part of the Marina. While the Owner may expect, throughout the Term, to have exclusive right to berth the Vessel at a specific berth indicated by the Company, the Company shall at all times retain the right to move or instruct the Owner to move the Vessel to such alternative berth as the Company shall, at its sole discretion determine, and the Owner shall comply with any such instructions. The Owner will not receive any compensation for such movement. The Owner shall not be entitled, without prior consent of the Company to use any berth other than that allocated to him/her.
- 2.6 The Company shall have the right to allow any other vessel to make use of the Berth.
- 2.7 The Company shall have the right to board, enter, move, or carry out any emergency work on any vessel within the confines of the Marina in the event of an emergency constituting a potential danger to life, property and/or the environment, or in order to ensure compliance with the terms and conditions of this Agreement.

3. SERVICES AND UTILITIES

- 3.1 Water and electricity supplies shall be available for the use of the Licensee and the Vessel at the rates and terms stipulated in '**Annex III Price List**' as may be revised from time to time. Any such supplies shall be for use of the Vessel only and must not be shared with any other person or vessel. The Company does not guarantee a constant supply of electricity and/or water.
- 3.2 The Owner shall pay a security deposit of twenty-five Euro €25.00 and shall be granted a Transponder Key by the Company. It is only upon return of the Transponder Key to the Marina office that the Company shall refund the twenty-five Euro €25.00 security deposit paid. The Transponder Key will also grant the Owner access to the pontoon where the Vessel is berthed.
- 3.3 Prior to departure, the Owner may switch off the Transponder Key at the service module besides the Berth. Any remaining credit will not be refunded by the Company. The Owner may use the remaining credit upon the Vessel's return to the Marina. Operation procedures of the Service Modules are illustrated on each unit and operating instructions can be obtained from the Marina Office.



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- 3.4 The Owner shall ensure that the Vessel's connections to the utility supplies are properly designed, fitted, and maintained. Electricity cables must be disconnected from the supply point before being disconnected from the Vessel.
- 3.5 The Owner may use the Transponder Key to purchase electricity and water supplies from the Recharge Point available at the Marina.
- 3.6 All water hose pipes shall be fitted with a spring-loaded nozzle designed to shut off the water flow when the hose is unattended.
- 3.7 The modules supplying water/electricity and fire hydrants are deemed and accepted to be in good condition and working order. The Owner shall be liable for any damages caused by the Owner, the Vessel, its crew and/or its passengers, whether through want of harm or negligence and hereby accepts that all damages will be settled immediately after submission of the repair or replacement of the same utility module.

4. CONSIDERATION AND PAYMENT

- 4.1 In consideration of the License, the Owner shall pay to the Company the Berthing Fees as listed in '**Annex II Berthing Fees**'
- 4.2 The Berthing Fee shall be payable whether the Berth is occupied or not. No refunds will be made to the Owner for any period during which the Berth is not occupied. Berthing fees are non-refundable or transferable unless otherwise indicated.
- 4.3 The Owner shall pay the Company the fees listed in '**Annex III Price List**' for the provision of any other service therein set out.
- 4.4 The Company reserves the right to revise the fees referred to in clause 4.1 and 4.2 above on an annual basis by giving the Owner thirty (30) days prior notice in writing of the effective date of change ('**Effective Date of Change**'). Should the Owner refuse the revised fees, he/she shall notify the Company in writing prior to the Effective Date of Change after which this Agreement shall be deemed terminated.
- 4.5 The continued use of the Berth following the lapse of the Effective Date of Change shall be deemed to constitute acceptance of the revised fees.
- 4.6 For the avoidance of doubt, the continued use of the Berth beyond the Term shall not constitute an automatic renewal of the Berthing Licence Agreement.
- 4.7 The Fees referred to in clause 4.1 and 4.2 above shall be inclusive of VAT.
- 4.8 The Owner accepts that the Company shall have a possessory lien over the Vessel in security of any Berthing Fees or other fees, costs and interest that may be due to the Company.
- 4.9 Failure of the Owner to pay any fee by the date on which the said fee shall be due shall entitle the Company to:
 - a) Suspend the provision of any services, including but not limited to the provision of a berth.
 - b) Prevent the Vessel from leaving the Marina; and/or
 - c) Lift the Vessel on to hard standing at the Owner's charge.



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- 4.10 The exercise by the Company of any of its rights under paragraph 4.9 shall be without prejudice to any other right or remedy available to the Company.
- 4.11 Interest at the maximum amount permissible at law shall accrue on any sum outstanding from the date of default until the date on which payment is affected.

