



BAREBOAT CHARTER AGREEMENT

(MARINE LEISURE ASSOCIATION)

PARTIES

1. The Owner of Tangewesi : Richard Britten-Long
represented by: Mrs Jessica Norton-Griffiths of Nderit Estates Limited, P.O.Box 1014
Kilifi, Kenya 80108
2. The Charterer : []
Ref: Holiday in Kilifi December 2019
of [Charterer's Address]

DEFINED TERMS

"Vessel": including all equipment, machinery and gear on board and any inventory signed by the parties

"Charter Period": from..... to.....

"Cruising Limits": 10 nautical miles from Kilifi boatyard

"Charter Fee": the sum of: USD\$ 2,000.00 (two thousand dollars)

"Advance Payment": the sum of: USD\$ 1,000.00

"Balance of Payment": the sum of: USD\$1,000 due by:.....

"Security Deposit": the sum of: USD\$ 1,000.00

"Fuel and Accidental Damage Payment": non-refundable payment covering accidental damage or loss to the vessel and ancillary equipment and loss or damage to any third party yacht involved in an accident with the Vessel. Includes fuel up to a stated value of USD\$ 250.00

"Owner" and "Charterer": the persons named above and their respective successors in title.

"Port of Delivery": Kilifi Boat Yard or environs

"Port of Redelivery": Kilifi Boat Yard or environs

"Equipment" : as set out in Clause 8 of this Agreement.

PROVISIONS

1 CHARTER AND PAYMENT

- 1.1 The Owner shall let on bareboat charter and the Charterer shall hire the Vessel for the Charter Period for the Charter Fee.
- 1.2 The Advance Payment is paid by way of a deposit to secure the Vessel for the Charter Period and shall be paid to the Owner on the signing of this Agreement. On payment by the Charterer of the Advance Payment, the Owner agrees not to enter into any other agreement for the charter of the Vessel for the same period. The Balance Payment shall be paid to the Owner no later than the date stipulated herein. The Security Deposit and/or Fuel and Accidental Damage Payment shall be paid to the Owner before commencement of the Charter Period.

2 SECURITY DEPOSIT/FUEL AND ACCIDENTAL DAMAGE PAYMENT

- 2.1 The Owner may retain and apply the Security Deposit in part or in full to cover any liability of the Charterer to the Owner.
- 2.2 The Fuel and Accidental Damage Option and Security Deposit provisions as detailed in the Booking Form and Charter Agreement shall apply.
- 2.3 In the case of damage or loss caused by an act of gross negligence, retention of the Security Deposit or payment of a Fuel and Accidental Damage Payment shall not prejudice the right of the Owner to recover any unsatisfied balance of such liability of the Charterer to the Owner.
- 2.4 Subject to the preceding clauses of this section, the Security Deposit or any balance remaining shall be returned to the Charterer within 14 days after the Redelivery, or, in the event of a dispute, upon the determination of such dispute.

3 OWNER'S OBLIGATIONS

- 3.1 The Owner shall at the beginning of the Charter Period deliver the Vessel to the Charterer, or his representative, in good and seaworthy condition in compliance with the MCA's Code of Practice for the Safety of Small Commercial Motor or Sailing Vessels and with the minimum equipment requirements of the Kenya Maritime Authority (KMA) full of fuel at a time convenient to the Charterer and the Owner and for a reasonable duration, the Charterer may inspect the Vessel before the start of the Charter Period in the company of a representative of the Owner. The Owner does not warrant the fitness of the Vessel in all conditions of weather for any particular cruise or passage within the Cruising Limits.
- 3.2 The Owner will use all reasonable endeavours to deliver the Vessel to the Charterer in the aforesaid condition at the agreed time and place but in default, whether as a result of a breach of 3.1 or otherwise, his liability shall be limited to a pro rata return of the Charter Fee for each period of 12 hours for which delivery is delayed. If such delay exceeds 25% of the Charter Period, the Charterer shall be at liberty to treat the Charter as cancelled. The Owner shall thereupon return all sums but shall have no further liability to the Charterer in respect of the curtailment or cancellation of the Charter including without prejudice to the generality of the foregoing liability in respect of consequential or economic loss or loss of use or enjoyment.
- 3.3 The Owner is not liable under clause 3.2 if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service. If the Owner asserts this clause as an excuse for failure to perform his obligation, then he must prove that he took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the Charterer was timely notified of the likelihood or actual occurrence of an event described above. Where delivery is delayed otherwise than by reason given in this clause, the

Owner's maximum liability, in addition to the return of all sums paid, shall be limited to an amount equal to 50% of the Charter Fee.

- 3.4 The owner will provide the equipment as set out in clause 8 in good faith with no warranty as to whether the Equipment is the appropriate size of fitting for The Charterer of his guests.

