



BOATSETTER TERMS OF SERVICE

1. Introduction and Welcome to the Terms of Service
2. Definitions and List of Additional Agreements Incorporated by Reference
3. Eligibility Requirements
 - a. Owner Eligibility Requirements
 - b. Renter Eligibility Requirements
 - c. Captain(s)
 - d. Affiliate(s)
 - e. Boat Eligibility Requirements
4. Boatsetter User Accounts and User Content
 - a. User Accounts
 - i. Access to the Service via Third Party Accounts
 - b. User Content
 - c. Charter Partners and Charter of Charter Partner Boats
5. Owners
 - a. Owner Representations and Warranties
 - b. Designated Authorized Agent
 - c. Appointment of Boatsetter in Limited Capacity as Payment Agent
6. Renters
 - a. Renter Rep and Warranties
 - b. Disclaimer Regarding Insurance Available to Renter
 - c. Additional terms for Renter
 - i. Other provisions
7. Captains
 - a. Boat Captain Service Agreement
 - b. No Endorsement
 - c. Captain Strictly Retained by Renter
8. Affiliates
 - a. Appointment of Boatsetter in Limited Capacity as Payment Agent For Boatsetter Affiliates
9. Bookings and Financial Terms
 - a. Billing Procedure
 - b. Security Deposit
 - c. Payments
 - i. Charter Fee
 - ii. Captain's Fees
 - d. Taxes
10. Intellectual Property
 - a. License Grant
 - b. Third Party Links
 - c. End User Licenses

- d. Boatsetter Proprietary Rights
 - e. Prohibited Activities
 - f. DMCA Notice
11. Privacy
 12. Security
 13. Indemnification
 14. Limitation of Damages
 15. Insurance
 16. General Disclaimer and Disclaimer of all Warranties
 17. Limitation of Liability
 18. Assignment
 19. Termination
 20. Jurisdiction
 21. Governing Law
 22. Arbitration and Dispute Resolution
 23. Class Action Waiver
 24. Specially designated Nationals; U.S. Export Controls
 25. Notice
 26. Miscellaneous
 - a. Entire Agreement / Severability
 - b. No Waiver
 27. Signature

1. INTRODUCTION AND WELCOME TO THE TERMS OF SERVICE.

Welcome to BOATSETTER.COM, a peer-to-peer boat charter marketplace, website and online service provided by Collaborative Boating, Inc. (hereinafter “BOATSETTER,” “We,” or “Us”) which brings vessel owners and those interested in bareboat chartering a vessel together. The terms “BOATSETTER,” “We” or “Us” include collectively BOATSETTER’s affiliates, agents, directors, employees, insurers, underwriters, suppliers and licensors.

Whether you (hereinafter “You” or “Your”) are a boat owner or someone who wants to charter a boat, please read this Terms of Service Agreement (hereinafter “Agreement”) carefully.

This Agreement describes the terms and conditions that govern Your use of and participation in the BOATSETTER Service (defined below) and contains important information regarding Your legal rights, remedies and responsibilities. The Service include the BOATSETTER web site, web widgets, feeds, mobile device software applications (the “BOATSETTER Software”), applications for third-party web sites and services, and any other mobile or online services and/or applications owned, controlled, or offered by BOATSETTER (collectively the “Service(s)").

The Service can be used to facilitate the listing and booking of Boats for Bareboat Charter.

Please note, BOATSETTER does not ITSELF offer, perform or participate in boat charters or rental services. Instead, BOATSETTER offers a service allowing boat owners and those interested in bareboat chartering boats to connect and transact directly with each other. While it is BOATSETTER’s intention to facilitate successful transactions and assist with the resolution of any related disputes, BOATSETTER does NOT guarantee the quality, safety, truth accuracy or adequacy of Charter(s), User Content, insurance coverage or other services or transactions available through the Service.

BOATSETTER is NOT the owner, operator, broker, manager, repairer, insurer, renter, licensor of any of the Boats and BOATSETTER possesses no legal interest in any of the Boats listed on the Service. BOATSETTER’s responsibilities are strictly limited to: (i) facilitating the availability of the Service, and (ii) serving in the limited capacity as pay agent of each Owner and Affiliate for the purpose of accepting payments from Renter on behalf of the Owner and Affiliate.

By accessing or using the BOATSETTER Service, You signify You have read, understood, and agree to be bound by this Agreement and to the collection and use of Your information as set forth in the BOATSETTER [Privacy Policy](#) whether or not You are a registered User of our Service. You are further agreeing to this Agreement’s terms and conditions and You are also agreeing to be bound by all related agreements, documents policies and rules described herein and incorporated by reference.

If You do not agree to be bound by all the terms of this Agreement, You are not authorized to access BOATSETTER’s Service.

2. DEFINITIONS AND ADDITIONAL AGREEMENTS

The following defined terms have the following meanings in this Agreement.

- a. **Affiliate.** Any person or entity that has registered on the BOATSETTER website to provide any referral or other services to either the Service, an Owner or a Renter including but not limited

to: (1) Boathub Affiliates (“BA”) including travel agents and concierge(s); (2) Preferred Marina Affiliates (“PMA”), (3) Manufacturer Affiliate (“MA”) / Dealer Affiliates (“DA”) and /or (4) Independent Affiliates (“IA”).

- b. **Charter Partner.** An Owner who is in the business of offering boats for charter to the public and who wishes to List Boats on Boatsetter.com. United States & International Charter Partners will maintain and provide insurance to cover their charter operations. Charters and requests for charters of Boats owned by United States based Charter Partners will be run and serviced through the Service with all scheduling and payments for those Charters to be completed on Boatsetter.com. See section 4(c)(b) below regarding additional terms specific to International Charter Partners.
- c. **Bareboat Charter.** A written agreement whereby the Boat Owner gives possession, control and use of the Boat to Renter and Renter is responsible for manning including hiring its own captain and crew, supplying its own provisions and is otherwise responsible for the Boat's operation during the Charter Period.
- d. **Time Charter.** A written agreement whereby the Boat Owner rents the boat to Renter and Owner is responsible for manning including hiring its own captain and crew, supplying its own provisions and is otherwise responsible for the Boat's operation during the Charter Period.
- e. **Boat.** The vessel to be chartered from a Boat Owner using the Service as identified in the **Charter Confirmation**. The term "Boat" includes the boat and all of its machinery, electronics, equipment, rigging, gear, sails, contents and appurtenances.
- f. **Boat Owner's Fee.** The Owner's indicated net amount to be charged to the Renter for the Charter of the vessel excluding any amounts for services purchased through BOATSETTER such as insurance and towing, marketing, credit card processing and other fees.
- g. **Booking.** A booking is a confirmed Charter. When a Renter makes a request to Charter a specific Boat, the Owner and BOATSETTER must approve the request before it becomes a “Booking”.
- h. **Captain.** The person contracted by Renter to pilot the Boat during the Charter Period.
- i. **Charter.** Each transaction in which a Renter charters a boat from a Boat Owner whether with or without a Captain or other professional operator via the Service as more fully described in the Charter Confirmation.
- j. **Charter Fee.** The total price the Renter will pay for a Charter consisting of the sum of the Owner's indicated net amount plus services purchased through BOATSETTER including but not limited to insurance and towing, marketing, credit card processing, fuel, Captain's and other fees
- k. **Charter Period.** The duration of time between Delivery and Redelivery as specified in the **Charter Confirmation** during which Renter has sole possession, control and use of the Boat.
- l. **Delivery Location.** The physical location as specified in the **Bareboat Charter Agreement** where the Owner agrees to provide the Vessel in full commission and in proper working order fully fueled and with full equipment required by law to Charterer at or before the time and date specified as the beginning of the Charter Period.
- m. **Deliver(y).** The time at which the Boat Owner turns over control of the Boat to the Renter at the commencement of the Charter Period.
- n. **Designated Agent.** The person officially appointed via the **Designated Agent Authorization** form by the Owner to serve as the Owner's representative in
- o. **Fees.** See **Fee Schedule**.

- p. **Redelivery Location.** The physical location as specified in the **Bareboat Charter Agreement** where the Charterer agrees to return the Vessel to the Owner in full commission and in proper working order, normal wear and tear excepted, following the conclusion of the Charter Period and any agreed to extension thereof.
- q. **Redeliver(y).** The time at which the Renter returns control of the Boat to the Boat Owner at the conclusion of the Charter Period free and clear of any maritime liens, charges or other indebtedness incurred by the Renter or for the Renter's account, or by Renter for the Owner's account unless any such indebtedness incurred for the Owner is made pursuant to Owner's prior written authorization.
- r. **List(ing).** Any Boat identified on the Service as being available for Charter and the related description and terms applicable to same.
- s. **Owner.** The person or entity that has registered on the BOATSETTER website and has title to the Boat or is otherwise the registered and/or documented owner of the Boat.
- t. **Policy.** Any insurance policy procured by Owner or Renter through the Service for the benefit of Owner or Renter.
- u. **Renter.** The person or entity that has or will Charter the Boat through the Service.
- v. **User(s).** All visitors and others who access the Service who are assigned a User Account.
- w. **User Content.** Feedback, comments, questions, and other content or information posted, displayed or otherwise made available by a User on the Service.
- x. **Check-out / Check-in Procedure.** An introduction to the Boat's systems and operating procedures prior to the commencement of the Charter Period including completion of a "**Check-out / Check-in List,**" documentation of any pre-existing damage, completion of any other document(s) required by applicable law, demonstration of the location of the Boat's emergency and safety equipment and upon the completion of the Charter completion of the Check-out/Check-in List and documentation of the Boat's condition and Fuel level.

The following list of additional documents are incorporated by reference into this Agreement as if stated in full herein. By using BOATSETTER's Service, You agree that You've read, understand and will be bound by and act in accordance with all of the agreements, documents, policies and rules relating to the Service including, but not limited to:

- a. **Boat Eligibility Requirements**
- b. **Renter Eligibility Requirements**
- c. **Owner Policies and Procedures**
- d. **Renter Policies and Procedures**
- e. **Privacy Policy**
- f. **Fee Schedule**
- g. **Insurance Summary**
- h. **Charter Confirmation (available upon Booking)**
- i. **Boat Captain Service Agreement (Between Renter and Captain)**
- j. **Bareboat Charter Agreement (Between Owner and Renter)**
- k. **Check-Out / Check-In List**
- l. **Designated Agent Application**
- m. **Affiliate Terms of Service**
 - i. **Boatsetter Pro Affiliate Addendum (available upon signing up as Affiliate)**

- ii. **Preferred Marina Affiliate Addendum (available upon signing up as Affiliate)**
- iii. **Manufacturer / Dealer Affiliate Addendum (available upon signing up as Affiliate)**
- iv. **Independent Affiliate Addendum (available upon signing up as Affiliate)**

In the event of a conflict between the terms of this Agreement and the terms and conditions contained in one of the additional documents described in (a) – (m) above and / or in a specific area of the Service, the latter terms and conditions will take precedence with respect to Your use of or access to that aspect of the Service.

3. ELIGIBILITY REQUIREMENTS.

This Service is intended solely for persons who are eighteen (18) years or older, and any registration, use or access to the Service by anyone under 18 is strictly prohibited and in violation of this Agreement. By accessing the Service You represent that You are at least 18 years old or older.

The Service is not available to any Users previously removed from the Service by BOATSETTER, unless BOATSETTER has given You written notice of reinstatement.

All Users must provide all requested documentation and information throughout their use of the Service.

You acknowledge and agree that the eligibility requirements may change at any time and for any reason and waive notice of same.

a) **Owner Eligibility.**

See **Owner Eligibility Requirements.**

b) **Renter Eligibility.**

See **Renter Eligibility Requirements.**

c) **Captain(s).**

See **Boat Captain Service Agreement.**

d) **Affiliate(s).**

See **Affiliate Terms of Service.**

e) **Boat Eligibility.**

See **Boat Eligibility Requirements.**

4. BOATSETTER USER ACCOUNTS AND USER PROFILES.

No matter whether You are a Boat Owner seeking to list Your Boat for Charter or a Renter seeking to Charter a Listed Boat or interested in offering professional services on BOATSETTER, You will need to **apply for a user account** (“User Account”) with BOATSETTER.

a. User Accounts.

By applying for a User Account, You give BOATSETTER permission to disclose the information You provide on Your application to third parties for verification purposes, and to obtain additional information about You. In addition, by applying for a User Account, You represent that you meet the **Eligibility Requirements** which are applicable to Your User Account.

BOATSETTER may accept or reject User Account applications in BOATSETTER's sole discretion for any reason. If You are accepted for a User Account, You acknowledge and agree to abide by the **Eligibility Requirements** which are applicable to Your User Account, as they exist or as they may be amended.

Your User Account gives You access to the Service and functionality that BOATSETTER may establish and maintain from time to time and in its sole discretion.

Your User Account is for Your personal use only. You may not create a User Account on behalf of a business entity unless the Boat is owned by a business entity. If the Boat is owned by a business entity You warrant and represent to BOATSETTER (i) that You have authority to manage the Boat on behalf of the entity, (ii) that the business entity specifically authorizes the Boat to be chartered, (iii) and that said entity is active, in good standing and authorized to do business in the jurisdiction in which the Boat is to be chartered.

You may not use another User's Account, permit anyone else to use Your User Account, or assign or otherwise transfer Your User Account to any other person or entity. When applying for and creating Your User Account, You must provide accurate and complete information, and keep such information updated and accurate throughout the term of this Agreement. You are solely responsible for the activity that occurs on Your account and You must keep Your User Account password secure. You must notify BOATSETTER immediately of any breach of security or unauthorized use of Your User Account. BOATSETTER will not be liable for any losses caused by any unauthorized use of Your User Account. You agree that You will not disclose Your password to any third party and that You will take sole responsibility for any activities or actions under Your User Account, whether or not You have authorized such activities or actions.

You may not have more than one (1) active User Account. BOATSETTER reserves the right to suspend or terminate Your User Account and Your access to the Service if You create more than one (1) User Account or if any information provided during the registration process or thereafter proves to be inaccurate, not current or incomplete.

i. Access to Service via Third Party accounts ("TPA").