5. TERM AND TERMINATION

- 5.1 The Berthing License is being granted for the Term stated in the Berthing License Agreement.
- 5.2 Without prejudice to any other provision, and subject to paragraph 5.3 hereof, the Owner may terminate this Agreement by giving the Company at least thirty (30) days prior notice in writing. Without prejudice to any other provision contained herein, the Company shall be entitled to terminate this Agreement immediately by giving the Owner written notice, if:
- a) The Owner fails to pay any amount due to the Company in terms of this Agreement.
 - b) The Owner breaches any material terms of this Agreement; Provided that if the breach is capable of remedy, the Company shall only exercise this remedy if the Company shall have given the Owner time to remedy such breach and the Owner fails to take effective steps to remedy within the said time frame.
 - c) The Owner commits any criminal offence in relation to property or individuals at the Marina.
- 5.3 The Owner shall by not later than the date of termination of this Agreement, or by such later date as may be consented to in writing by the Company, remove the Vessel from its Berth. If the Owner fails to remove the Vessel, by the agreed date the Owner shall automatically become liable to pay to the Company a daily penalty payable for each and every day during which the Company remains in default equivalent to five (5) times the daily rate that would be applicable to the Vessel according to the Marina rates current on the date of termination.
- 5.4 Berthing Fees paid in advance will not be refunded by the Company to the Owner.

6. LIABILITY, INDEMNITY AND INSURANCE

- 6.1 The Owner shall procure and maintain in full force, at its sole cost and expense for the entire duration of this Agreement, fully comprehensive insurance (issued by a reputable insurer) against all relevant risks, including but not limited to adequate marine / boat insurance in relation to the Vessel and third party liability cover (including, where relevant, employers' liability insurance) for not less than one million one hundred and fifty thousand Euro (€1,150,000.00) in respect of each accident or damage, which shall include sufficient cover against salvage and wreck removal claims.
- 6.2 The Owner shall provide certificates or otherwise satisfactory evidence of the policies for which it is responsible to procure in terms of clause 6.1 at inception and upon every renewal thereof. Each certificate shall state that the Company shall be entitled to advance notice of at least thirty (30) days of any cancellation, material change or non-renewal of the policy/ies, and that the Insurers shall be bound to inform the Company accordingly. The Owner shall be required to produce the policy or policies and evidence of payment of the premiums to the Company on demand.
- 6.3 Should the Owner fail to procure any insurance required hereon, the Company may, in addition to any other remedies, procure the same on behalf of the Owner. The Owner agrees to pay the premium due therefore promptly on the Company's demand.



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- 6.4 The Company shall not be liable for any loss or damage of whatsoever nature caused, directly or indirectly, to any Vessel or other property of the Owner or of third parties claiming through the Owner; and/or to any gear, equipment or other goods left with it for repair or storage; and, or to any persons entering or leaving the Marina and/or using any of the Marina's facilities or equipment, by reason of events or circumstances beyond the Company's reasonable control (including, but not limited to, extreme weather conditions, the conduct / actions of third parties, or any defect in the Owner's or any third party's property). For the avoidance of any doubt, it is agreed that the Lessee shall obtain appropriate insurance coverage for such purpose in accordance with clause 6.1 above.
- 6.5 The Owner shall indemnify the Company and hold it harmless from and against any and all actions and claims arising from the Owner's (including its principals, agents, contractors, employees and guests) occupation / use of the Vessel and, or Marina, or from any activity, service, work or thing done, permitted or suffered by the Owner (including its principals, agents, contractors, employees and guests (whether by invitation or otherwise)) in or about the Vessel and, or the Marina and against all costs, fees, expenses and liabilities incurred in the defence of any such action or claim. The Owner shall further indemnify the Company and hold it harmless from and against any and all claims arising from any breach or default in the performance of any obligation on the Owner's part to be performed in terms of the Berthing Agreement, or arising from any negligence of the Owner's principals, agents, contractors, employees and guests (whether by invitation or otherwise), and from and against all costs, fees, expenses and liabilities incurred in the defence of any such action or claim. If any action or proceeding is brought against the Company by reason of any such claim, the Owner upon notice from the Company, shall defend the same, at the Owner's expense, by advocates satisfactory to the Company.
- 6.6 The Company shall take reasonable steps (having regard to the nature and scale of the Marina and the Company's business) to maintain security at the Marina and to maintain its facilities and equipment in reasonable working order.
- 6.7 Where access for vessels to and from the Marina is via a lock gate, swing or lift bridge or other restriction, the Company shall not be liable for loss, damage or costs of whatsoever nature suffered by the Owner as a result of the lock gate, swing or lift bridge or other restriction being inoperative.
- 6.8 The Company shall not be under any duty to salvage or preserve the 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 the Owner's Vessel or other property from the consequences of an accident which has not been caused by the Company's negligence of some other breach of duty on its part. Provided that the Company reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the danger of individuals, property, or the environment. Where it does so it shall be entitled to charge the Owner concerned a normal commercial charging basis and, where appropriate, to claim salvage reward.
- 6.9 No warranty or representation is expressed or implied by the Company of the suitability of the Berth for the Vessel or of any berth structure gear or other facility provided under the Terms and Conditions of this Berthing Agreement.

7. MAINTENANCE AND REPAIR OF VESSEL

- 7.1 The Vessel shall be maintained in a good and clean condition, in good working order and properly in repair and in seaworthy condition at the Owner's expense. Only repair and maintenance work of a minor nature may be carried out on a Vessel whilst at its Berth. Other works are to be carried out in such area or repair berth as may be designated by the Company for such purposes from time to time.



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7.2 The Company may at any moment and in its absolute discretion order that any repair works being carried out cease immediately if it considers that such works are or may cause damage, inconvenience or nuisance, or constitutes a health and safety risk to the Marina, its Users, other Owners or to persons or premises nearby.

7.3 The Owner undertakes to ensure that all work to be carried out on the Vessel at the Marina will be effected solely by properly authorized, qualified and experienced personnel.

8. GENERAL

8.1 The Owner shall comply with all reasonable instructions given by the Company for the proper and efficient operation of the Marina.

8.2 Prior to entering or exiting the Marina, the Captain or the Owner of the Vessel shall contact Mgarr Marina on VHF radio Channel Thirteen (13) for authorisation for safe manoeuvring within Marina waters. The Vessel's speed within the Marina, shall for reasons of safety, never exceed the three (3) knots.

8.3 In the navigation of the Vessel, Owners will observe all rules and restrictions implemented by the harbour, marina, navigation, or other authorities, in a seaman like manner such that other vessels and Marina Users are not endangered or inconvenienced. Vessels shall not drop anchor in the Marina except in emergency or unless directed to do so by the Company.

8.4 The Owner agrees not to allow anything to take place at the Marina or aboard the Vessel that may annoy, cause nuisance or offence to any Marina Users, or to persons or property therein or nearby. The Owner shall not keep engines running, loud audio equipment, outdoor cooking, unsecured halyards and sail cover, and anti-social behaviour. All pets shall always be kept under strict control, but the Company may in its absolute discretion order that any animal be removed immediately and thereafter banned from the Marina.

8.5 Waste and refuse must be placed in appropriate receptacles provided by the Company. No person shall discharge or allow escape of any oil, garbage, or other refuse into the waters of the Marina or left on pontoons or jetties. The Company reserves the right to charge the cleaning of waters from any pollution to any one or more Owners that it deems responsible.

8.6 No washing lines shall be erected on-board the Vessel, nor shall washing be dried on the exterior of the vessel.

8.7 No person is authorized to provide services or carry out works on any Vessel in the Marina unless with prior written approval of the Company.

8.8 Vessels shall be berthed or moored by the Owner in such a manner and position as the Company may require. Vessels shall only be moored to bollards and equipment designated for such purpose. The Owner shall provide the necessary wraps and fenders for the Vessel and the Owner shall be responsible for ensuring that all such wraps and fenders are adequate and replaced, maintained and adjusted as necessary.

8.9 The Company takes no responsibility for any fendering fixed by the Owner to pontoons and such fendering can only be attached with the permission of the Marina Manager. Fenders attached to the Vessels shall also remain the Owner's sole responsibility.

8.10 Chaining and locking of tenders to pontoons or vacant Berths is strictly forbidden. The Company reserves the right to remove any such tenders or personal watercraft.



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- 8.11 No items will be left on pontoons or quays or anywhere else in the Marina, unless the place has been designated by the Company as a storage place. Any items, including vehicles, which are left unattended at the Marina, on the pontoons, or quays or within the Marina's environs, may be removed by the Company at the Owner's expense.
- 8.12 The Company reserves the right to move the Vessel, any gear, equipment of other goods at any time for reasons of safety, security, or good management of the premises. A copy of the Company's charges for Vessel movements are provided to the Owner in '**Annex III Price List**'.
- 8.13 The Marina shall not be used for swimming, fishing, or other water sports.
- 8.14 No person may live habitually or permanently aboard any Vessel unless the Owner has obtained the written authorization of the Company.
- 8.15 Fuelling, re-fuelling services to the Vessels shall only be carried out if the Company issues a valid permit at the sole discretion of the Company. Otherwise, such services will be given through pre-authorised contractors by the Company.

