

## **YACHT CHARTER BOOKING TERMS AND CONDITIONS**

**Please read these booking conditions carefully; they form an important part of the contract for your vacation. Please refer to our websites for the latest booking terms and conditions.**

If your vacation is with The Moorings brand then the same has been advertised in our brochures and on our website, and will be operated, by Mariner International Travel, Inc. trading as "The Moorings". If your vacation is with the Sunsail brand then the same has been advertised in our brochures and on our website, and will be operated, by Mariner International (USA), Inc. trading as "Sunsail". The applicable Mariner entity (Mariner International Travel, Inc. or Mariner International (USA), Inc.) is referred to in these Terms and Conditions as the **"US Company"**. In either case, Sunsail Worldwide Sailing Ltd ("SWSL") is also a party to your contract. SWSL and the applicable US entity enter into your contract as principals, each in its own right and in an independent capacity (together, the **"Contracting Companies"**). Except as expressly provided in Section 2.3 with respect to the US Company's limited role as collection agent for SWSL, neither Contracting Company acts as an agent for the other under these Terms and Conditions. Each US Company is registered at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801, USA with an address for the administration of paperwork at 311 Park Place Blvd, Suite 250, Clearwater, FL 33759, USA. All references to **"The Moorings"**, **"Sunsail"**, **"Company"**, **"we"**, **"us"** or **"our"** shall, as applicable, mean the Contracting Companies and, where relevant to the rights and protections under these Terms and Conditions, their respective affiliates, owners, officers and employees, as well as the named yacht or substitute yacht, including its master and any Crew. The use of a collective reference to the Contracting Companies does not, of itself, make either Contracting Company jointly and severally liable for the acts or obligations of the other, except where these Terms and Conditions expressly provide otherwise. Each limitation of liability, waiver, release, assumption of risk, indemnity, dispute resolution, governing law and jurisdiction provision in these Terms and Conditions applies for the benefit of, and may be enforced separately by, each Contracting Company.

The payment of your initial deposit creates a contractual relationship between SWSL and the US Company, and you, the lead charterer or passenger of the yacht provided by the Company (individually and for and on behalf of the other passengers of the yacht, and hereinafter individually and collectively referred to as **"you"**, or the **"Passenger"**) on the basis of these terms and conditions (**"Terms and Conditions"**). For the avoidance of doubt any reference to Passenger(s) in these Terms and Conditions is a reference to you and/or, as applicable, any other guest who participates in the vacation. Please read the following information carefully. **IN PARTICULAR YOUR ATTENTION IS DRAWN TO SECTIONS 7 (REGARDING OUR LIMITATION OF LIABILITY AND THE RESPONSIBILITIES OF INDEPENDENT CONTRACTORS), 14.2 (WAIVER OF JURY TRIAL), 14.3 (WAIVER OF CLASS ACTION), AND 14.6 (TIME LIMIT TO BRING ANY CLAIMS).**

It is a condition of your booking that you return signed Terms and Conditions within 72 hours of paying your initial deposit. They shall be emailed to the Lead Charterer to sign at the same time as the Booking Confirmation (as defined below) is sent to the Lead Charterer. Once the names of the other Passengers in your booking have been provided to us they shall be required to login to the 'My Account' in order to sign and return these Terms and Conditions. If any Passenger is not able to access the 'My Account' then they should contact us to make alternative arrangements to sign these Terms and Conditions.

**Please read these Terms and Conditions in full for more information and for other important rights and obligations. Your signature, and that of each fellow passenger aged 18 or over, is required and is a condition of this booking to confirm your agreement to the terms and conditions of your vacation. All Passengers must sign and return a copy of these Terms and Conditions. Should you fail to obtain the signatures of all Passengers who will be travelling on your booking, then we reserve the right to refuse boarding to any such Passenger without any liability to you or to any Passenger, whatsoever.**

### **Important Information for Yacht Charters in Greece and Italy:**

For Greece Yacht Charters the US Company acts as agent for our sister company, Hellenic Sailing Holidays SA. In accordance with local Greek legal requirements, upon arrival at our Greek base you will be provided with an invoice for the yacht charter (stamped as fully paid) and you will be asked to sign a separate yacht charter agreement (**"Greece Charter Agreement"**) before you will be allowed to take possession of the yacht. The Greece Charter Agreement will be between you and Hellenic Sailing Holidays SA for the charter of the yacht.

Our charters in Italy are operated by our franchise partner, Sailitalia, and you will be required to sign their terms and conditions on your arrival at the relevant base (**"Italian Charter Agreement"**) before you will be allowed to take possession of the yacht. The Italian Charter Agreement will be between you and Sailitalia. To the extent the US Company received any amount attributable to Hellenic Sailing Holidays SA or Sailitalia in connection with a Greece or Italy charter, it receives that amount solely as collection agent for the applicable entity and not for its own account. For the avoidance of doubt, the collection agency described in this paragraph is limited to collection of such amounts and does not itself create or expand any other agency relationship.

No additional payment will be required from you under the Greece Charter Agreement or the Italian Charter Agreement (or the invoice in the case of the Greek charters) and a copy of the Greece Charter Agreement or the Italian Charter Agreement can be provided to you in advance of departure upon request. To the extent there is a conflict between these Terms and Conditions and, as applicable, the Greece Charter Agreement or the Italian Charter Agreement as they relate to you, then these Terms and Conditions shall prevail and supersede the provisions of the Greece Charter Agreement. **By asking us to confirm your booking for Greece or Italy, you agree that the US Company is acting as agent in the booking of your Greek yacht charter or Italian yacht charter and accept the provisions of this section and agree that you will sign the Greece Charter Agreement or the Italian Charter Agreement upon arrival at the respective base.**

## 1. Itineraries and guest information

- 1.1 Dates and itineraries that we provide are indicative only and subject to change.
- 1.2 In order to ensure all Passengers are aware of important information regarding your vacation (such as, but not limited to, charter briefings, safety information and these Terms and Conditions (for which their signature is a condition of this booking (see above))), it is a condition of your booking that you promptly inform us of the names and details of all Passengers on your booking and update us immediately should any Passenger details change. Any person whose name has not been provided to us, and who has not signed a copy of these Terms and Conditions, shall not be permitted onboard the yacht.
- 1.3 In providing Passengers' information to us, you confirm that you have obtained the Passengers' express permission to provide us with their contact details. We confirm their details will be used in accordance with our privacy policy which can be found on our websites at <https://www.moorings.com/privacy> and <https://www.sunsail.com/about-us/legals/privacy>.