4 INSURANCE AND LIABILITIES

- 4.1 The Vessel and her equipment shall be insured on the terms of the Institute Yacht Clauses or on comparable terms for her full value with third party damage cover of no less than \$50,000 subject to a policy deductible no greater than the Security Deposit.
- 4.2 The Charterer shall indemnify the Owner in respect of any loss or damage to the Vessel or her equipment, or other expense or liability arising out of any act or omission of the Charterer, his servants or agents or any member of his party, which is not for any reason covered by the Vessel's insurance.
- 4.3 The Owner shall have no liability for death or personal injury suffered by the Charterer, his servants, agents or any member of his party unless caused by the Owner's negligence or wilful default.
- 4.4 The Charterer shall neither take the Vessel outside the Cruising Limits nor do any other act which may vitiate the Owner's insurance or prejudice the Owner's right to claim thereunder.
- 4.5 In the event of damage to or failure of the Vessel or any other incident involving a third party, the Charterer shall at the earliest opportunity (and in any case within 12 hours) report such occurrence to the Owner or his local agent and shall comply with any reasonable instructions given. The Charterer shall not accept a tow or take any other action that could lead to a claim for salvage unless in imminent peril and unless a reasonable fee has been agreed for the action to be taken.
- 4.6 In the event of major damage to the Vessel during the Charter Period involving a claim on the Vessel's insurance or in the event of a breakdown of gear or machinery rendering the Vessel unseaworthy or unusable, either a pro rata credit will be made for the period during which the Vessel was unseaworthy or unusable or (if the Charterer so elects and subsequent charters of the Yacht permit) the Charter Period will be extended by the period of such enforced unfitness, provided that neither the Charterer nor any member of his party caused or contributed to the damage or breakdown and provided also that the Owner shall not be liable to the Charterer for any other compensation in respect of damage or breakdown whether in respect of consequential or financial loss or otherwise, save where damage or breakdown is caused by the negligence of the Owner and results in death or personal injury.

5 CHARTERER'S OBLIGATIONS

- 5.1 The Charterer will restrict the navigation of the Vessel to the Cruising Limits and to those areas within the Cruising Limits in which the Vessel (i) is legally entitled to be navigated and (ii) can be safely navigated by the Crew in the prevailing conditions.
- 5.2 If the Charterer fails to accept delivery of the Vessel within 24 hours or such time as agreed with the Owner or his agents of the start of the Charter Period and has not by then notified the Owner of his intention to accept delivery later during the Charter Period, the Owner may treat this Agreement as terminated without prejudice to his rights to recover any unpaid portion of the Charter Fee and to recover damages in respect of any other loss caused to the Owner through the failure of the Charterer to accept delivery of the Vessel.
- 5.3 The Charterer warrants that he and the Crew have the experience and competence with proof of competency and that they are capable of safely handling the Vessel.
- 5.4 The Charterer will pay all running expenses during the Charter Period (including, but not limited to, food, water, fuel, bills of health, pilotage and all other provisions for the Charterer and the Charterer's party) and to the extent that on redelivery if any consumables such as fuel other than those expressly included within the Charter Fee have not been restored to their handover levels, the Charterer shall be liable to the Owner for the cost thereof.
- 5.5 The Charterer shall not sub-charter or part with control of the Vessel without the prior written consent of the Owner.
- 5.6 The Charterer shall take care of and assume full responsibility for the safety and maintenance of the Vessel and its equipment at all times during the Charter Period including when unattended. When the Charterer leaves the Vessel unattended, the Charterer shall remain fully responsible therefor and should take all reasonable precautions to secure the Vessel and the equipment and gear on board. For the sake of good order, the Charterer will remove all the unfixed leisure equipment including for example skiis, googles tow ropes at the end of each day.
- 5.7 Where loss or damage is caused to the Vessel the Charterer shall use his best endeavours to obtain the prior approval of the Owner before putting any repairs in hand and will in any event obtain a written estimate for any work likely to cost more than £100.00.
- 5.8 The Charterer shall not allow the Vessel to dry out or be stranded and shall ensure that the Vessel is moored only at a secure and well-maintained mooring point. The Charterer shall not anchor the Vessel in a place where anchoring is restricted or that is not suitable for anchoring such a vessel taking into consideration the many coral heads and reefs that are within the cruising limits.
- 5.9 The Charterer shall neither use the Vessel for any purpose other than private pleasure cruising for himself and his guests, nor race the Vessel without the prior written consent of the Owner.

- 5.10 The Charterer shall limit the number of persons in his party to not more than six persons in number except by prior agreement with the Owner, such agreement to be contingent on the Charterer's party not exceeding the number of places on the Vessel licensed by the KMA
- 5.11 The Charterer shall observe all applicable rules, regulations and laws whether of customs, harbour or other authorities or otherwise.
- 5.12 The Charterer shall not allow any animals on board the Vessel without the prior written consent of the Owner.
- 5.13 The Charterer shall not allow any third parties on board nor undertake any act that could lead to seizure, arrest or distraint.
- 5.14 The Charterer shall redeliver the Vessel to the Owner at the end of the Charter Period, at the Port of Redelivery or at such other place as may be agreed between the parties, free of indebtedness, in as good, clean and tidy condition as on delivery (fair wear and tear excepted) and with her inventory complete. If the Charterer fails so to redeliver the Vessel, he shall be liable for twice the pro rata Charter Fee for every day or part thereof by which redelivery is delayed, unless such delay is caused by the operation of an insured peril or circumstances beyond the Charterer's reasonable control. Due to the availability of weather forecasts, abandonment of the Vessel away from the Port of Redelivery due to bad weather does not constitute a circumstance beyond the Charterer's reasonable control.
- 5.15 The Charterer's obligations under this Agreement shall continue until redelivery.