9. RESPONSIBILITY

- 9.1 The Owner shall at all times be responsible for the safety of the Vessel and shall be liable for any damage caused by the Vessel to the Marina, its facilities, or other Users and vessels therein situated.
- 9.2 The Company shall take all security measures it deems appropriate and necessary for the general security of the Marina. Provided that the Company shall not provide safety watch nor weather watch to the Owner. The security personnel, employed or contracted by the Company as well as the Marina Manger, may board to inspect and log by all means as deemed necessary by him/her/them during inspection for ISPS Regulations.

10. RESERVATIONS AND DEPARTURES

- 10.1 The Company retains the right to reserve berthing space at the Marina for any vessel.
- 10.2 Owners agree to pay the full Berthing Fees upon reservation. Berthing Fees shall not be refundable.
- 10.3 Provided that reservations for use of berths for periods of six (6) months and over shall be accepted upon the payment of a non-refundable minimum reservation fee equivalent to twenty-five per cent (25%) of the applicable Berthing Fees. The remaining seventy-five per cent (75%) of the applicable Berthing Fees, shall be payable in full, in advance, of the Commencement Date stipulated on the Berthing License Agreement page 1.

11. FIRE PREVENTION

- 11.1 Marina Users shall take all reasonable precautions against the outbreak of fire. Each Vessel must keep adequate firefighting equipment on-board of an approved or GSI standard type, size, and installation ready for immediate use in the event of fire. Fire extinguishers are to be regularly, always maintained and in good working order.
- 11.2 No fuel, gas, or other highly inflammable or explosive substance shall be brought onto the Marina unless properly secured. Any such substance kept on-board must be held in appropriate containers and stowed in a seaman like manner. Gas bottles shall be turned off when not in use. Work with hazardous or inflammable substances cannot be undertaken at the Marina.



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12. POLLUTION

- 12.1 Marina Users shall take all reasonable precautions to prevent pollution. No garbage, toilet effluent, dirty/oily bilge water or other pollutant shall be discharged or thrown overboard.
- 12.2 No pollutant shall be brought onto the Marina unless properly secured. Any such substances kept aboard must be held in appropriate containers and stowed in a seaman like manner.
- 12.3 Any pollution of a serious nature, such as but not limited to, disposal of fuel/oil, within Marina Concession Area will authorise the company to take all necessary actions in line within the Company's ISO 14001 Certification in order to safeguard the Concession Area and third parties within the Concession Area. The Owner of the vessel accepts undisputedly all charges related to the incident being attributed to him/her if the Marina proves that such pollution or offence has been carried out by the owner, his/her guests or through the vessel discharge systems.

13. FORCE MAJEURE

- 13.1 If either Party is effectively prevented from observing its obligations by force majeure, it shall forthwith notify the other Party of the nature and expected extent thereof. Force majeure means, in relation to either Party, any circumstances beyond the reasonable control of that Party, such as acts of God, war, civil commotion, labour disputes, strikes, fire, flood or other casualty.
- 13.2 Neither Party shall be deemed to be in breach of the Berthing Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any force majeure of which it has notified the other Party, and the time for performance of that obligation shall be extended accordingly. The Party effected by force majeure shall however exercise its best endeavours to remedy and restrain the effects thereof and render the non-performance of any obligation less burdensome on the other Party.
- 13.3 If the force majeure in question persists for a continuous period in excess of seven (7) days, the Parties shall enter into a bona fide discussion with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

14. WAIVER

- 14.1 The failure by the Company to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right to remedy or a waiver of any other rights or remedies that party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy of the exercise of any other right or remedy.

15. JURISDICTION AND CHOICE OF LAW

- 15.1 The Berthing Agreement (including all matters relating to the formalities, construction, application and enforcement) is governed by Maltese Law.
- 15.2 The Courts of Malta shall have exclusive jurisdiction to settle any dispute arising under or in connection with this Berthing Agreement.



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16. NOTICES

16.1 Notice on the Owner shall be deemed to have been duly served:

- a) If delivered by hand to the Owner or any person in charge of the Vessel; provided that if the Owner is a legal person, to any physical person to the Owner, or, if the Owner is a legal person, to any physical person who exercises by himself or together with others, control over the Owner;
- b) If sent by post when sent by registered letter to the address provided by the Owner and/or Captain and/or authorised representative as indicated on page one (1) of this Berthing License Agreement.
- c) If affixed to the Vessel, when the notice is affixed to a conspicuous part of the Vessel and documented by a dated photograph. Provided that the Company shall avail itself of this method of service in (i) urgent situations or (ii) if it is otherwise unable to effect service to the Owner or the Owner refuses to acknowledge an attempt to affect the service.