

## **Le Boat Terms and Conditions 2018**

### **Annexure A: Customer Booking Conditions (CPA)**

Parties Mariner Yachts (Pty) Ltd (Registration number 2009/009705/07) (Mariner)

The Agent listed in Schedule 1 (Agent) The Customer listed in Schedule 1 (Customer)

#### **1 Definitions and interpretation**

1.1 In this Agreement:

(1) Business Day means any day other than a Saturday, Sunday or official public holiday in South Africa;

(2) CPA means the Consumer Protection Act 68 of 2008;

(3) Insolvency Act means the Insolvency Act 24 of 1936;

(4) Invoice means a duly rendered tax invoice displaying the total Holiday Price plus any applicable tax and/or additional expenses payable, addressed to the Customer;

(5) Lead Customer means the person named on the Booking or the Option, being the person who will solely be entitled to issue instructions to change names, amend the Booking details or cancel the Booking or the Option, and who will be solely responsible for full payment for the Holiday Price, the Deposit and Cancellation Charges (if any);

(6) Parties means Mariner, the Agent and the Customer and a Party means, as the context requires, any one of them;

(7) Signature Date means the date of the last signature to this Agreement;

(8) VAT means value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended.

1.2 Any number of days prescribed in this Agreement excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.

1.3 Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.

1.4 Unless stated otherwise in this Agreement, a time of day must be construed as a reference to Johannesburg time.

1.5 The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after

termination, or which must by implication continue to have effect after termination.

#### **2 Agreement and Duration**

2.1 Mariner hereby sells to the Customer, who purchases a return boating holiday from the Departure Base to the Destination Base, as described in Schedule 1 (Product), on the terms and conditions set out in these Customer Booking Conditions, read together with Schedule (Agreement).

2.2 This Agreement will commence on the date Mariner confirms the Booking (described in clause 4.1) by delivering an Invoice to the Customer or if the Customer places a Booking within seven days of the Customer's departure on the boating holiday, the date Mariner accepts the Deposit (defined in clause 4.1) (Commencement Date). This Agreement will terminate on the termination date as set out in Schedule 1 or on receipt by Mariner of full payment of any Cancellation Charge(s) in terms of clause 5.3 due by the Customer, whichever is earlier (Termination Date).

#### **3 Holiday and Additional Product Prices**

3.1 The Holiday Price that is applicable to the Product purchased by the Customer in this Agreement is set out in Schedule 1.

3.2 The Customer may purchase other products or services, additional to the Products, which are advertised by Mariner and available to the Customer from Mariner (Additional Products). For the purposes of this Agreement, the Customer has purchased the Additional Products, at the Additional Product Prices, listed in Schedule 1.

3.3 The Additional Product prices must be paid by the Customer to Mariner in full no later than 10 weeks before the Customer departs on the boating holiday (Departure Date) (as set out in Schedule 1).

3.4 In addition to the Holiday Price and/or Additional Product Prices Mariner has the right to charge the Customer an amount equal to the escalation of any transportation costs which accrues after the Signature Date including, but not limited to, any increases in the cost of fuel, taxes or fees chargeable for services such as landing taxes or embarkation or disembarkation fees at ports and airports.

Extras requested and paid for at base are subject to higher rates

#### **4 Payment and confirmation of Bookings**

4.1 The Customer must pay a deposit of 35% of the Holiday Price (Deposit) at the time of making a reservation of the Product, through the Agent (Booking).

4.2 If the Customer places a Booking within 10 weeks of the Departure Date full payment of the Holiday Price must be made no later than 56 days before the Departure Date.

4.3 The Booking will be confirmed by Mariner issuing the Invoice to the Customer, alternatively, on Mariner accepting payment of the Deposit from the Customer.

4.4 Once Mariner confirms a Booking, no discounts may be applied retrospectively.

4.5 Except in circumstances referred to in clause 4.2, the Holiday Price and Additional Product Prices, if applicable, less any Deposits paid (Balance) must be paid no later than 70 days before the Departure Date.

4.6 All payments by the Customer may be made by credit/debit card, bank guaranteed cheque (made payable to Mariner) or bank transfer into Mariner's bank account, the details of which are set out in Schedule 1.

