

DATED

2014

ASSOCIATED BRITISH PORTS
and
OCEAN WATERSPORTS TRUST VALE OF GLAMORGAN

LICENCE
relating to Use of No. 1 Dock
PORT OF BARRY

ASSOCIATED BRITISH PORTS
Aldwych House
71-91 Aldwych
London
WC2B 4HN

AN AGREEMENT made the day of 2014 ("Commencement Date")

BETWEEN

- (1) **ASSOCIATED BRITISH PORTS** (No. ZC00195) whose principal office is at Aldwych House, 71-91 Aldwych London WC2B 4HN ("**ABP**")
- (2) **OCEAN WATERSPORTS TRUST VALE OF GLAMORGAN** a Charitable Incorporated Organisation registered under Part 11 of the Charities Act 2011 whose principal office and address for service is at 10, Parc Clwyd, Barry, Vale of Glamorgan, CF63 1DS Charity Registration Number 1157946 ("**Licensee**")

BACKGROUND

- (A) ABP is the owner and operator of the Port of Barry ("**Port**").
- (B) The Licensee wishes to use the No. 1 Dock, Barry for the purposes of providing facilities for water sports activities for use by the local community.
- (C) ABP and the Licensee have agreed to enter into this Agreement to set out the terms on which such use is permitted.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions shall apply in this Agreement:-
 - "**Additional Obligations**" means the obligations of the Licensee set out in the Schedule;
 - "**Lease**" means the lease between the parties of even date under which ABP leases premises known as part of The Mole, Dock No1, Barry Waterfront to the Licensee;
 - "**Permitted Area**" means the area of the Port specified in the Schedule;
 - "**Permitted Use**" has the meaning given to it in the Schedule;
- 1.2 The Interpretation Act 1978 will apply to this Agreement in the same way as it applies to an enactment, except where its provisions are inconsistent with any express terms of this Agreement.
- 1.3 The Schedules will have effect as part of this Agreement.
- 1.4 Any references in this Agreement to Clauses or Schedules are to clauses of, or schedules to this Agreement.
- 1.5 Headings will be ignored in construing this Agreement.

- 1.6 References to a statute or statutory provision include that provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Agreement and any subordinate legislation made under it.
- 1.7 Unless the context otherwise requires, words importing the singular will include the plural and vice versa and reference to any masculine, feminine or neuter gender will include the other genders.
- 1.8 Words importing individuals or persons will include companies, corporations, firms, unincorporated bodies of person and partnerships. The words "include", "including", and "includes" are to be construed as if they were immediately followed by the words "without limitation".

2. TERM

This Agreement shall commence on the Commencement Date and shall continue in force until the date on which this Licence is terminated in accordance with Clause 8.

3. LICENCE

In consideration of the sum of £1 (receipt of which is hereby acknowledged by ABP), ABP hereby grants to the Licensee the right to use the Permitted Area for the Permitted Use only subject to the terms of this Agreement.

4. LICENSEE'S OBLIGATIONS

- 4.1 The Licensee shall conduct risk assessments of its activities on the Port and shall provide copies of such risk assessments to ABP. Such risk assessments shall be updated regularly and in any event not less than annually.
- 4.2 The Licensee shall appoint a safety representative in respect of its activities at the Port and shall inform ABP of the name and contact details of that representative prior to commencement of undertaking of the Permitted Use. The Licensee shall ensure that in the event any of these details change, ABP is informed in writing immediately. Such appointed representative must be in attendance during the performance of the activities in respect of which this licence has been granted.
- 4.3 The Licensee will at all times and at its own expense keep itself informed of, observe and comply with all applicable laws (including any applicable bye-laws), regulations and any reasonable and lawful directions given by ABP relating to health and safety in the discharge and performance of its activities at the Port.

- 4.4 The Licensee shall at all times conduct its activities, whether being performed independently or through its servants, agents or invitees in a professional manner, commensurate to the type of activities for which this licence is granted with reasonable skill and care and in a safe and proper manner.
- 4.5 The Licensee shall conduct its activities at the Port at all times so as to ensure that no pollution incident occurs as a result of its activities on the Port.
- 4.6 The Licensee will conduct its activities at the Port at all times in such a way as to minimise any nuisance or disturbance to ABP or any other person in the Port or the owners or occupiers of other land within or adjacent to the Port.
- 4.7 The Licensee shall notify ABP's Lock Control at Barry or alternatively if off-tide, Local Port Services at Cardiff, on each occasion it accesses the Port prior to entering the water at the Port and when its activities in the water cease.
- 4.8 The Licensee shall notify ABP of all craft owned by or under the control of the Licensee which are retained or used at the Port.
- 4.9 The Licensee shall suspend all waterborne activities in such locations within the Permitted Area as ABP may specify at the time in the event a vessel is scheduled to arrive, depart or move at the Port. Under no circumstances shall the Licensee take any craft alongside a commercial vessel or convey any crew from such vessel.
- 4.10 At least one senior representative from the Licensee shall be trained to operate a VHF radio. The Licensee's trained representative shall monitor such VHF Channels as shall be determined by ABP at all times when the Licensee is engaged in waterborne activities.
- 4.11 The Licensee shall notify ABP immediately in the event of being involved in or becoming aware of any accident or incident at the Port.
- 4.12 The Licensee shall comply with the Additional Obligations.

