

Dated February 2015

THE YACHT CONCIERGE –  
TERMS AND CONDITIONS FOR CUSTOMERS

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## 1 DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

**Broker** means the intermediary broker or agent who introduces you to Us (where applicable);

**Business Days** means 09.00 to 17.00 Monday to Friday excluding public or bank holidays in London;

**Call** means a telephone call or email by you to The Yacht Concierge to make an Order;

**Call Fee** means the fee We will charge you each time you make a Call to The Yacht Concierge, which will be as quoted on Our Website, brochure and/or current price list from time to time, except in cases of obvious error;

**Contract** means each contract between Us and you for the supply of Services in accordance with these Terms;

**Contract Year** means a period of 12 months, commencing on the date We issue written confirmation of your Membership in accordance with clause 2.2;

**Event Outside Our Control** is defined in clause 8.2;

**Member** means each individual member of The Yacht Concierge;

**Membership** means annual membership of The Yacht Concierge;

**Membership Fee** means the non-refundable annual membership fee which shall be as quoted on Our Website, brochure and/or current price list from time to time, except in cases of obvious error;

**Order** means your order for the Services;

**Service Provider(s)** means any party with whom We place an order for goods or services on your behalf at your expense;

**Services** means the good and/or services (or any part thereof) that We offer as specified on Our Website from time to time and any special request from a Member for the provision of goods and/or services that we agree to provide from time to time;

**Terms** means the terms and conditions set out in this document;

**Territory** means Europe and North America and any additional countries notified or agreed by Us from time to time;

**The Yacht Concierge** means the membership based concierge service operated by Us for Members;

**Website** means Our website at [www.theyachtconcierge.com](http://www.theyachtconcierge.com) or such other domain address as we may notify to you from time to time; and

**We/Our/Us** means Sixty One 320 Limited (trading as The Yacht Concierge) of 17 Queen Street, Mayfair, London W1J 5PH.

- 1.2 When We use the words "writing" or "written" in these Terms, this will include email unless We say otherwise.

## 2 MEMBERSHIP

- 2.1 To apply for Membership of The Yacht Concierge, you must submit to us a completed application form and pay the Membership Fee in accordance with clause 6.1. Please ensure that you read these Terms carefully before submitting your application form, as by submitting your application form you confirm your acceptance of these Terms.
- 2.2 On receipt of your application form and Membership Fee We will review it and notify you in writing whether you have been accepted for Membership. Membership is at Our sole and absolute discretion and We reserve the right to refuse Membership for any reason (in which case your Membership Fee will be refunded in full).
- 2.3 Once We have issued written confirmation that you have been accepted as a Member and we have received payment of your Membership Fee, you will become a Member and the Contract between you and Us will come into existence, subject always to these Terms. We will then issue you with a Membership card and number.
- 2.4 We consider that these Terms constitute the whole agreement between you and Us. By submitting your application form you acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of Us or any third party which is not set out in these Terms.

- 2.5 The Terms apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3 CHANGES TO TERMS OR SERVICES**

- 3.1 We may revise these Terms from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in how We accept payment from you, changes in relevant laws and regulatory requirements, and/or changes in the Services.
- 3.2 If We have to revise these Terms under clause 3.1, We will give you at least thirty (30) days' written notice of any changes to these Terms before they take effect.
- 3.3 We reserve the right to change, alter and/or add to the Services at any time provided that the nature of the Services are not materially affected to the detriment of Members. We will give you at least thirty (30) days' written notice of any change to the Services before they take effect.