## 2. How to book

- 2.1 You can make a booking via our websites at [www.moorings.com](http://www.moorings.com) or [www.sunsail.com](http://www.sunsail.com), or by contacting us by telephone using the numbers on our websites. You can also make a booking with us via an approved agent authorized to sell our vacations. The person making the booking (the "**Lead Charterer**") must be 18 years old or over and possess the legal capacity and authority to make the booking. The Lead Charterer must ensure that all Passengers are aware of the need for them each to sign these Terms and Conditions in order to participate in the vacation.
- 2.2 The Lead Charterer confirms they have full authority to make the booking on behalf of all Passengers named in the booking (the "**Travel Party**"). The Lead Charterer agrees to provide each member of the Travel Party with a copy of these Terms and Conditions and warrants that all members have agreed to be bound by them. The Lead Charterer agrees to bring these Terms and Conditions to the attention of, and to procure the agreement and compliance of, each member of the Travel Party. By signing, the Lead Charterer accepts these Terms and Conditions for and on behalf of every other Passenger named on the booking. This is in addition to, and does not limit or replace, the obligation in Section 1.2 for each Passenger to sign these Terms and Conditions.
- 2.3 For the purposes of these Terms and Conditions, a "**Non-Group Charter**" is any booking whereby the total number of yachts included in your booking is four (4) or less yachts. A "**Group Charter**" is any booking whereby the total number of yachts included in your booking is five (5) or more yachts. The "**Vacation Total**" means the price of all services which are booked with the Company as part of your vacation including, without limitation (and if applicable), the price of the yacht, any provisioning costs, any Crew onboard the yacht, any YDW (as defined in section 11.1), any prepaid fuel and the cost of any other services included in the price of your vacation. The Vacation Total is consideration for the services and arrangements provided under your booking by the Contracting Companies. Each Contracting Company is entitled to the portion of the Vacation Total allocated to it under the arrangements between them. That allocation does not change the Vacation Total payable by you, and you are not required to make separate payments to each Contracting Company. Unless we tell you otherwise, the US Company will act as merchant of record for payment processing purposes and will receive and process all payments due under your booking on behalf of itself and SWSL. To the extent the US Company receives any amount attributable to SWSL, it receives that amount solely as collection agent for SWSL and not for its own account. For the avoidance of doubt, when the US Company is collecting on behalf of SWSL, it is acting as a collection agent and not as an agent of SWSL in any other capacity. Payment to the US Company in accordance with these Terms and Conditions fully discharges your corresponding payment obligation to both Contracting Companies. Any refund due to you under these Terms and Conditions may likewise be paid by the US Company on behalf of both Contracting Companies.
- 2.4 We will only deal with the Lead Charterer in all subsequent correspondence, including any changes, amendments and cancellations. The Lead Charterer is responsible for ensuring the accuracy of the

personal details or any other information supplied in respect of all Passengers and for passing on any information regarding the booking or any changes made in relation thereto to all Passengers. This includes but is not limited to information on schedule changes or copies of booking confirmations.

2.5 All sums stated in these Terms and Conditions are in US\$ unless stated otherwise.

2.6 To make a booking you must pay a deposit and any balance payments in accordance with the following:

|                          | Upon booking                                                                                                  | Final balance due date                                                                                                                                                                                    |
|--------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NON-GROUP CHARTER</b> | 50% of the Vacation Total (unless your booking departs within 120 days)                                       | Final balance due no later than 120 days prior to the departure date specified on the Booking Confirmation (" <b>Departure Date</b> ")                                                                    |
| <b>GROUP CHARTER</b>     | \$500 deposit for each yacht listed on the Booking Confirmation (unless your booking departs within 180 days) | 50% payment of the Vacation Total for all yachts is due 180 days prior to the Departure Date.<br><br>The remaining outstanding balance payment is due no later than 120 days prior to the Departure Date. |

2.7 For all charters with a Departure Date between December 20<sup>th</sup> and January 6<sup>th</sup>, the Non-Group Charter payment schedule applies, irrespective of the number of yachts listed on the Booking Confirmation. Special events and packages may follow separate deposit, payment and cancellation schedules. You will be advised of this at the time of booking.

2.8 The Lead Charterer is jointly and severally liable for the full cost of the booking. This includes deposits, balance payments, amendment fees (and any increased costs following any amendment), cancellation charges, any claims brought by third parties, and any other fees arising from the booking, regardless of whether payment is made by the Lead Charterer or by another member of the Travel Party. If any member of the Travel Party disputes or reverses a payment (including by chargeback or similar action), the Lead Charterer remains liable for the full outstanding amount. By making the booking, the Lead Charterer acknowledges and agrees that all payments are authorized on behalf of the Travel Party and may not be disputed or reversed by individual members of the Travel Party. The Lead Charterer agrees to indemnify the Company for any loss, cost, or expense (including chargebacks and related fees) resulting from unauthorized or disputed payments initiated by any member of the Travel Party.

2.9 **Deposits are non-refundable. If complete and final payment is not made by the due date then we reserve the right to cancel your booking, in which case all deposits, and any interim payments paid to date will be forfeited.**

2.10 If we accept your booking, we will issue the Lead Charterer with a confirmation invoice ("**Booking Confirmation**") which shall be sent by email. The Lead Charterer should check the Booking Confirmation and the departure documents carefully upon receipt and inform us immediately if anything is incorrect. Once the booking is accepted you will receive an invitation by email to your "My Account". The Lead Charterer must log in to the "My Account" as soon as possible after the Booking Confirmation has been issued and provide us with the names, email addresses and any other information that we require, in order for us to send copies of these Terms and Conditions and any other documentation to all Passengers aged 18 or over. Copies of any travel documents will be sent to the addresses provided to us by the Lead Charterer so it is essential that these are accurate. Names on travel documents must exactly match those in the Passengers' passports. We cannot accept any liability for any documentation lost in the mail. Travel documents may be in paper or email form depending on your chosen vacation. You cannot assign or sub-charter your booking without the prior written consent of the Company.

2.11 We will consider special requests when you book. We will tell you whether there is a charge for the request. It is your responsibility to advise us of any special requirements. We regret we cannot accept any booking which is conditional upon the fulfillment of a particular request.

2.12 The safety of you and all other Passengers is of paramount importance to us. It is therefore imperative that you advise us at the time of booking of any condition, medical or otherwise, that might affect your or other Passengers' enjoyment of your vacation.

2.13 For bookings made through an agent, broker or other third party, please contact your agent directly in respect of any amendments or should you need to discuss your vacation.

### 3. Crew

- 3.1 There is an option to add to your booking a skipper, onboard crew, and / or a chef. Such persons are individually and collectively referred to in these Terms and Conditions as "**Crew**". Crew may be added either at the time of booking or at any time after, but is always subject to availability. You are advised to contact us as soon as possible should you wish to add any Crew to your booking as availability may become more limited the closer to your Departure Date that any request is made. There shall be a charge for adding any Crew to your booking. You will be notified of these costs at the time of booking any applicable Crew. The cost of adding Crew to your booking will be included in the Vacation Total. If any Crew is added to your booking within 120 days of the Departure Date then 100% cancellation charges shall apply should you no longer wish to have the applicable member of Crew as part of your booking.
- 3.2 Should you wish to add any Crew onto your booking then each member of Crew shall be required to have their own interior cabin onboard the Yacht (unless alternative arrangements are agreed in writing with the Company). You shall be required to have a skipper onboard the yacht in the event that a Passenger named on your Booking Confirmation does not possess sufficient competency to sail the yacht as set out in these Terms and Conditions. The decision of the Company in respect of your, or any other Passenger's, competency shall be final.
- 3.3 By making a booking where a skipper is not included, you confirm that you and/or members of your Travel Party are capable and competent to sail the yacht in the conditions and cruising area of your vacation in-line with port authority regulations advised at (i) the point of sale, (ii) which are noted online, (iii) are otherwise brought to your attention before the commencement of your vacation, and/or (iv) that you ought reasonably to have been aware of given the location of the cruising area. The Lead Charterer is responsible for ensuring that all Passengers have the necessary documentation for the cruising area. In many of our destinations you are required to be appropriately qualified and possess such documentation during the charter so you must ensure you carry such with you at all times.

### 4. Prices

- 4.1 All prices we advertise are accurate as of the date of publication, but we reserve the right to change any of those prices from time to time. Prices on our website are updated regularly. Before you make a booking we will give you the up-to-date price of your chosen vacation, including the cost of any supplements, upgrades or additional facilities which you have requested. In the unlikely event of an administrative error leading to an incorrect price being displayed, we reserve the right to correct it. Offers are not combinable unless expressly stated and may be withdrawn at any time.
- 4.2 To cover the cost of processing a credit or charge card transaction, and pursuant to applicable state regulations (including, with respect to Colorado, section 5-2-212, Colorado Revised Statutes), we impose a surcharge of 3% for all credit card payments, including the deposit and all balance payments. This surcharge is not greater than our acceptance costs for credit card transactions and does not apply to payment via debit card, wire transfer or check or redemption of a gift card, or to credit card payments with a billing address in Connecticut, Massachusetts, or Puerto Rico. Any surcharge is to cover the cost of the booking service provided and the surcharge fee does not constitute part of the price of your booking.
- 4.3 If you choose to pay via Automated Clearing House ("**ACH**") then such service is made available by our bank, Bank of America, from time-to-time. In making such payment, the person paying must agree to the Bank of America ACH terms and conditions (as updated from time-to-time) and authorizes us to accept and process payments via ACH.
- 4.4 The price of your booking is based on costs known at the time that the Booking Confirmation is issued. We reserve the right to adjust the Vacation Total (a "**Price Adjustment**") to reflect increases in costs directly attributable to (a) fuel or energy costs; (b) taxes, duties, levies or other governmental charges; (c) increases in costs imposed by third party suppliers beyond our reasonable control; and/or (d) material fluctuations in foreign exchange rates. Any Price Adjustment shall be: (i) limited to the proportional amount of the cost increase attributable to your booking; (ii) supported by a reasonable explanation of the basis of the adjustment; and (iii) notified to you in writing as soon as reasonably practicable and in any event no later than 30 days prior to the Departure Date. If any Price Adjustment results in an increase of more than 10% of the Vacation Total, you may cancel your booking by providing written notice to us within 7 days of receipt of the notice of the Price Adjustment, in which case you shall receive a full refund of all amounts paid to us for your vacation.
- 4.5 Where fuel is purchased as an added extra then you will be provided with a full tank of fuel with your yacht. Please note this sum is non-refundable and even if you have fuel remaining at the end of your vacation, no refund will be given. Where fuel is not purchased you must return the yacht to the base with

a full tank of fuel. If you do not you will be charged by the Company to refill the yacht with fuel including a premium payment.

**5. If you change or cancel your vacation**

- 5.1 **YOUR RIGHT TO A REFUND IS LIMITED.** Cancellation and/or refund requests must be sent to us in writing and cannot be made verbally. **NO REFUNDS (IF APPLICABLE) WILL BE ISSUED IN RESPONSE TO VERBAL CANCELLATIONS.**
- 5.2 For all bookings, if your booking is cancelled more than 120 days prior to the Departure Date then the Company shall retain your deposit.
- 5.3 For Non-Group Charters, if your booking is cancelled within (and including) 120 days prior to the Departure date (or where your booking is made within 120 days of the Departure Date) then 100% cancellation charges of the Vacation Total shall apply in the event of any cancellation of your booking.
- 5.4 For Group Charters, for cancellations which are made:
- 5.4.1 180 days (or more) prior to the Departure Date, then the cancellation charge shall be \$500 per yacht named on the Booking Confirmation;
  - 5.4.2 between 179 days and 121 days prior to the Departure Date, the cancellation charges shall be 50% of the Vacation Total, plus \$500 per yacht named on the Booking Confirmation; and
  - 5.4.3 120 days (or less) prior to the Departure Date, then 100% cancellation charges of the Vacation Total shall apply.
- 5.5 If your booking includes any pre- / post- charter accommodation at The Moorings Yacht Club Hotel then you shall be permitted to cancel your booking for accommodation at The Moorings Yacht Club Hotel up to 14 days before the first night stay at The Moorings Yacht Club Hotel and receive a full refund of all amounts paid in respect of The Moorings Yacht Club Hotel. The cancellation terms under this section 5.5 are separate to the cancellation charges which apply to your vacation for which section 5.2 to 5.4 apply.
- 5.6 **It is a condition of your booking that you purchase travel insurance to cover your booking and travel arrangements.**
- 5.7 If, after the Booking Confirmation has been issued, you wish to make a change to your booking we will, subject to availability and the provisions of sections 5.8 to 5.13, try to make the changes provided that notification is received in writing from the Lead Charterer.
- 5.8 We will not charge you fees to amend your booking should you need to correct an incorrect first name, surname or title initially provided to us at the time of booking, so long as you notify us of such correction no later than 30 days prior to the Departure Date. There may be charges or fees for any notification to us under this section 5.8 which is made within 30 days prior to departure..
- 5.9 Other than amendments under section 5.8, you are only permitted to make one (1) amendment to your booking, provided that such amendment is made by the time periods specified in section 5.10. By way of example only, if you change the date of departure of your booking, this shall constitute an amendment to your booking and you shall not be permitted to make any further amendments to your booking, such as changing the destination or the type of yacht etc. Any further amendment(s) will be treated as a cancellation and the cancellation terms in sections 5.2 to 5.4 shall apply.
- 5.10 You may change the departure date of your booking, subject to availability, provided this is done no later than 120 days prior to the Departure Date. No changes to the departure date may be made within (and including) 119 days prior to the Departure Date. For any other changes, which are not date changes, the change must be made no later than 60 days prior to the Departure Date. No other changes shall be permitted within (and including) 59 days prior to the Departure Date.
- 5.11 You shall be required to pay an amendment fee of \$500, in addition to any additional resulting costs, in order to confirm your amendment.
- 5.12 If, after any amendment has been made, your new Vacation Total is cheaper than the previous Vacation Total, then no refund of the difference will be made to you. If the new Vacation Total increases after the amendment has been made you shall be required to pay all additional amounts to confirm the amendment.

- 5.13 Some aspects of your booking may be non-refundable from the point of booking. Should you have purchased anything other than the booking for the yacht, then other charges in addition to those above may apply. You will be advised of this at the time of booking and/or in your Booking Confirmation.