You may also register to join by logging into Your User Account with certain third party social networking sites including, but not limited to, Facebook; each such account, a "Third Party Account" or "TPA", via the Service as more fully described below.

As part of the functionality of the Service, You may link Your User Account with Third Party Accounts, by either:

- (i) providing Your Third Party Account login information through the Service; or
- (ii) allowing Users to access Your Third Party Account, as is permitted under the applicable terms and conditions that govern Your use of each Third Party Account.

You represent You are entitled to disclose Your Third Party Account login information to User and/or grant User access to Your Third Party Account (including, but not limited to, for use for the purposes described herein), without breach by You of any of the terms and conditions that govern Your use of the applicable Third Party Account and without obligating User to pay any fees or making User subject to any usage limitations imposed by such third party service providers. By granting User access to any Third Party Accounts, You understand that User will access, make available and store (if applicable) any content You have provided to and stored in Your Third Party Account (“TPA Content”) so that it is available on and through the Services via Your User Account and User Account profile page. Unless otherwise specified in these Terms, all TPA Content, if any, will be considered to be User Content for all purposes of these Terms. Depending on the Third Party Account(s) You choose and subject to the privacy settings that You have set in such Third Party Accounts, personally identifiable information that You post to Your Third Party Accounts will be available on and through Your User Account on the Site, Services and Application. Please note that if a Third Party Account or associated service becomes unavailable or User’s access to such Third Party Account is terminated by the third party service provider, then TPA Content will no longer be available on and through the Site, Service and application. You have the ability to disable the connection between Your User Account and Your Third Party Accounts, at any time, by accessing the “Account” section of the website and application. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE TPA SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH TPA SERVICE PROVIDERS. BOATSETTER makes no effort to review any TPA Content for any purpose, including but not limited to, for accuracy, legality or non-infringement and User is not responsible for any TPA Content. If You have further questions, see BOATSETTER’s [Privacy Policy](#).

BOATSETTER will create Your User Account and Your User Account profile page for Your use of the Service based upon the personal information You provide to BOATSETTER or that BOATSETTER obtains via a TPA as described above.

b. User Content.

Some areas of the Service may allow Users to post User Content. While individuals retain ownership of and remain responsible for User Content User’s grant BOATSETTER an irrevocable license and right to use any User Content posted on the Service. You are solely responsible for the User Content that You upload, publish, display, link to or otherwise make available on the Service, and You agree that BOATSETTER is only acting as a passive conduit for Your online distribution and publication of Your User Content. You understand that BOATSETTER does not guarantee any confidentiality with respect to any User Content.

You agree not to post User Content that:

- (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to You, to any other person, or to any animal;
- (ii) may create a risk of any other loss or damage to any person or property;

- (iii) seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise;
- (iv) may constitute or contribute to a crime or tort;
- (v) contains any information or content that is unlawful, harmful, abusive, racially or ethnically offensive defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, or otherwise objectionable;
- (vi) contains any information or content that is illegal (including, without limitation, the disclosure of insider information under securities law or of another party's trade secrets);
- (vii) contains any information or content that You do not have a right to make available under any law or under contractual or fiduciary relationships; or
- (viii) contains any information or content that You know is not correct and current. You agree that any User Content that You post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined below), rights of publicity and privacy.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction. You understand that publishing Your User Content on the Service is not a substitute for registering it with the U.S. Copyright Office, the Writer's Guild of America, or any other rights organization.

BOATSETTER reserves the right, but is not obligated, to reject and/or remove any User Content that BOATSETTER believes, in its sole discretion, violates these provisions.

BOATSETTER takes no responsibility and assumes no liability for any User Content that You or any other User or third party posts or sends over the Service. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that You send, upload, download, stream, post, transmit, display, or otherwise make available or access through Your use the Service, is solely Your responsibility. BOATSETTER is not responsible for any public display or misuse of Your User Content. You understand and acknowledge that You may be exposed to User Content that is inaccurate, offensive, indecent, objectionable, or inappropriate for children, and You agree that BOATSETTER shall not be liable for any damages You allege to incur as a result of such User Content.

c. Charter Partners and Charter of Charter Partner Boats

a. Charter Partners.

Charter Partners currently offer boats for charter to the public but now desire and intend to List Boats on Boatsetter.com. Charters of Charter Partner Boats shall be booked through the Service in the same manner and in accordance with all of the Boatsetter Terms of Service as any other Owner Listed Boat

with one very important exception: Charter Partners shall maintain and provide all insurance to cover their charter operation(s).

Charter Partners shall procure and maintain *at a minimum* the following insurance related to the charter and operation of their vessels while Listed on the Service: (1) Hull and Machinery Insurance to the full extent of the value of the vessel(s); (2) Marine Protection and Indemnity Insurance (including crew coverage for personal injury or death, whether brought pursuant to the Jones Act, General Maritime Law, Unseaworthiness, Vessel Owner Negligence, Maintenance and Cure or otherwise) in a minimum coverage amount of \$1,000,000 with a deductible not to exceed \$10,000; (3) Commercial General Liability coverage (with contractual indemnity coverage and in rem liability coverage but deleting the watercraft exclusion) in a minimum coverage amount of \$1,000,000 dollars with a deductible not to exceed \$10,000; and (4) Vessel Pollution Insurance in a minimum coverage amount of \$500,000. Boatsetter shall be named as an additional insured on all of the above described insurance policies.

Renters and Charter Partners are exclusively responsible for confirming that the insurance provided by Charter Partner for any of its Charter operations are adequate and sufficient for their intended Charter and hereby agree to hold Boatsetter harmless for any lapse or absence of coverage.

Charter Partners and Renters shall use the applicable charter agreement, operation and business forms provided by Boatsetter to conduct their Charters.

b. International Charter Partners.

When renting from Charter Partners based in countries other than the United States of America, the charter agreement will be provided directly by the Charter Partner. Some Charter Partners may have different cancellation policies than BOATSETTER. Please note, it is the Renter's obligation to make sure he/she is aware of and able to comply with all of the Charter Partner's terms of service and policies. In addition, it is the responsibility of the Renter and the Charter Partner to be aware of and ensure compliance with all laws and regulations for the particular jurisdiction in which the Charter will take place.

c. Terms Applicable to Charter Partners

Charter Partners agree that they shall be solely liable for any and all claims of any kind arising out of or related to their Listing of Boats on and the use of the Service and /or Charter Partner's boat(s), howsoever caused including (1) claims within the deductible of the insurance policies required above, (2) liability for covered claims in excess of the limits of said policies, (3) claims for personal injury or death by or on behalf of paid crew whether brought pursuant to the Jones Act, General Maritime Law, Unseaworthiness, Vessel Owner Negligence, Maintenance and Cure or otherwise, and (4) all claims which are not covered by the above referenced policies.