### **4 PROVIDING SERVICES**

- 4.1 Once accepted as a Member, you can make Orders for the Services by telephone or email to The Yacht Concierge, quoting your Membership number.
- 4.2 We will endeavour to fulfil any Order for the Services, subject to the number of Services required by you at one time, the availability of a Service Provider to provide the Services in the Territory (which may vary depending on the country and the Services requested) and your compliance with your obligations set out in these Terms.
- 4.3 By making an Order you irrevocably authorise Us (including, without limitation, any sub-contractor of Us) to place an order for the Services with a Service Provider in your name and, where applicable, to use your debit or credit card to make reservation(s) in respect of and/or pay for the Services.
- 4.4 In the circumstances described in clause 4.3, you will enter into a direct contractual relationship with the Service Provider and any goods and/or services ordered on your behalf will be subject to the Service Provider's terms and conditions, which you agree to accept. Subject to the Service Provider's terms and conditions, you will be responsible for any documentation (including customs declaration and

insurance provisions) required and/or taxes or duties payable in respect of delivery or collection of any goods and/or services ordered.

- 4.5 We reserve the right to withdraw any of the Services and/or refuse to supply the Services requested for any reason including but not exclusively if, in our reasonable opinion, the request for Services is unlawful, unethical or unreasonable or the Member is being abusive or aggressive.
- 4.6 At the time that you make an Order (or as soon as possible afterwards) we will advise on the prices and delivery timescales for the Services. We will make every effort to complete the Services within the timeframe agreed with you. However, We will not be responsible for any delay or failure of any Service Provider to provide any Services on time, where we have properly booked or ordered the Services on your behalf in good time. There may also be delays due to an Event Outside Our Control (see clause 8 for Our responsibilities when an Event Outside Our Control happens).
- 4.7 We will need certain information from you that is necessary for Us to provide the Services, for example, your contact details and details of a valid debit or credit card for you. You undertake that all details provided to Us for the purpose of ordering the Services are correct, that the debit or credit card is your own and that there are sufficient funds on the debit or credit card to cover the cost of the Services. If you do not provide Us with this information, or you provide Us with incomplete or incorrect information We may:
- 4.7.1 be unable to provide the Services ordered;
  - 4.7.2 at our discretion make an additional charge of a reasonable sum to cover any extra work that is required; and/or
  - 4.7.3 suspend your Membership with immediate effect on written notice to you; and

We will not be liable for any delay or non-performance by Us or a Service Provider where you have not provided this information to Us.

- 4.8 Where We cannot deal with your request during your first Call, We will make arrangements to call you back. For the avoidance of doubt, a call back will not be treated as the supply of separate Services and a separate Call Fee will not be incurred by you.

- 4.9 We may have to suspend the Services if We have technical problems. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency (in which case we will contact you as soon as reasonably possible). This does not affect your obligation to pay any invoices We and/or a Service Provider have/has already sent you.
- 4.10 If you do not pay Us and/or the Service Provider(s) for the Services when you are supposed to as set out in clauses 6.4 and 6.7, We may suspend the Services with immediate effect until you have paid Us and/or the Service Provider(s) the outstanding amounts (except where you dispute an invoice under clause 6.6). We will contact you to tell you this. This does not affect Our right to charge you interest under clause 6.5 in respect of any outstanding payments due to Us.
- 4.11 We make no warranty that the Website or use of the Services will be uninterrupted, timely or error-free.
- 4.12 We will endeavour to ensure that all information provided as part of the Services will be accurate at the time it is given to you. However, due to the nature of the Services being provided, We are often reliant on information sources outside of Our control and We accept no responsibility for the accuracy of third party information. The availability of specific information may vary from country to country and information provided to you as part of the Services may quickly become out-of-date and is provided without any guarantees, conditions or warranties as to its continuing accuracy. We are under no obligation to update such material unless such an obligation is expressly agreed in advance with you as part of the Order. No information provided to you as part of the Services is intended to be legal or medical advice on which you should place any reliance. We disclaim all liability and responsibility arising from any reliance placed on the information provided as part of the Services by you, or by anyone who may be informed of any of its contents, for any purpose other than the purpose for which it is intended or which has become out-of-date after it is given to you.
- 4.13 Where We report lost or stolen credit, debit or charge cards or mobile phones as part of the Service, We accept no responsibility for the failure of any card issuer or mobile phone company to act upon any report made by Us. This Service is not available for store cards.