4.7 An additional payment of 2.5% of the total value of the payment being made by credit card (including VAT) and an additional payment of 2% of the total value of the payment being made by debit card (including VAT) will be charged to the customer by Mariner.

4.8 Certain payments, as indicated in the pricing information (which may be found on Mariner's website and in its brochures from time to time) may be made locally at the Destination Base (in Schedule 1) in the applicable local currency.

#### **5 Cancellation and amendment of Bookings**

5.1 If the Balance is not paid by the Customer in full by the date specified, in terms of clauses 4.2 or 4.5, whichever is applicable, Mariner may retain the Deposit and cancel the Booking subject to clause 5.3.

5.2 The Customer may cancel the Booking prior to the Departure Date subject to payment of a reasonable cancellation charge (Cancellation Charge) in accordance with the table under clause

5.3. The Customer may request any reasonable amendments to the Booking. The Holiday Price may increase or decrease to reflect the changes requested by the Customer. All reasonable requests to amend the Booking will be subject to an amendment fee (Amendment Fee) in accordance with the table under clause 5.3 per booking amendment and any further cost incurred in making this alteration.

Period before Departure Date within which notice of cancellation or amendment is received / Cancellations fee:

- More than 70 days: Deposit only
- 70 - 43 days (10 to 6 weeks): 40% of total holiday price
- 42 - 15 days (6 to 2 weeks): 60% of total holiday price
- 14 days or less: 100% of total holiday price

**Amendment fee:**

- More than 70 days: R500
- 70 - 43 days (10 to 6 weeks): R500
- 42 - 15 days (6 to 2 weeks): R500
- 14 days or less: R500

5.4 The Parties agree that the Cancellation Charges set out in the table in clause 5.3 represents fair and reasonable compensation payable Mariner for a cancellation of a Booking by the Customer.

5.5 A Cancellation Charge may not be imposed on a Customer in the event of cancellation by the Customer based on the death or hospitalisation of the Customer or any of their party. The customer must furnish Mariner with a copy of a medical certificate or death certificate to verify the reason for cancellation.

5.6 The Customer may substitute themselves with a third party, provided the third party complies with the terms and conditions of this Agreement and agrees to pay all reasonable additional costs and disbursements incurred in making the substitution.

5.7 Should the Customer request a major alteration within 10 weeks of the Departure Date (such as a change of date or area) or amend its Departure Date to a date not within the current year then this will be treated as a cancellation and re-Booking.

5.8 Mariner reserves the right to cancel the Product/holiday if necessary. Mariner may amend the Product/holiday with the consent of the Customer. No amendment fee will be charged if Mariner requests the amendment. In the event of Mariner cancelling the Product/holiday, subject to clause 5.9, the Customer will be compensated in the amounts referred to in the table in this clause 5.8 below.

5.9 If Mariner cancels or amends the Customer's Product/holiday, Mariner will, at the option of the Customer and where available: (1) offer the Customer an alternative holiday to the same or better standard; (2) offer the Customer a holiday of a lower standard and a refund of the difference in costs; or (3) cancel the Customer's holiday and refund all payments received and interest at 15.5% per year calculated from the date of full payment by the Customer until to the date of reimbursement by Mariner.

5.10 The Parties agree that the Cancellation Charges set out in the table in clause 5.8 read with the options available to the Customer in clause 5.9 represents fair and reasonable compensation payable to the Customer for a cancellation of a Booking by Mariner.

## **6 Limitations on terms of contract**

6.1 The Product does not include any form of financial protection.

6.2 A provisional booking of a Product (Option) placed by the Customer will only be valid and binding on the Parties for a maximum of five calendar days.

6.3 The minimum number of people required to hire a boat is 2 adults. For larger boats we recommend a minimum of 3-4 adults are needed to handle the boat comfortably. At least three experienced/confident adults are compulsory on our Vision boats – or at least four less-experienced adults. The number of passengers on board may not exceed the

maximum amount of passengers permitted by the licence of the particular boat, chartered by the Customer.

6.4 The Customer must comply with the "Captain's Manual", which may be found on Mariner's website, all the rules of river navigation and also the instruction given by the company and the river authorities, at the Departure Base. The Customer will restrict their cruising to those waters permitted by the company. The Customer is not allowed to sail after nightfall, nor engage in towing, sub hiring or lending of the boat.

6.5 Hirers must be over the age of 18 years (21 years in Ireland).

## **7 Liabilities**

7.1 Mariner's liability to the Customer for any loss or damage which it may suffer while attending the boating holiday in terms of the Product is limited to three times the Holiday Price, which amount will represent agreed liquidated damages. This is a limitation of Mariner's liability and the Customer may not recover all of their losses because of this limitation on their rights. 7.2 The Customer's liability to Mariner for any loss or damage which it may suffer pursuant to this Agreement is limited to three times the Holiday Price. The limitation of liability in terms of this clause.

7.2 is not applicable to the negligent or intentional act or omission of the Customer or the Customer's party.

## **8 Conditions of carriage**

8.1 If any international convention applies to, or governs, any of the services or facilities included in the Product and the Customer incurs liability arising out of death, injury, loss or damage suffered during or as a result of the provision of those services or facilities in terms of the Product, Mariner's responsibility to pay the Customer, is limited to the amount of compensation provided for by such international convention concerned.

8.2 Mariner's responsibility to pay the Customer for any liability incurred by the Customer or its party arising out of death, injury, loss or damage suffered during or as a result of the provision of those services or facilities included in the Product, is limited to the amount of compensation provided for by Mariner's insurance policy in place from time to time.

8.3 Clauses 8.1 and 8.2 means that Mariner's responsibility to pay compensation to the Customer may be limited by international conventions and Mariner's insurance cover, and the Customer may not be able to recover all losses suffered by it or its party.

## **9 Personal Insurance**

9.1 Mariner's insurance does not cover the Customer's personal belongings. The Customer is responsible to take out travel insurance to cover themselves and their party against any possible risk.

9.2 Mariner offers a travel insurance scheme, details of which can be obtained from its sales teams, the Agent or Mariner's website.

## **10. BOAT DAMAGE PROTECTION**

10.1 For all charters featured by us, you will be required to provide cover against accidental damage or loss to the vessel and ancillary equipment and either purchase Le Boat Collision Damage Waiver upfront or pay a higher Security Deposit at the base as further detailed below.

10.2 In the event you or your party cause damage or loss to the vessel (howsoever caused) or to property belonging to a third party you will be liable for the damage up to the value of the Security Deposit paid at the Base, except in the case of gross negligence as defined below.

10.3 If you or your party cause damage or loss to the vessel, any ancillary equipment or to property belonging to a third party and such damage or loss is caused as a result of your gross negligence or reckless conduct you will be liable for the full extent of the loss suffered and our right to claim against you will not be limited or waived in any way by the payment of the security deposit or purchase of Le Boat Collision Damage Waiver.

10.4 Acts that will be considered as gross negligence or reckless conduct will include, without limitation, cruising under the influence of alcohol and/or drugs, not having sufficient crew in charge of the vessel at all times, having a person less than 16 years of age driving the boat not being in control of the vessel by means within the control of the Skipper, non-respect of local navigation rules and navigation limits.

10.5 During the booking process you will be provided with the option of either purchasing Le Boat Collision Damage Waiver or paying a higher Security Deposit at the base as set out below. You will not be able to proceed with your booking unless you agree to one of the options and by asking us to confirm your booking you are agreeing to comply with the content of this section and make any required payment.

**Option 1: Collision Damage Waiver (CDW)**

If you choose to purchase the Collision Damage Waiver this will be added to your booking. You will be provided with the cost of purchasing the Collision Damage Waiver during the booking process which will be added to your overall holiday cost. In addition, you will be expected to pay a sum of between £200 / €250 / CA\$370 and £600 / €740 / CA\$1,110, depending on the size of your boat, as damage deposit upon arrival at the LeBoat Base. The damage deposit will be taken prior to embarkation and if you do not pay we reserve the right to cancel your booking without further liability and without any right to a refund and you will not be entitled to continue with the charter.

	Daily Rate					Security Deposit		
	France, UK & Ireland	Italy	Germany	Belgium	Holland	Security Deposit Payable @ European Bases	Security Deposit Payable @ UK Bases	Security Deposit Payable @ Canada Base
Option 1								
Budget boats	R 285-00	R 301-00	R 317-00	R 333-00	R 333-00	€250	£200	CA\$370
Comfort boats	R 412-00	R 428-00	R 444-00	R 476-00	R 491-00	€350	£280	CA\$515
Comfort Plus boats	R 444-00	R 460-00	R 476-00	R 491-00	R 507-00	€500	£400	CA\$740
Premier boats	R 587-00	R 602-00	R 618-00	R 634-00	R 682-00	€750	£600	CA\$1,110

### Option 2: Security Deposit

If you choose to pay a Security Deposit only you will be asked to pay a sum of between €1,800 / €2,250 / CA\$3,325 and €2,600 / €3,250 / CA\$4,805 depending on the size of your boat, as Security Deposit upon arrival at the Le Boat Base. The Security Deposit will be taken prior to embarkation and if you do not pay we reserve the right to cancel your booking without further liability and without any right to a refund and you will not be entitled to continue with the charter.

						Security Deposit Payable @ European Bases	Security Deposit Payable @ UK Bases	Security Deposit Payable @ Canada Base
Option 2	France, UK & Ireland	Italy	Germany	Belgium	Netherlands & Canada			
Budget boats	No Daily Rate Paid					€2,250	€1,800	CA\$3,325
Comfort boats						€2,500	€2,000	CA\$3,695
Comfort Plus boats						€2,750	€2,200	CA\$4,065
Premier boats						€3,250	€2,600	CA\$4,805

10.6 The Security Deposit payable under Option 1 and Option 2 can be paid in cash, or credit card.

10.7 The Security Deposit paid under either Option 1 or Option 2 will be used as security for any loss or damages suffered by the Company as a result of any breach by you of these booking conditions and any damage caused to the cruiser or its contents during the period of your arrangements. You cannot apply or deduct any portion of the damage deposit from the final balance payable for your travel arrangements. You will be asked to sign a form before embarkation confirming that you fully understand your obligations in the event of any loss or damage to the vessel, ancillary equipment or third party property.

10.8 On return of the boat to the base following the charter period and following inspection of the boat by our base staff, in the event that we are satisfied that there is no apparent damage to the boat on its return from you, our base staff shall, where applicable, refund the relevant Security Deposit paid by you to you as soon as reasonably possible. Please note that the Collision Damage Waiver monies pre-paid under Option 1 are a non-refundable sum to reduce your Security Deposit and in no circumstances whatsoever is such monies refundable.

10.9 In the event that we determine that accidental damage or loss was caused to the boat and/or its contents during the period of your arrangements, you will be liable to us for all losses and damages incurred by us as a result up to the value of the Security Deposit left at the base. In the event that we determine that damage or loss was caused to the boat and/or its contents during the period of your arrangements as a result of your gross negligence or reckless conduct, you will be liable to us for all losses and damages incurred by us as a result. In both instances we reserve the right to retain, where applicable, part or all of the relevant Security Deposit paid by you. We may use all or part of the Security

Deposit paid by you to repair any damage caused to the boat or its contents during the period of your arrangements, including without limitation the costs involved in lifting the boat for a full inspection to assess the damage to the boat.

10.10 Retention of the Security Deposit will not in any way limit or prejudice any claim which we may have over and above the sum of the Security Deposit paid by you where the loss or damage was caused or contributed to by you or any such losses or damages incurred by us over and above the sum of the damage deposit paid by you. In the event that the losses or damages suffered by us as a result of any breach by you of these booking conditions and any damage caused to the boat or its contents during the period of your arrangements is less than the relevant damage deposit/Security Deposit paid by you, we shall refund, as relevant, part of the Security Deposit paid by you to you as soon as reasonably possible after the damage has been repaired or the repair costs have been ascertained. In the event of any disagreement over damage or loss, we shall retain the relevant Security Deposit paid by you until the matter is resolved. Please note that if loss or damage caused by your gross negligence or reckless conduct is in excess of the level of the damage deposit we reserve the right to pursue a claim against you for the full extent of our loss.

10.11 For the avoidance of doubt, where we make any refund to you of the relevant Security Deposit paid by you, any Le Boat Collision Damage Waiver fees also paid by you will not be refunded.

## **11 Customer's conduct**

11.1 The Customer is responsible for the proper conduct of themselves and any members of their party. Mariner will not be responsible for under-age consumption of alcohol.

11.2 Mariner reserves the right to terminate, without further notice, the Agreement and the holiday arrangements of any Customer who refuses to comply with the instructions or orders of Mariner's staff, agent or other responsible person whose behaviour in their opinion is likely to cause distress, damage or danger or annoyance to other Customers, staff, any third party or to property. Mariner's responsibility for the Customer's holiday ceases on termination and Mariner will not be liable for any additional costs incurred by the Customer.

## **12 Accidents and loss/damage of equipment**

12.1 If the boat is involved in an accident of any nature, the Customer must immediately contact the base and complete an accident report form (found on board) and ask any other party involved to complete the same form. The Customer will not ask for any repairs to be carried out without Mariner's agreement. On arrival, the Customer will be asked to check the boat for external signs of damage and indicate these areas on a separate form

12.2 The Customer will also be asked to sign an inventory list detailing all critical items of inventory for which a separate fee is charged should they not be returned, or returned damaged. Should any equipment be lost, stolen or broken, the Customer must report this on return of the boat. Should any equipment be lost, stolen or broken, the Hirer must report this on return of the boat. Damage to the boat and/or loss or damage to inventory will be deducted, in part or in full, from the hirer's damage deposit - see section 10.

## **13 Embarkation/Disembarkation and Cruising Route**

*13.1 Embarkation & Disembarkation:* Boat embarkation time is from 16:00 on the Departure Date and disembarkation must be by 09:00 on Termination Date. For an additional fee(s), and subject to operational constraints, early boarding from between 11:00- 12:00 and after 14:00 and late check-out from 12:00 can be pre-booked and will be detailed on the Customer's Booking confirmation summary document, which will be provided to the Customer by the Agent. Reference to time in this clause *13.1* will be the standard time in the country where the holiday is being enjoyed.

*13.2 Cruising route:* For operational reasons, Mariner reserves the right to change the direction of the Customer's one-way cruise, to make a one-way cruise a return-to-base cruise and to make a return-to-base cruise a one-way cruise. Such changes may be required at late notice. These changes will not entitle the Customer to cancel with a refund or compensation.

*13.3 Return of the boat / cleaning service* (1) the boat must be returned by 09:00 on the Termination Date at the Departure Base, unless the Customer has booked and paid for a late check-out, in which case the boat must be returned by 12:00. Reference to time in this clause *13.3(1)* will be the standard time in the country where the Departure Base is situated. (2) Late returns will incur an abandonment fee of £700 (in UK) / €1,000 (in the rest of Europe) and CA\$1,500 (in Canada).

*13.4* All customers must return the boat in a reasonably clean state with the following completed: i) all rubbish neatly bagged up; ii) all crockery and utensils cleaned and re-stored; iii) beds stripped; iv) decks mopped iv) Bathrooms and toilets cleaned. If the boat is left in an unsatisfactory condition, the boat's cleaning fee will be charged to the customer.

*13.5 Cleaning service:* You may pay an additional cleaning fee of R1,078 - R2,019 (€80- €150) dependant on the size of the boat and we will take care of the final cleaning of your boat. In this case all you are asked to do is to bag up your rubbish & all crockery and utensils cleaned and re-stored.

## **14 Navigational Restrictions**

*14.1* Mariner's brochures and website offers a number of cruising suggestions for each region based on the Customer's experience and knowledge of the area. On the Departure Date the Customer will receive detailed cruising information for their region, clearly stating which waterways are navigable and which are prohibited or restricted.

*14.2* The base team will also advise the Customer of any specific routes which are prohibited or restricted, or procedures falling under the control of Inland Waterways Authorities for the cruising area. Customers who require assistance (towing/haulage) as a result of cruising in prohibited/ restricted areas will incur an additional charge, payable locally in local currency. The Customer may contact the sales team prior to the Departure Date if they wish to cruise on any waterways not covered in Mariner's brochures or website.

*14.3* Locks are closed on some bank holidays, (e.g. 1st May, 1st November and 14th July) in most of our cruising regions. For more information, please contact our team.

## **15 Technical Assistance**

*15.1* Mariner has a breakdown service during normal working hours every day of the week.

*15.2* Mariner will endeavour to attend and repair a breakdown or technical incident as quickly as possible. The Customer will have no claim against Mariner for any failure caused

by the Customer including but not limited to grounding, and in such instances the company will reserve the right to recover from the Customer the expenses incurred in rectifying the matter.

## **16 Boat Descriptions & Fleet availability**

16.1 Boat layout plans, specifications and illustrations in the brochure are for general guidance. Some models within boat classes have minor variations. Fleet availability for each cruising suggestion / cruising region is correct at time of going to press, but is subject to change without notice.

## **17 Fuel Charges & Fuel Deposit**

17.1 Fuel is charged according to market rates and is subject to fluctuations in diesel prices.

17.2 At the start of the Customer's cruise the Customer will be informed of the hourly charge and the current engine hours on the relevant boat will be agreed and recorded.

17.3 At the start of the Customer's cruise the relevant boat will have a full tank of fuel and the Customer will be advised by the base staff of the cost of the hourly charge.

17.4 Before departing the base the Customer will be required to leave a Fuel Deposit payable locally in local currency.

17.5 At the end of the holiday the Customer will either pay an additional fuel cost to cover the amount of fuel actually used, or will be owed a refund if the fuel consumption is less than the deposit paid.

## **18 Other costs while you cruise**

18.1 Any services you use while away from our base, such as mooring fees, shore power, marina facilities (e.g. showers) and/or fresh water and pump out services must be paid for at your own expense.

## **19 Pets**

19.1 To allow for additional cleaning, a supplement per pet is charged to Customers, and a maximum of two pets are allowed on board Mariner's boats.

19.2 The Customer is required to have a basket/blanket for pets to sleep on and to refrain from letting pets lie on bedding or settees. The Customer may not leave pets unattended on the boat.

19.3 If despite paying the pet cleaning supplement the base manager considers additional cleaning is required on the return of the boat, the Customer will be asked to pay an additional reasonable boat cleaning fee.

## **20 Car Transfers**

20.1 Le Boat staff are insured to transfer cars between bases in all cruising regions where we have two or more bases (except Germany). We are unable to transfer cars heavier than 3.5 tonnes, cars pulling trailers or caravans, campervans or motorcycles. Car transfers are available for a charge, must be pre-booked before departure and are subject to availability.

20.2 Our base teams can transfer hire/lease cars, but you should check with your hire/leasing company first as the terms of your agreement may not permit this. If it is permitted your hire/leasing company may charge you extra to add a member of our base

team as a named driver. For operational reasons, we may not know the name of the driver until the week of your departure.

## **21 Passport and Visa Requirements**

21.1 It is essential that you ascertain whether or not you can obtain relevant visas and inoculations before making your booking, particularly for late bookings. Whilst we are able to provide basic advice to clients regarding passports and visa requirements, you should check with the appropriate embassy, consulate or your home countries Foreign and Commonwealth Office (or equivalent) for the exact requirements for your chosen charter and date of travel. It is your responsibility to ensure that you have the correct passport and visas to gain access to any country/region included in the travel arrangements which you purchase from us. If you fail to do so, we have no liability to you for any cost, loss or damage which you suffer, nor will we refund you the cost of any unused portion of your travel arrangements.

21.2 When assessing whether trips will operate we use information from our local offices in conjunction with advice from the British Foreign and Commonwealth Office and other relevant government bodies. It is your responsibility to acquaint yourself with the travel advice provided by the relevant government bodies. Check with the appropriate Embassy, Consulate or British Foreign Office for advice and the latest information about passports, travel and living abroad, including without limitation foreign travel advice to specific countries.

21.3 When travelling to Canada you must check with your foreign office and the Canadian authorities that you have the correct passport and comply with the visa requirements. Under Canada's ETA program, citizens from countries other than the United States, who do not need a visa to enter Canada, will need to obtain an online authorization before flying to Canada, unless otherwise exempted. The earlier travellers get their ETA, the sooner they will benefit from knowing they have been pre-screened to enter Canada. A fee of \$7 is payable for processing an application for an electronic travel authorization. An application for an electronic travel authorization must be made by means of an electronic system that is made available by the Department (Citizenship and Immigration Canada) for that purpose. An electronic travel authorization is valid for a period of five years from the day on which it is issued to the applicant or until the earliest of the following days, if they occur before the end of that period: (a) the day on which the applicant's passport or other travel document expires, (b) the day on which the electronic travel authorization is cancelled, or (c) the day on which a new electronic travel authorization is issued to the applicant.

## **22 Protection of Customer's information**

22.1 Mariner may use the Customer's information such as the Customer's name, address, special needs, dietary requirements as it may reasonably require.

22.2 Mariner will apply appropriate security measures to protect the Customer's Information. However, Mariner must supply the Customer's information to certain service providers, including airlines, hotels and transport companies. Mariner may also supply it to security or credit checking companies and to public authorities such as customs and immigration.

22.3 Mariner will only pass data, including sensitive information regarding disabilities or dietary and religious requirements to people responsible for the Customer's travel arrangements.

22.4 The Customer hereby consents to the data referred to in this clause 22 being supplied to the any relevant persons and entities.

### **23 Force majeure**

23.1 A Party will not be liable for any loss suffered by the other Party arising out of delay in or prevention of performance of the Party's obligations due to any cause the adverse effects of which the Party could not and cannot reasonably and practicably avoid in the ordinary conduct of the Party's business.

23.2 To the extent that it becomes impossible for a Party to perform any obligation (other than a payment obligation) in terms of this Agreement because of an event or circumstance that was neither foreseen nor reasonably foreseeable when the Agreement was entered into or which, if the event could have been foreseen at that time including, but not limited to fire, an act of government, war, civil commotion, embargo, strike, lockout cannot be guarded against or avoided by reasonable care or the reasonable acts of that Party, that Party must: (1) notify the other Party within five Business Days of the nature, extent, effect and likely duration of the event or circumstance and keep the other Party updated as may be reasonably required by the other Party; (2) take all commercially reasonable action to remedy or minimise the consequences (and report to the other Party); and (3) immediately resume performance of its obligations under this Agreement and notify the other Party when performance of the obligation again becomes possible.

23.3 If a Party's performance is delayed by a cause described in clause 20 the Party will be entitled to a reasonable extension not exceeding 14 days for performance. If performance is or will be delayed for longer than this period the performance will be regarded as having been prevented.

23.4 If a Party's performance is prevented by such a cause the parties will: (1) if the obligation or obligations of which performance is prevented are not material, make such financial adjustment between them as may be equitable; (2) if the obligation or obligations of which performance is prevented are material, endeavour in good faith to agree on an alternative basis for achieving the objects of this agreement. If agreement on an alternative basis is not reached this agreement will terminate and: (a) either Party may retain the other's performance to the extent performance has taken place; (b) if a Party does not elect to retain the other's performance the other Party may nevertheless require that Party to retain the performance, unless to do so would be inequitable in the circumstances; (c) if a Party elects or is required to retain the other's performance the Parties will make such financial adjustment between them as may be equitable.

### **24 Default and breach**

24.1 In the event that a Party: (a) commits any breach of this Agreement and fails to remedy the such breach within [10] days of receipt of a notice from the other Party specifying the breach and requiring it to be remedied; (b) fails to pay an amount due on the due date of such payment in terms of this Agreement; (c) makes or threatens to make an assignment for the benefit of, or enters into any arrangement or composition with, its creditors, or suspends or ceases to carry on its business or threatens to do so; (d) goes into liquidation either compulsorily or voluntarily (except for the purpose of reconstruction or amalgamation), has a receiver, administrator or trustee appointed over the whole or any

part of its assets, or becomes subject to any other form of insolvency or business rescue proceedings or if any similar event occurs in relation to it under any applicable jurisdiction; (e) takes steps to deregister itself or is deregistered; or (f) commits an act of insolvency as defined in the Insolvency Act as at the date of this Agreement, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural person; such Party will be in default.

24.2 If a Party is in default (Defaulting Party) the other Party (Aggrieved Party) will be entitled, in addition to all other remedies in law, to: (1) cancel the Agreement, in which event: (a) the Aggrieved Party may retain all monies paid by the Defaulting Party or claim damages; (b) if the Aggrieved Party elects to claim damages the Aggrieved Party may retain all monies paid by the Defaulting Party pending determination of the amount of the damages; or (2) uphold the Agreement, in which event the full balance owing, and all other obligations owed, by the Defaulting Party will, at the option of the Aggrieved Party, become immediately due, payable and/or enforceable, as the case may be.

## **25 General**

25.1 Any written notice in connection with this Agreement including the addresses at which documents in legal proceedings in connection with this Agreement may be addressed and served (*domicilia citandi et executandi*): (1) in the case of Mariner through Mariner's electronic reservation and Booking system, which is currently Tarantella, Neptune and Extranet or any replacement thereof, or any third party computerised reservation system used by Mariner, as upgraded, enhanced or replaced from time to time (System) or to the physical or email address of Mariner in Schedule 1. (2) in the case of the Customer to the physical or email address of the Customer in Schedule 1.

25.2 The notice in clause 25.1 will be deemed to have been duly given: (1) five Business Days after posting (14 Business Days if the address is not in South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of clause 25.1; (2) on delivery, if delivered to the Party's physical address in terms of clause 25.1 between 08:30 and 17:00 on a Business Day (or on the first Business Day after that if delivered outside such hours); (3) on despatch, if sent to the Party's then fax number or e-mail address between 08:30 and 17:00 on a Business Day (or on the first Business Day after that if despatched outside such hours); unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

25.3 A Party may change that Party's address to another physical address in the Republic of South Africa or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.

25.4 Despite anything to the contrary in this Agreement, a written notice or communication actually received by a Party will be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen *domicilium citandi et executandi* or address in clause 25.1.

25.5 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or Agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

25.6 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a stipulatio alteri) which, if accepted by the person, would bind any Party in favour of that person.

25.7 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, will be effective unless reduced to writing and signed by or on behalf of the Parties.

25.8 No waiver of either Party's rights will operate as a waiver of any later breach of such provision(s) nor will it prevent that Party from relying on a breach in respect of which its rights have been waived, in order to justify enforcement of its rights in relation to a later breach.

25.9 No right, power or remedy conferred in this Agreement upon either Party or reserved for either Party will exclude any other right, power or remedy which is available to that Party, and each such right, power or remedy will be cumulative to the others.

25.10 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement will not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

25.11 Except as provided for in this Agreement, neither Party may give up any or all of their rights to another person nor delegate any or all of their obligations under this Agreement without the prior written consent the other Party, which consent will not be unreasonably withheld.

25.12 This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa.

25.13 The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape High Court for any proceedings arising out of or in connection with this Agreement.

25.14 Each Party will bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement. Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party will be borne by the Party in breach.

25.15 This Agreement may be executed in counterparts, each of which will be deemed to be an original and which together will constitute one and the same Agreement.

25.16 Each of the Parties hereby respectively agrees and acknowledges that: (1) it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and (2) each provision of this Agreement (and each provision of the Annexures) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

25.17 Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement. 26 26.1 26.3 26.5 27 27.1 5.1 to listed clauses. 27.2 24.16 and 25.1 to 25.5.

## **26 Capacity of the Lead Customer The Lead Customer represents and warrants that:**

26.1 It has the power to enter into and perform their obligations under this Agreement and to carry out the transactions contemplated by this Agreement;

26.2 It has taken all necessary action to authorise their entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement;

26.3 It has been duly authorised by each member of their party, accompanying them on the boating holiday in terms of this Agreement, to act on their behalf and to conclude this Agreement on their behalf, as their representative for all purposes in respect of and relating to this Agreement;

26.4 Its obligations under this Agreement are valid and binding and enforceable against them in accordance with their terms;

26.5 the execution, delivery and performance by the Lead Customer of this Agreement (and any other agreement required to be entered into by it in connection with this Agreement) will not (1) result in a breach of, or constitute a default under, any agreement or arrangement to which they are a party or by which they are bound; or (2) result in a breach of any law or order, judgment or decree of any court, governmental agency or regulatory body to which they are a party or by which they are bound.

## **27 Clauses to be drawn to the attention of the Customer in terms of the CPA**

27.1 The following clauses limit the risk of Mariner and constitutes an assumption of risk on the Customer, namely 5.3; 5.5 to 5.9; 7.1; 7.2; 8.1; 8.2; 9.1; 10; 11.1; 11.2; 12.2; 13.2; 14.2; 15.2; 19.4; 19.1; 19.3; 21.1 and 21.2. This means that in terms of the clauses listed in this clause 24.1, Mariner will not be responsible or accountable and the Customer will be prevented from recovering any losses from Mariner, in respect of the circumstances which are set out in the following clauses amount to an acknowledgment of fact by the Customer, namely 5.4, 5.10,. This means that the Customer accepts the clauses listed in this clause 27.2 as the truth and the Customer may not challenge this acknowledgment at a later stage.