Charter Partners represent and warrant that, at all times while participating in the Service, Charter Partner's boat[s] will: be in a safe and seaworthy condition; contain all equipment required under applicable law; and comply with all other legal requirements applicable to the boat[s], including but not limited to insurance requirements, Coast Guard regulations (if applicable), zoning laws, marina regulations, manning, vessel livery and any other governmental or other requirements of the

jurisdiction(s) in which Charter Partner will be providing boat[s]. If Boatsetter believes that a Charter Partner's boat does not conform to these standards, Boatsetter may notify Charter Partner and also reserves the right to refrain from listing the boat through the Service until the concerns have been resolved to the satisfaction of Boatsetter at its sole discretion. The foregoing notwithstanding, Boatsetter shall have no affirmative obligation to conduct any inspections, investigations or surveys to determine the seaworthiness or condition of any boat, the competency of any captain or crew, and or the sufficiency of any equipment or facilities of the Charter Partner or its boat[s].

5. **OWNERS**

If You are an Owner, including Charter Partner Owners, You agree to the **Owner Policies and Procedures**. By accessing or using the Service, You signify You have read, understood and agreed to be bound by the **Owner Policies and Procedures**.

Owner authorizes BOATSETTER to make whatever inquiries BOATSETTER considers necessary (including requesting Your consumer report from one or more consumer reporting agencies) in connection with Your Listing and offer to Charter Your Vessel and for any other lawful purpose (including collecting any Fees owed or other amounts payable).

a. **Owner Representations and Warranties**

See **Owner Policies and Procedures**

b. **Designated Authorized Agents.**

An Owner may designate an agent (a "Designated Agent") to fulfill his or her responsibilities under the BOATSETTER Service, provided that:

- I. Owner completes a **Designated Agent Authorization**;
- II. BOATSETTER approves the Designated Agent in writing prior to the Designated Agent undertaking any duties on behalf of Owner;
- III. the Designated Agent acknowledges in writing that he or she has fully read and understood this Agreement, the **Bareboat Charter Agreement**, the Owners Policies and Procedures and agrees to be bound by both, and that he or she will be responsible for the Check-out / Check-in List and competence assessment of the Renter.
- IV. Owner assumes all liability and responsibility for the acts of his or her Designated Agent.

c. **Appointment Of Boatsetter In Limited Capacity As Payment Agent.**

Each Owner hereby appoints BOATSETTER as the Owner's limited agent solely for the purpose of collecting payments made by Renters to Owners. Each Owner agrees that payment of Fees made by a Renter to BOATSETTER shall be considered the same as a payment made directly to the Owner and the Owner will make the Boat available to Renter in the agreed upon manner as if the Owner has received the Fees. Each Owner agrees that BOATSETTER may, in accordance with the cancellation policy (i) permit the Renter to cancel the booking and (ii) refund to the Renter that portion of the Fees specified in the applicable cancellation policy. In accepting appointment as the limited authorized payment agent

of the Owner, BOATSETTER assumes no liability whatsoever for any acts or omissions of the Owner or Renter.

To the maximum extent permitted by the law, Owner shall indemnify, defend and hold BOATSETTER harmless from and against any and all claims, demands, expenses (including attorneys' fees and costs) and liabilities of any and every nature which BOATSETTER may sustain or incur or which may be asserted against BOATSETTER in its limited capacity as payment agent.

6. **RENTERS**

By accessing or using the Service, Renters signify that they meet the **Renter Eligibility Requirements** and have read, understood and agree to be bound by the **Renter Policies and Procedures**.

When a Renter completes a Booking, the Service will present the Renter with a page confirming the details of the Charter (the "**Charter Confirmation**"). By clicking "Accept" (or any other means of acceptance presented by the Service), Renter agrees to be bound by the terms of the **Bareboat Charter Agreement** which governs the rights and obligations of Owner and Renter with respect to the Charter and the completed Charter Confirmation becomes part of this Agreement.

Renter authorizes BOATSETTER to make whatever inquiries BOATSETTER considers necessary (including requesting Your consumer report from one or more consumer reporting agencies) in connection with Your Booking and Charter of a Vessel and for any other lawful purpose (including collecting any Fees owed or other amounts payable).

a. **Renter Representations and Warranties.**

See **Renter Policies and Procedures**.

b. **DISCLAIMER REGARDING INSURANCE AVAILABLE TO RENTER:**

The available coverage and limits may not be adequate to fully cover a Renter's potential liability in the event that he or she or the Boat is involved in an accident during a Charter or if there is injury to Captain, Crew or Passengers or the Renter themselves. Renter is responsible for all damage or injury that he or she incurs personally and / or causes to third parties whether or not covered by the Policy.

To the extent permitted by law, Renter hereby waives and rejects the inclusion of "no-fault," Personal Insurance Protection, medical payments, uninsured boater, underinsured boater, supplementary no fault, or any other optional coverage. If such protection is imposed by operation of law, then the limits of such protection will be the minimum required by applicable law.

There may be exclusions to coverage, including but not limited to exclusions for:

- **running aground;**
- **theft;**
- **bodily injury to Renter or Renter's family;**
- **bodily injury to divers from the time they leave the Boat to the time that they are safely back on board;**
- **damage to Renter's personal property;**
- **damage to any marine estuary, artificial or natural reef.**

Renter hereby acknowledges that coverage is void if Renter breaches either:

- (1) a material term of this Agreement,
- (2) a term of the **Bareboat Charter Agreement** entered into with an Owner, or
- (3) fails to cooperate in any loss investigation conducted by BOATSETTER or the insurer.

Renters and Charter Partners are exclusively responsible for confirming that the insurance provided by Charter Partner for any of its Charter operations are adequate and sufficient for their intended Charter and hereby agree to hold Boatsetter harmless for any lapse or absence of coverage.

For a complete list of exclusions and Policy limits when coverage is provided through Boatsetter, the Renter MUST contact the insurance agent at:

Tanya Lewicki

Arthur J. Gallagher & Co

8333 NW 53rd Street, Suite 600 | Miami, FL 33166

305.639.3154

Tanya.lewicki@ajg.com

c. Additional Terms for Renter.

Vessel Theft or Conversion. It is a felony in most states to fail to return a rental boat within a certain period of time after the rental period has expired. Each state's relevant statute is hereby incorporated by reference. The following conduct may result in the Boat you have Chartered being reported as stolen to law enforcement, possibly subjecting You and any other person in possession of the Boat to civil and/or criminal penalties and / or insurance coverage being voided:

- a. If You fail to return the Boat you have Chartered at the time and place specified in the Charter Confirmation and You have not properly obtained an extension of the Charter Period through the Service;
- b. If the Boat is returned to any place other than the Redelivery Location;
- c. If You misrepresent material facts to the Owner pertaining to Your Charter, use, or operation of the Boat;
- d. If the Boat is operated by anyone who has given a:
 - I. false name;
 - II. false address;
 - III. false or invalid driver's license;
 - IV. driver's license that becomes invalid during the Charter Period;
- e. If the Boat is operated by anyone:
 - I. who has obtained the keys without permission of the Owner or Renter;
 - II. who misrepresents or withholds facts to/from Owner or BOATSETTER material to the Charter, use or operation of the Boat.
- f. If the Vessel is navigated beyond the navigational limits set forth in the Vessel's insurance policy.

- i. Other provisions relating to Theft of the Vessel, Equipment and / or Appurtenances.
 - a. Any damage to, loss or theft of the Boat, its equipment and / or appurtenances occurring prior to the Owner's inspection of the Boat at the end of the Charter Period shall be the responsibility of the Renter.
 - b. If any of the Boat's appurtenances or equipment are stolen or lost as a result of the Boat being left unlocked or unsecured during the Charter Period the Renter shall be deemed responsible for the loss and shall cooperate fully with the Owner, BOATSETTER, police or other authorities with respect to any required report.
 - c. The Renter shall cooperate in the investigation of any accident or vandalism that occurs with respect to the Boat during the Charter Period.

7. CAPTAINS

a. Boat Captain Service Agreement.

The hiring of a Captain by a Renter is subject to the terms and conditions of the Boat Captain Service Agreement.

b. No Endorsement.

In order to promote safety and a great experience BOATSETTER provides a list of available Captains which can be hired by the Renter whether required by the Owner or requested by the Renter. BOATSETTER CANNOT AND DOES NOT CONTROL THE CONTENT CONTAINED IN ANY LISTINGS OR OFFERINGS BY CAPTAINS NOR THE CONDITION, LEGALITY, SUITABILITY, INSURABILITY OR QUALIFICATIONS OF ANY CAPTAINS. BOATSETTER never approves or endorses any Captain. BOATSETTER requires Captains to submit evidence of their qualifications at the time of initial sign up but does not and is not responsible to ensure that a Captain's credentials remain current at the time of any particular Charter.

Ensuring that a Captain is currently credentialed and properly qualified for a particular Boat or Charter is the sole responsibility of the Renter.

c. Captains Are Strictly Retained by Renter.

Renter agrees that it alone will be the employer of any Captain selected and / or hired by Renter and that said Captain will be so notified by Renter and agree that they are not the employee or borrowed servant of the Owner or BOATSETTER and will make no claims of any kind against Owner or BOATSETTER on the basis of any alleged employment relationship.

8. AFFILIATES

Various service providers including but not limited to travel agents and concierges, marinas, boat manufacturers, boat dealers, and other independent service providers may register on the BOATSETTER to offer various services to Users.

BOATSETTER CANNOT AND DOES NOT CONTROL THE CONTENT CONTAINED IN ANY LISTINGS OR OFFERINGS BY AFFILIATES NOR THE CONDITION, LEGALITY, SUITABILITY, INSURABILITY OR QUALIFICATIONS OF ANY AFFILIATES.

a. **Appointment Of Boatsetter In Limited Capacity As Payment Agent For Boatsetter Affiliates.**

Registered BOATSETTER Affiliates appoint BOATSETTER as the Affiliate's limited agent solely for the purpose of collecting payments made by Owners on behalf of the Affiliate for products and services provided by the Affiliate to a User. Each Affiliate agrees that payment of Fees made by an Owner or Renter to BOATSETTER shall be considered the same as a payment made directly to the Affiliate. In accepting appointment as the limited authorized payment agent of the Affiliate, BOATSETTER assumes no liability whatsoever for any acts or omissions of the Affiliate.

To the maximum extent permitted by the law, Affiliate shall indemnify, defend and hold BOATSETTER harmless from and against any and all claims, demands, expenses (including attorneys' fees and costs) and liabilities of any and every nature which BOATSETTER may sustain or incur or which may be asserted against BOATSETTER in its limited capacity as payment agent.

9. **BOOKINGS AND FINANCIAL TERMS.**

If you are an Owner and a Booking is requested for your Boat via the Service, You may be required to either confirm or reject the Booking within 24 hours of when the Booking is requested or the Booking request may be automatically cancelled.

When a Booking is requested via the Service, BOATSETTER will share with Owner (i) the first and last name of the Renter who has requested the booking, and, (ii) a link to the Renter's User Account profile page so that Owner can view such information before confirming or rejecting the Booking.

If Owner is unable to confirm or decides to reject a Booking of a Boat within such 24 hour period, any amounts collected by BOATSETTER for the requested Booking shall be refunded to the applicable Renter's credit card or other payment method and any pre-authorization of such credit card or other payment method will be released.

When Owner confirms a Booking requested by a Renter, BOATSETTER will send Owner an email, text message and/or message via the Service confirming such Booking, depending on the Owner's selected notification preference.

a. **Billing Procedure.**

Owner agree to the fees and charges, terms of sale, payment and billing policies applicable to Your use of the Service as stated in the **Fee Schedule**. BOATSETTER may add new services for additional fees and charges, or amend fees and charges for existing services, at any time in its sole discretion. All Fees for Owner's use of the Service are non-refundable, except as may be expressly stated in the **Fee Schedule**.

b. **Security Deposits.**

BOATSETTER will, in its limited capacity as the payment agent of the Owner, use commercially reasonable efforts to charge against the credit card or other payment method in the amount of the full Charter Fee plus minimum Security Deposit at the time the Booking is confirmed and prior to the Delivery. BOATSETTER will use commercially reasonable efforts to address Owners' requests and claims related to Security Deposits, but BOATSETTER is not responsible for administering or accepting any claims by Owners related to Security Deposits, and disclaims any and all liability in this regard.

For further information related to Security Deposits please see the [Fee Schedule](#).

c. **Payments.**

i. **Charter Fee.**

If You are an Owner, You may set the net amount you wish to charge for the Charter of your Boat as permitted by the Service. BOATSETTER will process the Charter Fee on your behalf, which means processing the Renter's credit card, retaining a commission as set forth in our Fee Schedule, distributing funds to third parties such as, but not limited to Affiliates and remitting such remaining funds due to you as provided in this section. BOATSETTER will remit payments due to you hereunder no later than thirty (30) days after the end of each calendar month in which the applicable Charter Fees are received for completed Charters. Payment shall be in the form You select when You register for the Service, or subsequently updated as permitted by the Service. BOATSETTER reserves the right to withhold payment or charge back to Your account any amounts otherwise due to BOATSETTER under this Agreement, or any amounts due as a result of a breach of this Agreement by You, pending BOATSETTER's reasonable investigation of such breach.

To ensure proper payment, You are solely responsible for providing and maintaining accurate contact and payment information associated with Your account.

Any bank fees related to returned or cancelled checks due to a contact or payment information error or omission may be deducted from the newly issued payment. You agree to pay all applicable taxes or charges imposed by any government entity in connection with Your participation in the Service. If You dispute any payment made hereunder, You must notify BOATSETTER in writing within thirty (30) days of any such payment. Failure to so notify BOATSETTER shall result in the waiver by You of any claim relating to any such disputed payment. Payment shall be calculated solely based on records maintained by BOATSETTER.

ii. **Captain's Fee.**

Captains are responsible to set the net amount they wish to charge for their Services. Renter's are responsible for payment of the Captain's Fee except on the event of Rental being canceled by Owner as set on the [Boat Captain Service Agreement](#).

d. **Taxes.**

You are solely responsible for ensuring that BOATSETTER has Your correct, current and applicable tax information. If We believe that We are obligated to obtain tax information and You do not provide this information to Us after We have requested it, We may withhold Your payments until You provide this

information or otherwise satisfy BOATSETTER that You are not a person or entity from whom BOATSETTER is required to obtain tax information.

- **IRS Reporting Regulations on Third-Party Payment Transactions.**

Due to Internal Revenue (“IRS”) regulations, U.S. third-party payment networks, including BOATSETTER, are required to file Form 1099-K for U.S. taxpayer sellers who meet the following thresholds in a calendar year:

- More than \$20,000 in unadjusted gross sales, and
- More than 200 transactions.

IRS regulations require non-U.S. taxpayers to provide Form W-8BEN to BOATSETTER in order to be exempt from U.S. tax reporting requirements. As a result of these and other upcoming regulations, the following Users are required by BOATSETTER to provide taxpayer identification information to BOATSETTER by completing a W-9 or a W-8BEN:

- All Professional sellers;
- Individual sellers that exceed 20 transactions in a calendar year, regardless of sales volume;
- Individual sellers that exceed \$20,000 in a calendar year, regardless of the number of sales.

Important Notice. Information in this Agreement does not constitute tax, legal, or other professional advice and must not be used as such. To find out how this new legislation will affect You or Your business, or if You have other questions, please contact Your tax, legal, or other professional adviser.

10. INTELLECTUAL PROPERTY.

a. License Grant.

By posting any User Content on the Service, You expressly grant, and You represent and warrant that You have a right to grant, to BOATSETTER a royalty-free, sub-licensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, publicly perform, publicly display, and make derivative works of all such User Content and Your name, voice, and/or likeness as contained in Your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with BOATSETTER’s (and its successors and affiliates) business. You also hereby grant each User of the Service a non-exclusive license to access Your User Content through the Service, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Service and under this Agreement.

b. Third Party Links.

The Service may contain links to third-party websites, advertisers, services, special offers, or other events or activities that are not owned or controlled by BOATSETTER. BOATSETTER does not endorse

any such sites or the information, materials, products, or services contained on or accessible through such sites. BOATSETTER has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites or services. If You access a third party website from the Service, You do so at Your own risk, and You understand that this Agreement and BOATSETTER's **Privacy Policy** do not apply to Your use of such sites. You expressly relieve BOATSETTER from any and all liability arising from Your use of any third-party website or services or third party owned content. Additionally, Your dealings with or participation in promotions of advertisers found on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between You and such advertisers. You agree that BOATSETTER shall not be responsible for any loss or damage of any sort relating to Your dealings with such advertisers. We encourage You to be aware of when You leave the Service, and to read the terms and conditions and privacy policy of any third-party website or service that You visit.

c. **End User Licenses.**

- I. **BOATSETTER Service.** Subject to the terms and conditions of this Agreement, You are hereby granted a non-exclusive, limited, non-transferable, freely revocable, license to use the Service for Your personal, noncommercial use only. BOATSETTER reserves all rights not expressly granted herein in the Service and the BOATSETTER Content (as defined below). BOATSETTER may terminate this license at any time for any reason or no reason.
- II. **Use of BOATSETTER Software.** To use the BOATSETTER Software You must have a mobile device that is compatible with the BOATSETTER Service. BOATSETTER does not warrant that the BOATSETTER Software and/or BOATSETTER Service will be compatible with Your mobile device.
- III. **License Grant.** BOATSETTER hereby grants You a non-exclusive, non-transferable, revocable license to use a compiled code copy of the BOATSETTER Software for one BOATSETTER User account on one mobile device owned or leased solely by You, for Your personal use.
- IV. **Restrictions.** You may not:
 - (i) modify, disassemble, decompile or reverse engineer the BOATSETTER Software, except to the extent that such restriction is expressly prohibited by law;
 - (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the BOATSETTER Software to any third party or use the BOATSETTER Software to provide time sharing or similar services for any third party;
 - (iii) make any copies of the BOATSETTER Software;
 - (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the BOATSETTER Software, features that prevent or restrict use or copying of any content accessible through the BOATSETTER Software, or features that enforce limitations on use of the BOATSETTER Software; or
 - (v) delete the copyright and other proprietary rights notices on the BOATSETTER Software.
 - (vi) copy, distribute, or disclose any part of the Service in any form via any medium, including without limitation by any automated or non-automated "scraping";

- (vii) use any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the BOATSETTER servers than a human can reasonably produce in the same period of time by using a conventional online web browser except that BOATSETTER grants the operators of public search engines revocable permission to use spiders to copy materials from BOATSETTER.com for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials;
 - (viii) transmit spam, chain letters, or other unsolicited email;
 - (ix) attempt to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service;
 - (x) take any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure;
 - (xi) upload invalid data, viruses, worms, or other software agents through the Service;
 - (xii) collecting or harvesting any personally identifiable information, including account names, from the Service;
 - (xiii) use the Service for any commercial solicitation purposes;
 - (xiv) impersonate another person or otherwise misrepresent Your affiliation with a person or entity, conduct fraud, hide or attempt to hide Your identity;
 - (xv) interfere with the proper working of the Service;
 - (xvi) access any content on the Service through any technology or means other than those provided or authorized by the Service; or
 - (xvii) bypass the measures BOATSETTER may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.
- V. **Software Upgrades.** You acknowledge that BOATSETTER may from time to time issue upgraded versions of the BOATSETTER Software, and may automatically electronically upgrade the version of the BOATSETTER Software that You are using on Your mobile device. You consent to such automatic upgrading on Your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades.
- VI. **Third-Party Code.** Any third-party code that may be incorporated in the BOATSETTER Software is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code.
- VII. **Rights Reserved.** The foregoing license grant is not a sale of the BOATSETTER Software or any copy thereof, and BOATSETTER or its third party partners or suppliers retain all right, title, and interest in the BOATSETTER Software (and any copy thereof). Any attempt by You to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. BOATSETTER reserves all rights not expressly granted under this Agreement.
- VIII. **Government End Users.** If the BOATSETTER Software is being acquired on behalf of the United States Government, then the following provision applies. Use, duplication, or disclosure of the BOATSETTER Software by the U.S. Government is subject to restrictions set forth in this

Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.

- IX. **Export Control.** The BOATSETTER Software originates in the United States, and is subject to United States export laws and regulations. The BOATSETTER Software may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the BOATSETTER Software may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the BOATSETTER Software and the BOATSETTER Service.

d. **Boatsetter's Proprietary Rights.**

Except for Your personal individual information, the Service and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music (the "BOATSETTER Content"), and all Intellectual Property Rights related thereto, are the exclusive property of BOATSETTER and its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and You agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the BOATSETTER Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite You to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("Idea(s)"). By submitting any Idea, You agree that Your disclosure is gratuitous, unsolicited and without restriction and will not place BOATSETTER under any fiduciary or other obligation, and that BOATSETTER is free to use the Idea without any additional compensation to You, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of Your submission, BOATSETTER does not waive any rights to use similar or related ideas previously known to BOATSETTER, or developed by its employees, or obtained from sources other than You.

e. **DMCA Notice.**

Since BOATSETTER respects artist and content owner rights, it is BOATSETTER's policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("DMCA").

If You believe that Your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify BOATSETTER's copyright agent as set forth in the DMCA.

For Your complaint to be valid under the DMCA, You must provide the following information in writing:

- An electronic or physical signature of a person authorized to act on behalf of the copyright owner;

- Identification of the copyrighted work that You claim has been infringed;
- Identification of the material that is claimed to be infringing and where it is located on the Service;
- Information reasonably sufficient to permit BOATSETTER to contact You, such as Your address, telephone number, and, e-mail address;
- A statement that You have a good faith belief that use of the material in the manner contemplated of is not authorized by the copyright owner, its agent, or law; and
- A statement, made under penalty of perjury, that the above information is accurate, and that You are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following DMCA Agent:

Attn: DMCA Notice – BOATSETTER

Email: contact@boatsetter.com

Please note that this procedure is exclusively for notifying BOATSETTER and its affiliates that Your copyrighted material has been infringed. The preceding requirements are intended to comply with BOATSETTER's rights and obligations under the DMCA, including 17 U.S.C. 512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding Your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, BOATSETTER has adopted a policy of terminating, in appropriate circumstances and at BOATSETTER's sole discretion, Users who are deemed to be repeat infringers. BOATSETTER may also at its sole discretion limit access to the Service and/or terminate the accounts of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS FEES.

11. **PRIVACY.**

BOATSETTER cares about the privacy of its Users. Our [Privacy Policy](#) outlines how We use and safeguard Your information. You understand by using the Service, You are consenting to the collection, use and disclosure of Your personally identifiable information and aggregate data as set forth in our [Privacy Policy](#), and to have Your personally identifiable information collected, used, transferred to and processed in the United States.

By providing BOATSETTER with Your email address, You consent to BOATSETTER using the email address to send You Service related email, including any notices required by law, in lieu of communication by postal mail. By providing BOATSETTER Your cell phone number, You consent to BOATSETTER using the phone number to send You Service-related SMS messages. You may opt out of Service related emails or SMS messages by emailing contact@boatsetter.com. Opting out of Service related messages may prevent you from fully participating in the Service.

By providing BOATSETTER with your email address and/or cell phone number You also consent to BOATSETTER sending you other messages, including notice of changes to features of the Service and special offers. If You do not want to receive such messages, You may opt by changing Your preferences in Your Settings page. Opting out may prevent You from receiving messages regarding updates, improvements, or offers regarding the Service.

For more information please review the [Privacy Policy](#) incorporated herein by reference.

12. **SECURITY.**

We have implemented commercially reasonable technical and organizational measures designed to secure Your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, We cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Your personal information for improper purposes. You acknowledge that You provide Your personal information at Your own risk.

BOATSETTER does not endorse any Users, Owners, Renters, Boats, Affiliates or Captains. In addition, although this Agreement requires Users to provide accurate information, BOATSETTER does not attempt to confirm, has no obligation to inquire, and does not confirm, any User's purported identity or other information provided by each such User.

You are responsible for determining the identity and suitability of others whom You contact via the Service. Except as provided by this Agreement, BOATSETTER will NOT be responsible for any damage or harm resulting from Your interactions with other Users or Affiliates.

13. **INDEMNIFICATION.**

User agrees to defend, indemnify and hold harmless BOATSETTER and its subsidiaries, agents, attorneys, licensors, insurers, underwriters, managers, and other affiliated companies and their employees, contractors, agents, officers and directors, from and against any and all claims, causes of action, damages, obligations, losses, liabilities, liens, costs or debt and expenses (including but not limited to attorney's fees) howsoever caused including those arising from:

- (i) User's use of and access to the Service, including, but not limited to, any data or content transmitted or received by User;
- (ii) PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM USER'S ACCESS TO OR PARTICIPATION IN THE BOATSETTER SERVICE INCLUDING, BUT NOT LIMITED TO ANY INJURY, DEATH OR DAMAGE ARISING AS A RESULT OF OR RELATED TO USE OF A BOAT OR OF A CHARTER;
- (iii) Your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties contained herein;
- (iv) Your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights;
- (v) Your violation of any law, rule or regulation of the United States (including local, state and federal laws) or the laws of any other country in which the Boat is operated;

- (vi) any claim for damages that arise as a result of any of your User Content or any that is submitted via Your account; or
- (vii) any other party's access and use of the Service with your unique username, password or other security code.

14. LIMITATION OF DAMAGES

By using the Service, You agree that any legal remedy or liability that You seek to obtain for actions or omissions of other Users or other third parties will be limited to a particular User or third party that caused You harm and You agree not to attempt to impose liability on, or seek any legal remedy from BOATSETTER with respect to such actions or omissions. If You have a dispute with one or more Users, you release BOATSETTER (and its officers, directors, employees, agents, subsidiaries, insurers and underwriters) from any and all claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes or Your use of the Services.

IN NO EVENT SHALL BOATSETTER, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, INSURERS, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, LIENS, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE GREATER OF EITHER (a) THE AMOUNTS PAID BY BOATSETTER TO YOU IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY OR (b) ONE HUNDRED DOLLARS (\$100). THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN BOATSETTER AND YOU.

CALIFORNIA RESIDENTS: If You are a California resident, you waive California Civil Code 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

15. INSURANCE.

Through a third party insurer BOATSETTER makes available insurance intended to provide certain limited coverage during some Charters transacted through the Service, as further described in the **Insurance Summary**, incorporated herein by reference. In the event a Charter in which You participate as a Renter results in a claim covered by this insurance, BOATSETTER will utilize reasonable efforts to assist You in submitting a claim. BOATSETTER does not guarantee insurance coverage nor the results of any claim submitted for coverage under any policy of insurance. No User of the Service should assume they are afforded any insurance coverage unless they receive specific confirmation from the insurance carrier(s). NOT ALL BOATS ON THE BOATSETTER SITE ARE COVERED BY INSURANCE PROVIDED BY BOATSETTER'S THIRD PARTY INSURER. SOME BOATS ARE COVERED SEPARATELY AND EXCLUSIVELY BY THE OWNER'S INSURANCE POLICY.

Remember — it is *always* the User's responsibility to determine what insurance coverage exists, if any, and whether it is adequate and sufficient for their needs!

16. GENERAL DISCLAIMERS AND DISCLAIMER OF ALL WARRANTIES.

If, at any time, BOATSETTER's policies differ from applicable federal, state, or local statutes, please remember that those legal requirements *always* preempt the BOATSETTER policies.

BOATSETTER CANNOT AND DOES NOT CONTROL THE CONTENT CONTAINED IN ANY LISTINGS OR USER GENERATED CONTENT NOR THE CONDITION, LEGALITY, SUITABILITY, INSURABILITY OR SEAWORTHINESS OF ANY BOAT. BOATSETTER IS NOT RESPONSIBLE FOR AND DISCLAIMS ANY AND ALL LIABILITY RELATED TO ANY AND ALL LISTINGS AND BOATS. ACCORDINGLY, ANY BOOKINGS AND CHARTERS ARE MADE AT THE RENTER'S AND BOAT OWNER'S OWN RISK WHETHER OR NOT AFFILIATES ARE INVOLVED. IT IS THE RESPONSIBILITY OF EACH PARTY TO UNDERSTAND AND MAKE CERTAIN THAT ALL NECESSARY INSURANCE COVERAGE IS IN PLACE!