6 NOTICE OF WITHDRAWAL

- 6.1 Where the Charterer is a Consumer (ie, the Charterer is a natural person and is acting for purposes which are outside his trade, business or profession):
 - 6.1.1 Should the Charterer give written notice to the Owner of his withdrawal from the charter at least two full calendar months before the start of the Charter Period, the Advance Payment shall be forfeit but the Charterer shall have no liability for the Balance of Payment (and if it and/or the Security Deposit or Fuel and Accidental Damage Payment have already been paid, it and/or they shall be refunded). If the Owner re-charters the Vessel for the Charter Period for no less than the Charter Fee then half the Advance Payment will be refunded.
 - 6.1.2 Should the Charterer give written notice to the Owner of his withdrawal from the charter within two calendar months of the start of the Charter Period, the Charterer shall remain liable for all payments due to the Owner at the date of the cancellation. In the event that the Owner is able to re-charter the Vessel for all or part of the Charter Period, the Owner will give credit for the net amount of charter hire arising from the re-charter up to the value of the Balance Payment.
 - 6.1.3 If prior to the commencement of the Charter Period the Owner gives notice to the Charterer of cancellation, the Charterer shall be entitled to repayment without interest of all sums paid by him to the Owner and shall in addition be entitled to a sum equivalent to 50% of the Advance Payment in liquidated damages.

- 6.2 Where the Charterer is not a Consumer (ie, the Charterer is not a natural person acting for purposes outside his trade, business or profession):
- 6.2.1 Should the Charterer give notice of cancellation of this Agreement on or at any time before the commencement of the Charter Period, the Charterer shall remain liable for all payments due to the Owner at the date of cancellation.
- 6.2.2 Should notice of cancellation be given by the Charterer or should the Charterer fail, after having been given notice, to pay any amount due under this Agreement, the Owner shall be entitled to treat this Agreement as having been repudiated by the Charterer and to retain the full amount of all payments.
- 6.2.3 In the event that the Owner is able to re-charter the Vessel for all or part of the Charter Period, the Owner will give credit for the net amount of charter hire arising from the re-charter up to the value of the Balance Payment.
- 6.3 If prior to the date of cancellation, the Vessel has taken on provisions for the Charter or the Owner has incurred other expenses on behalf of the Charterer, then the Charterer shall reimburse these expenses unless all or part can either be refunded by the supplier or transferred to the next charter, in which case such expenses shall be adjusted accordingly.

7 GENERAL

- 7.1 Prior to handover the Owner may require a sea trial of up to twenty minutes duration and if the Owner is not reasonably satisfied as to the ability of the Charterer and his party to handle the Vessel safely he may terminate this Agreement as if the Charterer had given written notice of withdrawal at this time and the provisions of Clause 6.1.2 shall apply.
- 7.2 The Owner shall have the right to restrict the Cruising Limits in the light of the experience of the Charterer and members of his party, and/or the actual or anticipated weather conditions.
- 7.3 If the Charterer fails to comply with any provision of the agreement, the Owner may forthwith terminate the Agreement and resume possession of the Vessel, but without prejudice to the right of the Owner to recover damages in respect of any breach of the Agreement by the Charterer.
- 7.4 Save as otherwise provided in the terms of business of the Owner, and subject to the statutory rights of the Charterer if contracting as a Consumer, the provisions of the Agreement shall exhaustively and exclusively govern the rights and obligations of the parties.
- 7.5 This Agreement is subject to Kenyan law. In the event of a dispute arising under this Agreement, the parties agree to use reasonable endeavours to resolve such a dispute by negotiation and, if such negotiation fails, to consider referring the dispute to alternative dispute resolution under the dispute resolution procedures adopted from time to time by the Kenyan Marine Federation. Save as aforesaid, in the case of a Charterer contracting otherwise than as a Consumer, any dispute arising under this Agreement shall be submitted to the exclusive jurisdiction of the Courts of Kenya.

- 7.6 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

8. Equipment

- 8.1 Mono water Ski
- 8.2 Pair of water skis
- 8.3 Ski Board
- 8.4 4 pairs of flippers
- 8.5 2 wet suits I ladies and one gentlemen
- 8.6 2 Ski "life" jackets
- 8.7 4 pairs of goggles and snorkels
- 8.8 1 ski rope
- 8.9 Full Fuel tank
- 8.10 Skipper

OWNER or authorised representative of the Owner

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DATE:

The Charterer

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DATE: