

**DATED**

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**ASSOCIATED BRITISH PORTS**

And

**BABERGH DISTRICT COUNCIL**

and

**PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY**

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**Licence Agreement**

**in relation to moorings at Pin Mill Bay**

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ASSOCIATED BRITISH PORTS

25 Bedford Street

London

WC2E 9ES



- (F) ABP supported not only the restoration and upgrade works but also the creation of the CIC and its management of Pin Mill Bay. Consequently, ABP was fully aware of and consented, inter alia, to:
- a. the laying down of new mooring posts, scrubbing posts and barge repair blocks by Babergh DC;
  - b. the management of the new and existing moorings by the CIC; and
  - c. the implementation of a charging regime established by the CIC for use of moorings at Pin Mill Bay.
- (G) ABP's consent and/or grant of a licence to Babergh DC was not formally documented at the time that the CIC was established, but the parties have now concluded that it is appropriate to do so in the light of various challenges at law made against the CIC by third parties.
- (H) This Licence Agreement is being entered into for declaratory purposes, to retrospectively confirm ABP's consent to the CIC's historic activities and to clarify the basis upon which the CIC may continue to use moorings at Pin Mill Bay.

**AGREED TERMS:**

**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 In this Licence Agreement, unless the context otherwise requires, the following terms have the following meanings:

**"Commencement Date"** means the date at the head of this Agreement

**"Ipswich Harbour Area"** means ABP's Statutory Harbour Authority area, comprising the port, harbour and dock of Ipswich and any part of the river between Stoke Bridge and a line drawn across the river from Shotley Point to Fagborough Cliff;

**"Moorings"** means:

- (a) the posts for moorings and scrubbing purposes on the area at Pin Mill bay known as the "Hard" and comprising the concrete access roadway and the shingled area downstream thereof;
- (b) the barge repair facilities on the Hard;
- (c) the dinghy mooring chain immediately up stream of the concrete roadway of the said Hard; and
- (d) the new jetty and its berthing and related anchoring facilities,  
all as marked on the Plan;

**“Sub-Lease”** means the sublease dated 05 January 2016 pursuant to which Babergh District Council sub-let Pin Mill Bay to the CIC for a term of 21 years less 2 days with effect from 19 November 2012;

**“Licence”** has the meaning specified in Clause 2.3;

**“Licence Period”** means a period of twelve consecutive months beginning on the Commencement Date;

**“Plan”** means the plan of Pin Mill Bay attached to this Licence Agreement as Appendix 1; and

**“Pin Mill Bay”** means the area of Hard and foreshore over which the CIC has been granted the Sub-Lease, as delineated on the Plan.

- 1.2 The Interpretation Act 1978 will apply to this Licence Agreement in the same way as it applies to an enactment, except where its provisions are inconsistent with any express terms of this Licence Agreement.
- 1.3 The Schedule will have effect as part of this Licence Agreement.
- 1.4 Any references in this Licence Agreement to Clauses or Schedules or Appendices are to clauses of, or schedules or appendices to, this Licence Agreement.
- 1.5 Headings will be ignored in construing this Licence 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 Licence 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”.
- 1.9 Save as otherwise provided, in the case of conflict or ambiguity, the order of precedence for this Licence Agreement and the documents attached to or referred to in this Licence Agreement will be as follows:
  - (a) the main body of this Licence Agreement and the Appendix;
  - (b) the Schedule.

## 2. **GRANT OF LICENCE**

2.1 ABP acknowledges and agrees that:

- (a) at the time that Babergh DC promoted the project for refurbishment of the Hard at Pin Mill Bay, ABP granted an unwritten licence for Babergh DC to lay down, maintain, use, have and

- otherwise deal with (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) the Moorings at Pin Mill Bay;
- (b) Babergh DC subsequently granted to the CIC the right to use, have and otherwise deal with (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) the Moorings; and
  - (c) since the CIC's incorporation in 2010, the CIC has used and maintained the Moorings at Pin Mill Bay in accordance with the rights granted under Sub-Clauses 2.1 (a) and 2.1(b).
- 2.2 ABP further agrees to enter into this Licence Agreement in order to give more formal expression and effect to the arrangements referred to in Clause 2.1 and to provide for revised arrangements for the future in respect of the terms of use of the Moorings by the CIC.
- 2.3 With effect from the Commencement Date, ABP grants to Babergh DC a licence to maintain, use, have and otherwise deal with the Moorings as Babergh DC deems fit, (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) for the Licence Period and subject to the terms of this Licence Agreement and the Terms and Conditions set out in the Schedule to this Licence Agreement (the "**Licence**").
- 2.4 Babergh DC sub-licences to the CIC its rights under the Licence and Babergh DC and the CIC further agree that, for the purpose of exercising those rights:
- (a) the CIC agrees that it shall maintain, use, have and otherwise deal with the Moorings (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) in accordance with the terms of this Licence Agreement; and
  - (b) the CIC shall enter into the Licence Terms and Conditions set out in the Schedule to this Agreement (both upon signature of this Agreement and in accordance with the provisions of Clause 2.5).
- 2.5 The Parties acknowledge and agree that, following expiry of the Licence Period:
- (a) the Licence granted to Babergh DC by ABP and the sub-licence granted by Babergh DC to the CIC shall be renewed automatically each year on the anniversary of the Commencement Date for a period of one year (a "Renewal Year") until the expiry or earlier termination of the Sub-Lease; and
  - (b) in respect of each Renewal Year, the CIC shall enter into a set of Licence Terms and Conditions with ABP in substantially the same form as set out in the Schedule to this Licence Agreement PROVIDED THAT it is acknowledged by Babergh DC and the CIC that ABP shall be entitled to review the terms and operation of the Licence to take account of any further challenges made by third parties against the CIC or any other circumstances requiring such a review.

2.6 Nothing in this Licence Agreement shall prejudice ABP's entitlement to levy dues on ships, dues on cargo, quay rental or any other charges or to exercise any other power in accordance with its statutory rights and obligations or ABP's Standard Terms and Conditions of Trade.

### 3. **NO ASSIGNMENT**

3.1 The rights, powers, duties and obligations of the Parties under this Licence Agreement are personal to them and no party may assign or transfer the benefit or burden of this Licence Agreement without the written consent of both other Parties.

### 4. **GENERAL**

4.1 Any notice in writing that under the terms of this Licence Agreement is to be given to ABP will be deemed effectively served if addressed to ABP and delivered by hand or sent by recorded delivery post addressed to ABP's Harbour Master at Old Custom House, Key Street, Ipswich, IP4 1BY or upon such other person at such address in the United Kingdom as ABP may from time to time appoint for that purpose. Any notice in writing that is to be given by ABP to the CIC will be deemed effectively served if delivered by hand or sent by recorded delivery post addressed to the CIC to its secretary at its registered office.

4.2 The Parties will bear their own costs and expenses incurred in connection with the negotiation and preparation of this Licence Agreement.

4.3 This Licence Agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this Licence Agreement and constitutes the whole agreement between the Parties relating to the subject matter of this Licence Agreement as at the date of this Licence Agreement to the exclusion of any terms implied by law which may be excluded from this Licence Agreement. Each of the Parties represents that it has not entered into this Licence 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 Licence Agreement. This Clause 4.3 will not apply to any representation, undertaking, warranty or statement made fraudulently or which was induced by fraud.

4.4 Each Party irrevocably and unconditionally waives any right it may have to claim damages for, and/or rescind this Licence Agreement because of breach of any warranty not contained in this Licence Agreement, or any misrepresentation whether or not contained in this Licence Agreement unless such misrepresentation was made fraudulently.

4.5 No purported alteration or variation of this Licence Agreement will be effective unless it is in writing and it refers specifically to this Licence Agreement and is signed by an authorised representative of each of the Parties.

4.6 The Contracts (Rights of Third Parties) Act 1999 will not apply to this Licence Agreement and no person who is not a Party to this Licence Agreement (including any employee, officer, representative

or sub-contractor of either party) will have the right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Licence Agreement which expressly or by implication confers any benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause.

- 4.7 If any provision in this Licence Agreement or any document referred to in it or to be entered into pursuant to or in connection with it is held to be void, 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 Licence Agreement but the legality, validity and enforceability of the remainder of this Licence Agreement will not be affected.
- 4.8 This Licence Agreement may be executed in any number of counterparts and by the Parties on separate counterparts but will not be effective until each Party has signed at least one counterpart. Each of such counterparts (when so executed) will constitute an original of this Licence Agreement and all of which will together constitute one and the same document.
- 4.9 This Licence Agreement will be construed in accordance with and governed by the laws of England and Wales and in the event of any dispute or claim the Courts of England and Wales shall have exclusive jurisdiction.
- 4.10 Nothing contained in this Licence Agreement shall restrict or otherwise affect the ability of ABP to comply with its statutory duties.

## SCHEDULE 1

### LICENCE TERMS AND CONDITIONS

#### 1. Definitions and Interpretation

1.1 In this Schedule, unless the context otherwise requires, the following terms have the following meanings:

**LICENSEE** : the CIC

**LICENCE FEE** : £xxx per annum excluding any applicable VAT

**LICENCE NUMBER** :

**COMMENCEMENT DATE** :

**LICENCE PERIOD** : a period of 1 Year commencing on the Commencement Date.

**MOORING POINT(S)** : [XXX],

being the existing mooring points(s) used and maintained by the Licensee at the Mooring Points pursuant to this Licence.

**VESSEL(S)** : [XXX],

together with such other vessels as may use the Mooring Points from time to time during the Licence Period, as notified by the Licensee to ABP, and a reference to “the Vessels” shall mean any one of these vessels.

1.2 Reference to a “**Condition**” is a reference to the relevant Condition of these Terms and Conditions. The headings to the Conditions are to be ignored in construing this Licence. The words “include” and “including” are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them.

#### 2. The Licence

2.1 Subject to the terms and conditions set out in this Licence, ABP authorises the Licensee to maintain and use the moorings at the Mooring Point(s).

- 2.2 This Licence:
- 2.2.1 shall be for the Licence Period unless determined in accordance with the terms of this Licence;
  - 2.2.2 is personal to the Licensee and not transferable;
  - 2.2.3 is subservient to ABP's use of the River Orwell for the purposes of its undertaking; and
  - 2.2.4 shall be exercised by the Licensee at the Licensee's own risk.

3. Acknowledgements and Declarations

- 3.1 This Licence does not authorise:-
- 3.1.1 the discharge or running off into the River Orwell from any boat moored at the Moorings of anything other than unpolluted surface water draining naturally and such sink waste and engine cooling water as may be permitted from time to time by ABP, the Environment Agency or any other competent authority;
  - 3.1.2 the taking of water from the River Orwell; and
  - 3.1.3 any fishing in the River Orwell or mooring save as authorised herein.

4. Licensees' Covenants

The Licensee agrees with ABP:

- 4.1. To exercise the rights granted by this Licence diligently and in good faith and in the event of any breach of the Licence to immediately notify ABP in writing of such a breach.
- 4.2 The Licence Fee shall be payable within 30 days of the date of the invoice. For the avoidance of doubt the Licence Fee excludes harbour dues and any other charges that may be levied by ABP.
- 4.2 To pay all rates, taxes (including any VAT) and other outgoings which are levied in respect of the Mooring Point or otherwise because of this Licence.
- 4.3 To provide at its own expense any mooring rings and/or other mooring devices required for the proper mooring of the Vessels at the Mooring Points.
- 4.4 To keep the Moorings in a clean and tidy condition.
- 4.5 Not to moor or permit or suffer to be moored at the Mooring Point any houseboat or any craft used as a residence or any craft other than the Vessels.

- 4.6 To keep the Vessels or to ensure that the Vessels are kept in a sound and watertight condition.
- 4.7 Not to moor the Vessels so as to be less than 10 metres from the edge of the dredged channel.
- 4.8 To ensure that when moored the Vessels are adequately secured with suitable mooring lines.
- 4.9 To mark all Moorings and buoys at the Mooring Point with the Licence Number.
- 4.10 Not to do anything which may interfere with the carrying on of ABP's undertaking or which may otherwise cause nuisance annoyance or inconvenience to ABP or other users of the River Orwell.
- 4.11 To comply with all applicable laws, including bye-laws, and all directions given by ABP's Harbour Master.
- 4.12 Not to assign, underlet or part with the Licence hereby granted.
- 4.13 If required in writing by ABP, to remove the Moorings to the reasonable satisfaction of ABP immediately before the expiration or earlier ending of this Licence.

## 5. Liability

- 5.1 ABP does not accept any liability whatsoever in respect of any damage to any Vessels or any other craft, or any person or property which may arise out of or in connection with this Licence, other than in respect of death or personal injury caused by ABP's negligence.
- 5.2 ABP is not responsible for the safety or custody of the Vessels.
- 5.3 Without prejudice to Condition 5.4 or any other rights or remedies ABP may have pursuant to this Licence or otherwise, in the event ABP's Harbour Master considers that any vessel at the Mooring Point or which has broken adrift from the Moorings, or the wreck of such vessel or any Moorings has or is likely to become a danger to navigation, ABP may remove and/or salvage the Moorings, vessels or wreck and recover all of its cost and expenses for doing so from the Licensee.
- 5.4 The Licensee agrees to be responsible for and to release and indemnify ABP and its employees and agents from and against all liability and expense which would not have arisen but for the grant of this Licence except where caused by the negligence of ABP or its employees or agents.

## 6. Insurance

- 6.1 The Licensee shall ensure that it has adequate insurance in place to meet its liabilities hereunder, such insurance shall include third party liability insurance for a minimum of £1 million.

7. Termination by ABP

7.1 Without prejudice to any other rights or remedies it may have against the Licensee, ABP may terminate this Licence in the event of:

- (a) any sum payable under this Licence being unpaid 28 days after its becoming due;
- (b) a material breach of any of the Conditions contained in this Licence that is incapable of remedy;  
or
- (c) the Licensee not remedying any breach, lack of observance or performance of any of the Conditions contained in this Licence within 21 days of ABP giving written notice of its requirements for remedy to the Licensee.

This document will take effect on the date stated at the beginning of it.

Signed for and on behalf of

**ASSOCIATED BRITISH PORTS**

Signature .....

Print name .....

Date .....

Signed for and on behalf of

**Babergh District Council**

Signature .....

Print Name .....

Date .....

Signed for and on behalf of

**PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY**

**Director**

Signature .....

Print name .....

Date .....

**Secretary**

Signature .....

Print name .....

Date .....

**APPENDIX 1**

**PLAN OF THE AREA OF PIN MILL BAY SUB-LEASED BY BABERGH DISTRICT COUNCIL TO THE CIC**