IF YOU CHOOSE TO USE THE SERVICE AND/OR PARTICIPATE IN A CHARTER WHETHER AS A RENTER OR AN OWNER, YOU DO SO AT YOUR OWN RISK. YOU ACKNOWLEDGE AND AGREE THAT BOATSETTER DOES NOT CONDUCT CRIMINAL BACKGROUND CHECKS ON ANY USER, INCLUDING BUT NOT LIMITED TO RENTERS, OWNERS, AND/ OR AFFILIATES. THE SERVICE AND ANY CONTENT IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

DISCLAIMER OF ALL WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THERE IS ALSO NO WARRANTY OF WORKMANLIKE PERFORMANCE AND THE SAME IS SPECIFICALLY DISCLAIMED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BOATSETTER OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

WITHOUT LIMITING THE FOREGOING, BOATSETTER, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE USER CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE OR ANY CHARTER WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT RESULTS FROM YOUR USE OF THE SERVICE.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICE AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICE INCLUDING BUT NOT LIMITED TO RENTERS OR OWNERS. YOU UNDERSTAND THAT BOATSETTER DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SERVICE AND BOATSETTER IS NOT RESPONSIBLE FOR THE ACTION OF USERS OF THE SERVICE.

BOATSETTER DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE BOATSETTER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND BOATSETTER WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

Some states do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to some specific Users. The disclaimers, exclusions and limitations of liability under this Agreement do not apply to the extent prohibited by applicable law.

17. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BOATSETTER, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, INSURERS, UNDERWRITERS, SUPPLIERS OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE, INCLUDING WITHOUT LIMITATION ANY CHARTER. UNDER NO CIRCUMSTANCES WILL BOATSETTER BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BOATSETTER ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY:

- (II) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT;
- (III) PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE INCLUDING, BUT NOT LIMITED TO ANY INJURY, DEATH OR DAMAGE ARISING AS A RESULT OF A CHARTER;
- (IV) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN;
- (V) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE;
- (VI) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY;
- (VII) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR
- (VIII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF BOATSETTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

BOATSETTER is not liable to Users for any interruption of the Service, delay or failure to perform.

18. ASSIGNMENT.

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by You, but may be assigned by BOATSETTER without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

19. TERMINATION.

You may terminate Your participation in the Service at any time, for any reason, upon receipt by BOATSETTER of your written or email notice of termination. The terms of this Agreement will remain in effect after Your participation in the Service terminates.

BOATSETTER may permanently or temporarily terminate, suspend, or otherwise refuse to permit a User access to the Service without notice and/or liability for any reason, including if in BOATSETTER's sole determination User violates any provision of this Agreement, or for no reason. Upon termination for any reason or no reason, User continues to be bound by this Agreement. All aspects of the Service are subject to change or elimination at BOATSETTER's sole discretion. BOATSETTER reserves the right to interrupt the Service with or without prior notice for any reason or no reason.

20. JURISDICTION.

You agree that: (i) the Service shall be deemed solely based in Florida; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over BOATSETTER, either specific or general, in jurisdictions other than Florida.

You agree to submit to the personal jurisdiction of a State court located in Miami Dade County, Florida or the United States District Court for the Southern District of Florida, for any actions for which We retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below.

21. GOVERNING LAW.

Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be governed by the United States General Maritime Law or, where said law is silent, shall be governed, construed and interpreted in accordance with the internal substantive laws of the State of Florida, without respect to its conflict of laws principles.

The application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

22. ARBITRATION AND DISPUTE RESOLUTION.

All claims and disputes arising under or relating to this Agreement are to be resolved by the parties. If you're unable to reach an agreement, you can ask Boatsetter to make the final decision 72 hours after the request was opened. When you involve Boatsetter, our team will be notified and a dedicated team member will be assigned to your case. They'll review the information provided by you and your host or guest, before making a final decision. In some cases, we may need to contact you to gather additional information, before we can make a decision. This decision will be binding and final.

Parties can also choose to resolve their claim by the binding arbitration in accord with the rules then in effect of Arbitration Resolution Services (“ARS”) with any hearings to be held at a mutually agreeable location in Miami Dade County, Florida. The parties expressly agree to abide by any and all rules of ARS in effect at the applicable time and as found in their web site at www.arbresolutions.com. In the event that a party fails to pay any award, the award may be converted to a judgment in any Court of competent jurisdiction.

23. CLASS ACTION WAIVER.

This Agreement requires the exclusive resolution of all disputes related to and / or arising from this Agreement to be conducted through arbitration instead of through any individual legal or class action. Even if the applicable law provides otherwise, User agrees that any legal action shall be brought individually and not as a member or part of any class action and User waives any right to participate in such class action. In any arbitration, User agrees that the arbitrator(s) have no authority to arbitrate claims on a class action basis.

24. SPECIALLY DESIGNATED NATIONALS; U.S. EXPORT CONTROLS.

By using the BOATSETTER.COM website and participating in the BOATSETTER Program, User represents and warrants that (i) neither User nor User’s listed Boat is located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) User is not listed on any U.S. Government list of prohibited or restricted parties. User also will not use the Service for any purpose prohibited by U.S. law, including but not limited to the development, design, manufacture or production of missiles, or nuclear, chemical or biological weapons. BOATSETTER does not permit User Profiles associated with certain countries due to U.S. embargo restrictions.

The Service is controlled and operated from BOATSETTER’s facilities in the United States. BOATSETTER makes no representations that the Service is appropriate for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if You are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

25. NOTICE.

BOATSETTER may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to You via electronic mail, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by BOATSETTER in its sole discretion. BOATSETTER reserves the right to determine the form and means of providing notifications to Users, provided that You may opt out of certain means of notification as otherwise specifically described in this Agreement. BOATSETTER is not responsible for any automatic filtering You or Your network provider may apply to email notifications We send to the email address You provide Us. We recommend that you add info@boatsetter.com to Your email address book to help ensure You receive email notifications from BOATSETTER.

26. **MISCELLANEOUS.**

a. **Entire Agreement / Severability.**

This Agreement, as amended, including all documents referenced in this Agreement and incorporated herein, and any other legal notices and agreements published by BOATSETTER via the Service, shall constitute the entire agreement between User and BOATSETTER concerning the Service. If a court of competent jurisdiction or a properly convened arbitration panel deems any provision of this Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

b. **No Waiver.**

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and BOATSETTER's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

27. **SIGNATURE.**

By accessing or using the BOATSETTER Service, You signify You have read, understood, and agree to be bound by this Agreement and to the collection and use of Your information as set forth in the BOATSETTER **Privacy Policy** whether or not You are a registered User of our Service.

Further, User understands that by checking the box next to "I have read and agree to the Agreement" and clicking on "Sign Up" on the Registration, User is electronically signing this Agreement. If You accept or agree to this Agreement on behalf of a company or other legal entity, You represent and warrant that You have the authority to bind that company or other legal entity to this Agreement and in that case, "You," "Your" and "User" will refer to that company or other legal entity.

Please contact BOATSETTER at contact@boatsetter.com with any questions regarding this Agreement.