## **6. If we change or cancel your vacation**

- 6.1 The arrangements for your vacation are made many months in advance. It is inevitable that changes will sometimes become necessary. We reserve the right to make such changes if we determine that they are necessary. Most changes will be minor and we will advise you of them as soon as possible. If major changes are made by us (such as, for example, not an equivalent (or substantially similar) yacht being made available, destination changes, date changes, or a delay in handover of the yacht of more than 24 hours), you will be notified as soon as reasonably possible and, subject to availability, we may offer you an alternative charter if there is time before your Departure Date. In most cases, we will offer an alternative charter which is the same price, or more expensive than the charter you originally booked. If an alternative charter offered by us is cheaper, you are entitled to a refund of the price difference. We reserve the right to assign or transfer your booking from The Moorings to Sunsail (or vice versa). This shall have no impact on your booking and the booking details will remain the same as in your Booking Confirmation.
- 6.2 We also reserve the right to recall the yacht, or if necessary to cancel your vacation, due to a Force Majeure Event (as defined below). If we cancel your charter, except for a Force Majeure Event or as a result of your non-payment of any amounts due under these Terms and Conditions, or for any other breach by you of your obligations under these Terms and Conditions, then you are entitled to receive a full refund of all monies paid. For the avoidance of doubt no refund or compensation will be paid if your vacation is cancelled due to a Force Majeure Event.
- 6.3 We strongly recommend that you do not make travel arrangements to your point of departure or make any connecting travel arrangements that are non-refundable or non-changeable or incur penalties or costs in respect of visas or vaccinations until such time as your travel itinerary has been confirmed on your Booking Confirmation. Any travel arrangements you make are separate to your booking with us and with independent third parties. As such, we are not responsible in any way in respect of such travel arrangements.
- 6.4 We reserve the right to refuse to accept a Passenger or remove a Passenger from your vacation if that Passenger violates any law, or, in our sole discretion, is disruptive to others, or constitutes a danger to themselves or others, the yacht or any third party property. In the event the Passenger is so removed, or their participation in the vacation is terminated, then that Passenger shall be responsible for any, and all, expenses which arise as a result, including (without limitation) the cost of returning the Passenger to the base, hotel accommodations and any return flights. In the event that the Company incurs any of these costs, the Passenger agrees to fully indemnify the Company from those costs. Further, the removed Passenger will not receive any refund for the remaining portion of their vacation. If any Crew or any of our base staff or agents, in their reasonable discretion, believes that a Passenger is disruptive or that they are suffering from a contagious disease, they can also refuse to let such Passenger proceed with the vacation, disembark the Passenger from the yacht, remove the Passenger from an accommodation or excursion/activity or take any other action or steps that they reasonably consider appropriate in the circumstances.

## **7. Our liability, conditions of carriage and limitations**

- 7.1 **NEITHER SWSL, THE US COMPANY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OWNERS, OFFICERS, AGENTS, OR EMPLOYEES, SHALL BE HELD LIABLE FOR ANY ACT, DEFAULT, INJURY (INCLUDING DEATH), LOSS, EXPENSE, DAMAGE, DEVIATION, DELAY, CURTAILMENT OR INCONVENIENCE WHICH MAY OCCUR OR CAUSED TO OR BE INCURRED OR SUFFERED BY ANY ENTITY, PERSON OR THEIR PROPERTY, HOWSOEVER ARISING, WHERE SUCH ACT, DEFAULT, INJURY, LOSS, EXPENSE, DAMAGE, DEVIATION, DELAY, CURTAILMENT OR INCONVENIENCE MAY HAVE BEEN CAUSED OR CONTRIBUTED TO BY DEFECTS OR FAILURES OF ANY AIRCRAFT, VESSEL, AUTOMOTIVE VEHICLE OR OTHER EQUIPMENT OR INSTRUMENTALITY UNDER THE CONTROL OF INDEPENDENT SUPPLIERS.** You further understand that if you purchase any optional activities, or transportation, that are not part of your vacation itinerary which you have booked with the Company (including, without limitation, shore excursions and tours, however conducted, airline flights, ground transportation, diving equipment (including use / hire of)): (a) these activities are operated by independent contractors; (b) the contract for the provision of that activity will be between you and the third party provider for such activity; (c) neither Contracting Company owns or operates the third party supplier; and (d) accordingly, you agree to seek remedies directly and only against the third party supplier and not hold either Contracting Company responsible for such third party supplier's acts or omissions whatsoever.

- 7.2 You understand and acknowledge that travel on a yacht and participation in any activities arranged by the Company included in your itinerary may involve risk and potential exposure to injury. You realize and acknowledge that risk and dangers may be caused by the negligence or participation of other Passengers. You also recognize and acknowledge that risk and dangers may arise from foreseeable and unforeseeable causes, including weather, other acts of nature or any Force Majeure Events. You fully understand and acknowledge that the aforementioned risks, dangers and hazards are a potential in connection with recreational activities which may take place during your vacation, and that you are willingly and knowingly electing to sail on the yacht and participate in the vacation in spite of such potential risk of danger.
- 7.3 In recognition of the inherent risk of the travels and related activities in which you are intending to engage, you confirm that you are physically and mentally capable of participating in the vacation, and you willingly and voluntarily assume full responsibility for any injury, loss or damage caused by, or to, you. It is your responsibility and obligation to inform the Company, at the time your booking is made, of any medical or physical disability or limitation that might disable you or render you unable to perform or safely participate in the vacation. Your failure to do so will release us from any liability for loss, damages or other compensation arising from or related in any way to such disability or condition. You further acknowledge that you are the best judge of your own conditions and limitations and that it is incumbent upon you to fully disclose the full extent of any such conditions or limitations to the Company.
- 7.4 In consideration of the services and arrangements provided by the Company, you, for yourself, and on behalf of other Passengers on your vacation, and for your heirs, personal representatives or assigns, do hereby release, waive, discharge, hold harmless and agree to indemnify each of SWSL and the US Company, and each of their respective owners, officers, directors, employees and affiliates from any and all claims, actions, or losses for emotional injury, bodily injury, property damage, wrongful death, loss of services, lost profits, consequential, exemplary, indirect or punitive damages or otherwise which may arise out of or occur during your vacation conducted in conjunction therewith and shall include, without limitation, any loss caused by breakage of shafts or any defect or unseaworthiness in hull, machinery or appurtenances, equipment, furnishings, supplies or officers or Crew of the yacht or its launches or watercraft; fault or neglect of the skipper, tugs, officers or members of the Crew, agents, servants, independent contractors; the quality, nature or consequences of medical or surgical treatment; your negligence or caused by your breach of these Terms and Conditions; or which results from your acts, omissions or defaults or any person acting on your behalf, or which results from the acts, omissions or defaults of, or any claims asserted by, the other Passengers on your vacation. Neither SWSL nor the US Company is liable for injury, illness or death of any Passenger unless directly caused by the negligence or willful misconduct of the Contracting Company against which the claim is made. Regardless of the situation or circumstances giving rise to a claim, you waive any right to seek consequential, punitive or exemplary damages against either SWSL or the US Company, or any of their respective owners, directors, officers, employees, agents, and affiliates, for any reason whatsoever.
- 7.5 The aggregate maximum liability of SWSL and any US Company, for any reason whatsoever, will be limited to the amount paid by you in respect of your vacation. For the avoidance of doubt, this is an aggregate cap applying to the Contracting Companies together and not a separate cap for each Contracting Company. If any international convention applies to, or governs, any of the services or facilities included in your vacation arranged or provided by us and you make a claim against us of any nature arising out of death, injury, loss or damage suffered during or as a result of the provision of those services or facilities, our liability to pay you compensation and/or the amount (if any) of compensation payable to you by us will be limited in accordance with and/or in an identical manner to that provided for by the international convention concerned (in each case including in respect of the conditions of liability, the time for bringing any claim and the type and amount of any damages that can be awarded). International Conventions which may apply include, without limitation, in respect of carriage by sea, the Athens Convention 1974. For the avoidance of doubt, this means that we are to be regarded as having the benefit of all limitations of compensation contained in any international conventions applicable to your vacation. Other than as set out above, and as is detailed elsewhere in these Terms and Conditions, we shall have no legal liability whatsoever to you for any loss or damage.
- 7.6 In the event medical care becomes necessary on your vacation, you may be hours or days travel by water, road, air or other (including non-vehicular) transportation from any medical facility. The medical facility you may be treated in may not have the same standards as hospitals or doctor's offices in your home country. The medical personnel you will be treated by may not speak fluent English and/or have the same training as medical personnel in your home country. You further acknowledge that an emergency evacuation may be unavailable, expensive and delayed at your yacht location, and that the medical facilities and attention available aboard the yacht are limited. Decisions are made by the Company staff based on a variety of perceptions and evaluations of the situation at hand. You understand and agree to abide by these decisions.

- 7.7 To the fullest extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in these Terms and Conditions.

## **8. Force majeure**

- 8.1 Without limitation, the Company is not responsible for, and no refunds or compensation will be given for, delays or cancellation of all or part of your vacation due to causes or circumstances beyond our responsibility or control, including but not limited to acts of God; perils of the sea, harbors, rivers, or other navigable waters; act of any governmental or ruling authority; epidemic; collision; stranding; fire; war; hostilities; riots; strikes or labor stoppages; or any other cause or circumstance beyond our responsibility or control (a **"Force Majeure Event"**).
- 8.2 For the avoidance of doubt, a Force Majeure Event also includes (a) the occurrence of any pandemic, epidemic or prevalent disease or illness with an actual or probable threat to human life as may be designated or determined by any local, city, county or state governmental entities, as applicable, or the federal government of the United States, the World Health Organization (WHO) or the U.S. Centers for Disease Control (CDC); including, without limitation, coronavirus, atypical pneumonia, Severe Acute Respiratory Syndrome (SARS), or avian influenza, or (b) adherence to any travel restriction, warning or advisory issued in relation thereto by any local, city, county or state governmental entities, as applicable, or the federal government of the United States, the World Health Organization (WHO) or the U.S. Centers for Disease Control (CDC), or (c) any quarantine or similar measure taken in relation thereto by any governmental agency or authority to prevent the spread of any communicable disease, or (d) any unavailability of any resources, information or services resulting from any of the foregoing including, without limitation, the unavailability of resources, information or services due to any governmental shut-downs or the unavailability of resources, information or services due to a shut-down, quarantine or similar measure of any third-party service provider whose service or information is relied upon by us to operate your vacation or otherwise fulfill our obligations under these Terms and Conditions.

## **9. Yacht charter information**

- 9.1 We and, as applicable, any Crew cannot be held responsible for underage consumption of alcohol.
- 9.2 Use of the yacht is for pleasure only. The yacht shall not transport merchandise or carry passengers for pay without our prior written consent. No pets or other animals are permitted onboard the yacht.
- 9.3 You are not permitted to sail/cruise on your yacht during the hours of darkness (which shall run from the start of sunset to sunrise). The yacht must be moored or docked at least one hour prior to sunset.
- 9.4 If your booking does not include any Crew provided by the Company, you should inspect the yacht, her gear, and inventory upon handover and ensure that all items are present and in good working condition. Following the onboard briefing, you accept the yacht and thereafter, it is your full responsibility, and you will have no right to claim for any loss of time or expense caused by an accident or breakdown or failure of any part of the yacht caused by your or any other Passenger's acts or omissions, or defects which are agreed and noted on the documentation during the onboard briefing.
- 9.5 Even if your booking does include any Crew provided by the Company, it is strongly recommended that you take the actions set out in section 9.4 and notify the Company of any issues you identify and / or raise any queries pre-departure.
- 9.6 Following the conclusion of your vacation, you must return the yacht at the time and place specified by us, free and clear of liens and indebtedness and in the same condition as the yacht was handed over to you, subject to normal wear and tear. If you return the yacht late, you will be liable to pay a penalty charge of at least one day equivalent price for every three hours late and you will be liable for all recovery costs.
- 9.7 The cruising area from, or around, each base may be restricted. The base team will inform you of any restrictions during the pre-charter briefing. Such information shall also be available in the E-Guide (as defined in section 11.5) and may further confine the cruising area of the yacht or require that there be additional competent crew onboard if considered necessary for the safety of the yacht and all Passengers, in which case a daily charge will be made for each crew member that is onboard the yacht.
- 9.8 When sailing the yacht, you are obliged to always have at least 2 persons onboard who must both be 18 years old or over. Unless you have added a skipper as part of the Crew for your booking, you shall be required to appoint a skipper who must oversee the yacht at all times. You must notify the Company of which Passenger is the appointed skipper. Furthermore, you must appoint a first mate who must be suitably skilled to carry out the role and be trained and experienced to conduct a "man overboard"

procedure in accordance with the standards set out at <https://www.boatus.com/expert-advice/expert-advice-archive/2012/october/man-overboard-rescue-for-powerboats>. Should you wish to have only the skipper and someone under the age of 18 onboard then you will need the Company's express written approval prior to you making your booking. If you are a solo traveller then please speak to the Company who can arrange for you to hire a member of Crew as your second mate on board. Charges in respect of that member of Crew shall be as set out in section 3.1.

- 9.9 Persons under the age of 18 years are not permitted to charter a yacht from the Company or otherwise sail the yacht at any time. Where a person under the age of 18 years shall be a named Passenger on your booking but travelling with a person, over the age of 18, but who is not their parent or legal guardian, the parent or legal guardian must provide written permission for that person to travel and must sign these Terms and Conditions and any other associated documentation on behalf of their child prior to departure.
- 9.10 If you hire a skipper, or any other third party suppliers (or utilize equipment from such third party suppliers, such as (but not limited to) diving equipment) to provide services onboard your charter, who are not Crew provided by the Company, then you do so at your own risk. Such persons must form part of your guest list that is provided to the Company and they are subject to all of the requirements in these Terms and Conditions including, but not limited to, signing and agreeing to these Terms and Conditions; completing a Company mandated sailing resume and providing copies of all relevant sailing qualifications and applicable paperwork. You must inform the base on arrival that you have hired a skipper and identify them to the base. You shall be liable for all acts or omissions of any third party suppliers or skippers.
- 9.11 If you require the use of electrical CPAP equipment, or any other equipment that requires the use of large or unusual amounts of electricity, you should inform us at the time of booking. We make no guarantee that sufficient power will be available to run the CPAP machine or any other electrical equipment which uses high amounts of electrical power. It is your responsibility to only ever use the CPAP equipment, or any other such equipment, in line with manufacturer instructions and we accept no liability for any damage, malfunction, theft, loss or any other issues with such CPAP equipment, or any other personal items or equipment, during your vacation.

## **10. Equipment and yacht insurance coverage**

- 10.1 You should insure yourself against any possible risk that may occur during your vacation and in particular to ensure that you have sufficient insurance in respect of dependent relatives and Force Majeure Events. The Company cannot be held responsible for any loss which you may suffer as a result of you providing incorrect information (such as, by way of example only, previous sailing experience (with regards bareboat charters or flotillas) when requested), or due to your negligence, deliberate default, or willful misconduct. Adults will at all times be responsible for minors in their charge.
- 10.2 For your convenience, we offer a Travel Protection Plan administered by Trip Mate, a Generali Global Assistance & Insurance Services brand. This may help protect your travel investment, your belongings and most importantly, you, from many unforeseen circumstances that may arise before or during your trip, including costs of circumstances that may arise from any illness. Individuals looking to obtain additional information regarding the features of the Travel Protection Plan, please visit <https://www.sunsail.com/insurance>. **Insurance benefits in the Plan are subject to limitations and exclusions, including an exclusion for pre-existing conditions.** Plan benefits, limits and provisions vary by state/jurisdiction and not all coverage is available in all states. To review full plan details online and Important Disclosures, go to: <https://www.csatravelprotection.com/certpolicy.do?product=GR40A>.
- 10.3 The Company agrees to insure and keep insured the yacht against public liability and marine public liability to such an extent as the Company in its absolute sole discretion shall deem appropriate. Such insurance policy does not cover loss of life (except that caused through the negligence of the Company), or damage to or loss of property of any person on board against which you must insure prior to the charter. Advice about such insurance is available from the Company on request.

## **11. Yacht damage waiver and security deposits**

- 11.1 For all charters, you will be required to provide cover against accidental damage or loss to the yacht and ancillary equipment and either purchase Yacht Damage Waiver ("YDW") upfront or pay a higher security deposit at the base. The latest YDW rates are available online at [www.moorings.com/yacht-damage-waiver](http://www.moorings.com/yacht-damage-waiver) for "The Moorings" bookings and at [www.sunsail.com/about-us/legals/yacht-damage-waiver](http://www.sunsail.com/about-us/legals/yacht-damage-waiver) for "Sunsail" bookings. The YDW rates are also available from us upon request. The YDW rates provided to you at the time of booking are based on current pricing at that time and are only guaranteed at the time of booking. If you choose to purchase YDW after your booking is confirmed, your rates may vary and are subject to change without notice.

- 11.2 In the event that you or any other Passenger in your Travel Party causes damage or loss to the yacht (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. Such liability could be more than the security deposit paid at the base in the case of negligence or reckless conduct.
- 11.3 If you or any other Passenger in your party causes damage or loss to the yacht, any ancillary equipment or to property belonging to a third party and such damage or loss is caused as a result of your 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 YDW. We shall deduct the amount of the security deposit from the total loss, and the balance shall then be payable by you. We shall provide you with an invoice for the total damage costs which shall be payable by you on demand.
- 11.4 Acts that will be considered as negligent, or otherwise as reckless conduct, will include, without limitation, sailing outside of defined sailing areas and/or hours, sailing under the influence of alcohol and/or drugs, not having a sufficient number of competent persons that in charge of the yacht at all times, not being in control of the yacht by means within the control of the skipper, and/or for any other breach of these Terms and Conditions. If any damage is caused to the yacht by you or your Travel Party as a result of negligence and / or reckless conduct which renders, in the Company's opinion, the yacht no longer fit for charter use then we will withdraw the yacht. In such circumstances you will not be offered a replacement yacht, alternative accommodation and/or any form of compensation or refund whatsoever.
- 11.5 At the time your booking is placed an e-guide will be made available to you in the 'My Account' portal which sets out, amongst other information, zones which are designated as "amber zones" or "red zones" (the "**E-Guide**"). You must not sail, or allow the yacht to be positioned, in any "red zones", as designated on the map in the E-Guide, under any circumstances. The E-Guide contains "amber" zones whereby you must exercise extreme caution when sailing the yacht, or allowing the yacht to be positioned, in any "amber" zones. The E-Guide shall also be made available to you: (1) during the check-in process before departure, and (2) on your mobile device. It should be referred to at all times during your vacation.
- 11.6 In addition to the acts at section 11.4, if you or your party causes damage or loss to the yacht (howsoever caused) or to any property belonging to a third party as a result of (i) any sailing or positioning of the yacht in any "red zones" as set out in the E-Guide, and/or (ii) any failure to exercise all necessary caution when sailing in any "amber zones" as set out in the E-Guide, then you will be liable for any all additional damages and losses incurred by the Company over and above the amount of the YDW and security deposit.
- 11.7 Your yacht may be fitted with telematics and related monitoring systems (including GPS-based geofencing) which may record things such as (but not limited to) speed, location, geofencing. Such systems may be included on the yacht to assist with the safety and comfort of your vacation. However, such systems are included for convenience only and should not be relied on as a substitute to following the instructions in the E-Guide and your pre-charter briefing. You shall remain responsible at all times for the safe navigation, compliance with laws and regulations, and adherence to any non-permitted, restricted or excluded zones. Any monitoring, alerts or information provided by the telematics systems are for guidance only and do not replace or reduce your obligations, judgment, or duty of care, nor do they create any obligation on the Company to warn, intervene or prevent entry into such zones.
- 11.8 During the booking process you will be provided with the option of either purchasing YDW (see Option 1 below) or paying a higher security deposit at the base (see Option 2 below). You will not be able to proceed with your booking unless you agree to one of these options. By asking us to confirm your booking you are agreeing to comply with the content of this section and make any required payment.
- 11.9 **Option 1: Yacht Damage Waiver**
- 11.9.1 If you choose to purchase the YDW this will be added to your booking at the time of booking or, if purchased later, at the time of your purchase. You will be provided with the cost of purchasing the YDW during the booking process. Note that YDW rates are subject to change in accordance with section 11.1. YDW is an up-front prepayment to cover any damage to the yacht and will not be refunded to you at the conclusion of your vacation. If you purchase YDW, you are still required to pay a security deposit upon arrival at the base (in such amounts as set out on the websites at section 11.1). The security deposit will be taken prior to embarkation in the local currency at the base. If you do not pay the security deposit we reserve the right to cancel your booking without further liability and you shall have no right to a refund. This security deposit may be refunded to you at the conclusion of your vacation, subject to certain requirements being met.
- 11.10 **Option 2: Security Deposit**

- 11.10.1 If you choose to pay a security deposit only, and do not purchase YDW, you must pay the higher security deposit upon arrival at the base (in such amounts as set out on the websites listed in section 11.1). The security deposit will be taken prior to embarkation in the local currency at the base. If you do not pay the security deposit we reserve the right to cancel your booking without further liability and you shall have no right to a refund. This security deposit may be refunded to you at the conclusion of your holiday, subject to certain requirements being met.
- 11.11 **Under Option 1 only, should you book a Flotilla holiday (fully arranged by the Company) or pre-book a skipper with the Company, the security deposit collected at the base will be half of what is displayed on the applicable website in section 11.1. Please note: if you have acquired your own YDW via a third party you must still pay the required security deposit under Option 2 upon arrival at the base.**
- 11.12 The security deposit paid under either Option 1 or Option 2 will be used as security for any loss or damage we suffer as a result of any breach by you of these Terms and Conditions and any damage caused to the yacht or its contents (or any third party property) during your vacation. You cannot apply or deduct any portion of the damage deposit from the final balance payable for your travel arrangements.
- 11.13 Prior to departure, you will be asked to sign a form confirming that you fully understand your obligations in the event of any loss or damage to the yacht, its contents or third party property. Upon your return to base, we will complete a check-out process which includes (without limitation) an inventory list and a general check for any loss or damage to the yacht.
- 11.14 We will conduct an inspection of the yacht upon your return to the base. If we are satisfied that there is no apparent damage to the yacht on its return (and we are not, at that time, aware of any damage to, or claim from, any third party), our base staff shall refund the relevant security deposit paid to you as soon as reasonably possible. For the avoidance of doubt, the YDW shall not be refunded to you.
- 11.15 If we determine that accidental damage or loss was caused to the yacht or its contents during your vacation, or we are notified of any damage to any third party property arising from your acts or omissions during your vacation, you will be liable to us for all losses and damages incurred by us up to the value of the security deposit left at the base. If we determine that damage or loss was caused to the yacht during your vacation, or we are notified of any damage to third party property, as a result of your 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 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 yacht, its contents or to any third party during the period of your arrangements, including, without limitation, the costs involved in lifting the yacht for a full inspection to assess the damage to the yacht.
- 11.16 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 your negligence or reckless conduct. In those circumstances you remain liable to us for the balance of all losses or damages incurred by us over and above the security deposit paid by you.
- 11.17 In the event that the losses or damages suffered by us as a result of any breach by you of these Terms and Conditions and any damage caused to the yacht or its contents, or to any third party, during your vacation is less than the security deposit paid by you, we shall refund, as relevant, part of the security deposit paid by 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 the damage or loss to the yacht or any third party property, we shall retain the full security deposit until the matter is resolved.
- 11.18 If you wish to participate in sailing regattas you must obtain our prior written consent. You will be required to pay a non-refundable race supplement in advance, plus an additional damage deposit, payable at the base for rigging or collision damage. This is payable by credit or debit card in addition to the relevant security deposit. Please note the race supplement is a charge omitted from any discounts offered by the Company.
- 11.19 **THE 4 HOUR COMMITMENT.** Subject to the following terms, the Company shall use its reasonable endeavours to ensure that if a breakdown of essential equipment occurs during your charter, we will attend to the yacht within four working hours (of the opening hours of the relevant base reception) of notification of the breakdown. The following terms in this section 11.19 apply to this commitment (and further information can be found <https://www.moorings.com/4-hour-commitment> or <https://www.sunsail.com/about-us/sunsail-commitment>):

- 11.19.1 the yacht must be within a twenty-mile radius of the base;

- 11.19.2 this commitment does not apply at the Exuma base and the franchise bases in Italy, Tonga, Whitsundays and Martinique;
- 11.19.3 you must provide a detailed list of the issues at the time of the initial notification;
- 11.19.4 for any lost charter time due to technical failing of the following essential equipment: *engine, transmission, windlass, sails, standing and running rigging, battery, and alternator* then the facts and cause shall be reviewed on a case-by-case basis and compensation (if any) may be provided. All compensation of this nature will be provided as a credit certificate determined by the Company (acting reasonably and in its sole discretion) for use on a future booking with the Company; and
- 11.19.5 no compensation shall ever be payable where the failure is 'un-essential' equipment which shall include, but not be limited to, the following: *cellular phone, VHF, refrigeration, stereo/cassette/CD player, auto pilot, GPS, water pressure pump, dinghy, outboard, knot meter, depth sounder, air conditioning, generator, and any other item which does not render the yacht inoperable.*

## **12. Visa, passport and travel documentation**

- 12.1 You are responsible for ensuring that you possess all necessary documentation (such as passports and visas) for your vacation. For all destinations, you should consult the appropriate consulate. Many countries require passports to be valid for six (6) months beyond your stay. Visa and entry permits are required for many countries. Passports, visas and re-entry permits are at your responsibility and cost. We recommend that you check travel advisories and health and medical information, for your destinations. WE CANNOT ACCEPT RESPONSIBILITY FOR ANY FAILURE BY YOU TO COMPLY WITH ANY TRAVEL DOCUMENTATION OR INOCULATION REQUIREMENTS OR ANY COSTS OR FINES BEING INCURRED BY YOU IN CONNECTION THEREWITH. PASSENGERS WHO ARE DENIED ENTRY FOR IMPROPER DOCUMENTATION/FAILURE TO PROVIDE REQUIRED INFORMATION OR FAILURE TO COMPLY WITH MANDATORY HEALTH REQUIREMENTS SHALL RECEIVE NO REFUND.
- 12.2 Each Passenger is solely responsible to make absolutely certain to have the proper immunizations and required documentation of such immunizations before travel. We shall not assume any responsibility for the accuracy of health requirements or vaccination and/or documentation for your vacation. If you are concerned about taking any medications or receiving certain inoculations, please check with your health practitioner BEFORE booking.
- 12.3 When assessing whether vacations will operate, we use information from our local offices in conjunction with advice from the U.S. Department of States travel site and other relevant government bodies. It is your responsibility to acquaint yourself with the travel advice provided by these government bodies. For more information, visit <https://www.moorings.com/travel-aware> and the government website at <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages.html> and <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html> for your destination country and the USA Centers for Disease Control <http://wwwnc.cdc.gov/travel/> relating to health issues.

## **13. Arbitration agreement**

- 13.1 You, SWSL and the US Company agree that any and all disputes and claims between you and either or both Contracting Companies that arise out of or relate to these Terms and Conditions and the vacation, including the breach, termination, enforcement, interpretation or validity of these Terms and Conditions, this agreement to arbitrate (the "**Arbitration Agreement**"), the scope or applicability of this Arbitration Agreement and the arbitrability of any and all of the above (collectively, "**Disputes**"), which are over \$15,000, will be resolved in a binding, confidential, individual and fair arbitration process pursuant to this section 13, and not in court. The only exceptions to this Arbitration Agreement are that (i) Disputes up to and including \$15,000 shall be brought and determined in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (unless the Delaware Court of Chancery shall decline to accept jurisdiction over a particular matter, in which case, in any federal court within the State of Delaware) or, if your Dispute or claim qualifies under applicable law, you may elect to proceed in small claims court and (ii) any party may bring suit in court against another party to enjoin infringement or other misuse of intellectual property rights.
- 13.2 Your booking evidences a transaction in interstate commerce, and thus the US Federal Arbitration Act, 9 U.S.C. §§ 1-16, governs the interpretation and enforcement of this Arbitration Agreement. This Arbitration Agreement will survive termination of your booking and these Terms and Conditions.

- 13.3 If you or either Contracting Company wants to arbitrate a Dispute, the party seeking arbitration must first send by mail to the other affected party or parties a written notice of the Dispute ("**Notice**") that sets forth the name, address, and contact information of the party giving notice, the specific facts giving rise to the Dispute, the charter to which the Notice relates, and the relief requested. Your Notice to either or both Contracting Companies must be sent by mail to 311 Park Place Blvd, Suite 250, Clearwater, FL 33759 and should identify the Contracting Company or Companies against which the Dispute is asserted. Notice sent to that address in accordance with this section will satisfy the notice requirement as to each Contracting Company identified in the Notice. We will send any Notice to you at the contact information we hold for you or that you later provide. It is the sender's responsibility to ensure that the recipient receives the Notice. During the first 45 days after sending a Notice, the affected parties may try to reach a settlement of the Dispute. If the Dispute is not resolved within those first 45 days, you or either affected Contracting Company may initiate arbitration in accordance with this section 13.
- 13.4 With respect to Disputes:
- 13.4.1 Any arbitration between you and us will be conducted by the American Arbitration Association (the "**AAA**") and will be governed by the AAA's then existing Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, the "**AAA Rules**"), as modified by this Arbitration Agreement. The AAA Rules are available online at [www.adr.org](http://www.adr.org), or by calling the AAA at 1-800-778-7879. The arbitration will be conducted by a single arbitrator. If it is not possible to agree on who that single arbitrator should be, then the AAA shall appoint an experienced arbitrator. The arbitrator is bound by the terms of this Arbitration Agreement. A form for initiating formal arbitration may be found on the AAA's website at [www.adr.org](http://www.adr.org) ("**Arbitration Form**"). In addition to filing this Arbitration Form with the AAA in accordance with its rules and procedures, you must send a copy of this completed Arbitration Form to us.
- 13.4.2 If you are seeking to recover \$100,000 or less (exclusive of interest on the sum claimed, cost of arbitration and legal expenses), and the Dispute is not filed in the appropriate small claims court, the Dispute should be resolved without a hearing. If the claim is for more than \$100,000 (exclusive of interest on the sum claimed, cost of arbitration and legal expenses), a hearing shall be held. The place of the hearing will be determined in accordance with the AAA Rules, Principles and Guidelines and, with the State of Delaware, USA being a possible location only if agreed upon by all parties.
- 13.5 The Passenger and each Contracting Company agree to maintain the confidential nature of any mediation and arbitration proceeding and shall not disclose the fact of the proceeding, any documents exchanged as part of the proceeding, this Arbitration Agreement, the arbitrator's decision and the existence or amount of any agreement or award, except as may be necessary to prepare for or conduct the arbitration (in which case anyone becoming privy to confidential information must undertake to preserve its confidentiality), or except as may be necessary in connection with a court application for a provisional remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or court order.
- 14. Exclusive governing law and jurisdiction**
- 14.1 These Terms and Conditions and any Disputes, arbitrations, and the limited legal proceedings identified as permissible in these Terms and Conditions shall be governed exclusively, in all respects, and without regard to conflict of law principles, by the laws of the State of Delaware, USA and, where applicable, the general maritime law of the United States including the Death on the High Seas Act (46 U.S.C. § 30302). Except as otherwise expressly specified in these Terms and Conditions, the Passenger agrees this choice of law supersedes and pre-empts any provision of law of any other state or nation.
- 14.2 **IN CONNECTION WITH ANY ACTION OR LEGAL PROCEEDING ARISING OUT OF THESE TERMS AND CONDITIONS, THE PARTIES HEREBY SPECIFICALLY AND KNOWINGLY WAIVE ANY RIGHTS THAT ANY PARTY MIGHT HAVE TO DEMAND A JURY TRIAL.**
- 14.3 These Terms and Conditions provide for the exclusive resolution of Disputes between the parties, to which you agree shall be brought only in its own behalf and not as a part of any class action. **EVEN IF THE APPLICABLE LAW PROVIDES OTHERWISE, YOU AGREE THAT ANY DISPUTE AGAINST SWSL AND/OR A US COMPANY WHATSOEVER SHALL BE LITIGATED BY YOU INDIVIDUALLY AND NOT AS A MEMBER OF ANY CLASS OR AS PART OF A CLASS ACTION, AND YOU EXPRESSLY AGREE TO WAIVE ANY LAW ENTITLING YOU TO PARTICIPATE IN A CLASS ACTION.**
- 14.4 The invalidity or unenforceability of any part of these Terms and Conditions, or the invalidity of its application to a specific situation or circumstance, shall not affect the validity of the remainder of these Terms and Conditions, or its application to other situations or circumstances. Any provision of these Terms

and Conditions held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

- 14.5 Except as otherwise expressly provided to the contrary, these Terms and Conditions are for the benefit of the Company and the Passenger. These Terms and Conditions shall be exclusive of any advertising, marketing or other sales literature or activities of the Company and nothing contained in any of such materials shall be construed to create any rights as a result of or in connection with these Terms and Conditions.

- 14.6 **ANY INCIDENT OR ACCIDENT RESULTING IN INJURY, ILLNESS OR DEATH MUST BE REPORTED IMMEDIATELY TO THE COMPANY AND/OR, AS APPLICABLE, ANY CREW PROVIDED BY THE COMPANY. THE COMPANY SHALL NOT BE LIABLE (IN THE EVENT OF ANY APPLICABLE LIABILITY) FOR CLAIMS, ACTIONS, OR LOSSES FOR BODILY INJURY, EMOTIONAL INJURY OR DISTRESS, PROPERTY DAMAGE, WRONGFUL DEATH, LOSS OF SERVICES, LOST PROFITS, CONSEQUENTIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES OR OTHERWISE WHICH MAY ARISE OUT OF OR OCCUR ON OR DURING YOUR VACATION AND ANY ACTIVITIES CONDUCTED IN CONJUNCTION THEREWITH, UNLESS FULL DETAILS IN WRITING ARE GIVEN TO THE COMPANY, WITHIN 185 DAYS AFTER THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM. SUIT TO RECOVER ON ANY SUCH CLAIM SHALL NOT BE MAINTAINABLE UNLESS FILED WITHIN ONE (1) YEAR AFTER THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM AND UNLESS SERVED ON THE COMPANY WITHIN 120 DAYS AFTER FILING. YOU EXPRESSLY WAIVE ALL OTHER POTENTIALLY APPLICABLE STATE OR FEDERAL LIMITATION PERIODS.**

- 14.7 If a written claim is not made and suit is not filed within the time frame set forth above, then you waive and release any right you may have to make any claim against us arising under, in connection with, your vacation. All written notices to either Contracting Company required under these Terms and Conditions must be mailed, postage pre-paid to The Moorings or Sunsail, 311 Park Place Blvd, Suite 250, Clearwater, FL 33759, USA. Each Contracting Company designates that address for purposes of notices required under these Terms and Conditions.

## 15. Consumer protection:

For the purposes of this section 15 only, references to the Company mean the US Company. The Company is a member of the United States Tour Operators Association and is fully covered by its Consumer Protection Plan. As an active member of the USTOA, the Company is required to post \$1 Million with the USTOA. This amount is to be used to reimburse, in accordance with the terms and conditions of the USTOA Travelers Assistance Program, the advance payments of the Company's customers in the unlikely event of Sunsail or The Moorings' bankruptcy, insolvency or cessation of business. Complete details of the USTOA Travelers Assistance Program and a list of affiliates may be obtained by writing to USTOA at 345 Seventh Ave., Suite 1801, New York, New York 10001, or by e-mail to [information@ustoa.com](mailto:information@ustoa.com) or by visiting its website at [www.USTOA.com](http://www.USTOA.com).

## ACKNOWLEDGEMENT:

My signature below indicates that I have, on the date shown, read and understood these Terms and Conditions for my vacation. I acknowledge that these Terms and Conditions affect my legal rights and agree to be bound by their terms. My signature also signifies my intention (on behalf of myself and all other customers/participants/Passengers for whom I am making the booking) to relieve and indemnify Sunsail Worldwide Sailing Ltd and, as applicable, Mariner International Travel, Inc. or Mariner International (USA), Inc., and each of their respective owners, officers, directors, employees, affiliates, agents, contractors and subcontractors from any liability for personal injury, emotional injury or distress, property damage or wrongful death which I/we might suffer during my participation in my vacation.

**The Passenger hereto has executed these Terms and Conditions as of the date written below:**

## **LEAD CHARTERER:**

**Booking Reference Number:** \_\_\_\_\_ **Email:** \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