5. INDEMNITY

- 5.1 The Licensee hereby undertakes and agrees (to the fullest extent permitted by law) to be responsible for and to release and indemnify ABP, its parent company, subsidiary and associated companies (all or any of which are referred to as "the ABP Group"), their servants and agents from and against all actions, claims, costs, expenses and/or damages brought against or reasonably incurred by the ABP Group as a result of the negligence, act, error or omission of the Licensee its employees, agents, contractors, sub-contractors, representatives and/or invitees including: -

- (a) personal injury (whether fatal or otherwise) to any person;

- (b) loss of or damage to any property whatsoever; and
- (c) any other loss (including economic and consequential loss), damage, costs (including any legal costs) and expenses suffered by any other person,

howsoever caused or incurred arising directly or indirectly from, or in any way connected with, the use of the Port by the Licensee, except to the extent that such is due to the negligence of ABP or its employees, servants or agents.

6. LIMITATION OF ABP'S LIABILITY

6.1 Subject to Clause 6.2, ABP is not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Port; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Port; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Port in the exercise or purported exercise of the rights granted by Clause 2.

6.2 Nothing in Clause 6.1 shall limit or exclude ABP's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of ABP or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for ABP to exclude or restrict liability.

7. INSURANCE

7.1 The Licensee shall throughout the term of this Agreement have and maintain public liability insurance for a minimum of £5,000,000 and such other insurances as appropriate to meet its obligations under this Agreement ("**Insurances**").

7.2 The payment of the premiums in respect of the Insurances will be the responsibility of the Licensee.

7.3 Copies of all insurance policies, proofs of payment of premiums and other relevant documents in respect of the Insurances will be provided by the Licensee to ABP promptly on request.

8. SUSPENSION/ TERMINATION

- 8.1 Either party may suspend the rights granted by this Agreement immediately upon the provision of written notice to the other party in the event of either an incident causing fatal injury or the existence of a safety hazard that would reasonably justify a temporary suspension of the rights granted pursuant to this Agreement within the Permitted Area.
- 8.2 Any suspension of the rights granted by this Agreement shall be temporary and shall remain in force only for so long as is reasonably necessary to make the Permitted Area safe for the Permitted Use.
- 8.3 ABP may also suspend this Agreement in the event that at any time the Licensee has failed to demonstrate that it has insurance in place in accordance with the requirements of Clause 7. Such suspension shall continue until such time as the Licensee is able to demonstrate that it does have the correct insurance in place.
- 8.4 ABP may terminate this Agreement immediately on written notice in the event: that the Licensee:-
- (a) commits a material breach of this Agreement which is not capable of remedy; or
 - (b) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 28 days of ABP requesting such remedy.
- 8.5 This Agreement shall terminate automatically on termination or expiry of the Lease for any reason.
- 8.6 Clauses 5, 6 and 7 shall survive termination of this Agreement.

9. GENERAL

- 9.1 Except as set out in Clause 5, a person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 9.2 This Agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this Agreement and, together with the Lease, constitutes the whole agreement between the parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded from this Agreement. Each of the parties represents that it has not entered into this Agreement in reliance on any representation, warranty, undertaking or other statement, expressed or implied, oral or in writing, given or made by or on behalf of any party except in so far as

contained in or referred to in this Agreement. This Clause 9.2 will not apply to any representation, undertaking, warranty or statement made fraudulently or which was induced by fraud.

- 9.3 No purported alteration or variation of this Agreement will be effective unless it is in writing and it refers specifically to this Agreement and is signed by a duly authorised representative of each of the parties of this Agreement.
- 9.4 No failure of any party to exercise, and no delay by it in exercising any right, power or remedy in connection with this Agreement (each a "Right"), will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of this Agreement may only be given in writing by the waiving party and will not be deemed to be a waiver of any subsequent breach.
- 9.5 If any provision in this Agreement or any document to be entered into pursuant to or in connection with it will be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement or the provision will not be affected.
- 9.6 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.7 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE

"Permitted Area"

The area of No. 1 Dock Barry shown coloured red on the plan attached to this Agreement as Appendix 1.

"Permitted Use"

Sailing, Sailability, Adaptive Rowing and Kayaking and other water sports activities approved in advance by ABP provided for the local community by local community groups, not-for-profit or non-commercial organisations as may be approved by ABP's Harbour Master, South Wales or such person that has been granted Harbour Master powers under the relevant legislation.

"Additional Obligations"

i) The Licensee shall provide maintain and deploy a suitable safety boat at all times when waterborne activities are taking place on the Permitted Area.

ii) The Licensee shall provide ABP's Harbour Master, South Wales or such person that has been granted Harbour Master powers under the relevant legislation with details of all intended methods of launching and recovering craft into and from the Permitted Area together with associated risk assessments and safe systems of operation.

iii) The Licensee shall not arrange any events such as a regatta or competition without the prior approval of ABP's Harbour Master, South Wales or such person that has been granted Harbour Master powers under the relevant legislation.