## 5 IF THERE IS A PROBLEM WITH THE SERVICES

- 5.1 In the unlikely event that there is any defect with the Services and/or you wish to make a complaint:
- 5.1.1 please contact Us and/or the Service Provider(s) as soon as reasonably possible; and
  - 5.1.2 please give Us and/or the Service Provider(s) a reasonable opportunity to repair or fix any defect.
- 5.2 We will endeavour to deal with any complaints and/or correspondence received from you promptly and within five (5) Business Days at the latest.
- 5.3 In the event of a dispute between you and a Service Provider over the supply (or non-supply) of any goods and/or services forming part of the Services, we will, if required, use reasonable efforts to work with the parties to resolve such dispute.
- 5.4 As a consumer, you may have legal rights in relation to Services not carried out with reasonable skill and care, or if the materials We use are faulty or not as described. Nothing in these Terms will affect these legal rights.

## 6 FEES AND PAYMENT

- 6.1 The Membership Fee shall be payable at the time that you submit your completed application form in accordance with clause 2.1.
- 6.2 As a New Member you will receive a number of complimentary Calls; 10 Ashore service Calls or 40 Afloat service Calls as amended from time to time. Once you have used your complimentary Calls, We will charge you a Call Fee each time you make a Call to The Yacht Concierge. €40 (Forty euro) per Call for Ashore services and €10 (Ten euro) per Call for Afloat services.
- 6.3 If you request that we do so, We will confirm the Call Fee and the price of the Services at the time We confirm your Order. Our prices may change at any time, but price changes will not affect Orders that We have confirmed with you.
- 6.4 Once you have used your complimentary Calls, We will invoice you in respect of the Call Fee in arrears after the Services are completed. Each invoice will quote the Order number. You must pay each invoice



in cleared monies within thirty (30) calendar days of the date of invoice by direct debit, BACS, debit or credit card.

- 6.5 If you do not make any payment due to Us by the due date for payment, We may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of Barclays Bank plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.
- 6.6 However, if you in good faith dispute an invoice issued by us and contact Us to let Us know promptly after you have received an invoice that you dispute it, clause 6.5 will not apply until the dispute has been resolved.
- 6.7 Where We place an order for goods and/or services with a Service Provider on your behalf (in accordance with clause 4.3) and we pay the reservation fee or price of the goods and/or services in advance using your debit or credit card you irrevocably authorise Us to do so. You will be responsible directly to the Service Provider for settlement of the balance of all bills for any goods and/or services ordered on your behalf where pre-payment of the full amount was not made using your debit or credit card, which will be subject to the Service Provider's terms and conditions. You shall indemnify Us at all times in respect of any handling fees or charges that we incur in procuring the Services on your behalf.

## **7 OUR LIABILITY TO YOU**

- 7.1 Where we instruct a Service Provider for the provision of the Services on your behalf, your contract is with the Service Provider not Us. We will not in any circumstances be responsible or liable for the failure of any Service Provider to provide any goods and/or services properly booked or ordered by Us on your behalf or any loss, liability or cost incurred by you arising from or as a result of the negligence or any other act or omission of the Service Provider or any other third party supplier in providing or failing to provide any goods and/or services.
- 7.2 We will not in any circumstances be responsible or liable for any loss whatsoever arising out of any bookings made on your behalf by a Service Provider (including, without limitation, flight cancellations, disruption to travel plans, insurance costs and failure of hotel bookings).

- 7.3 Nothing in these Terms shall limit or exclude Our liability for:
- 7.3.1 death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors;
  - 7.3.2 fraud or fraudulent misrepresentation; or
  - 7.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.4 Subject to clause 7.3:
- 7.4.1 we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with the Contract and/or the Services which shall include, without limitation, any loss of or damage to profit, business, contracts, data, anticipated savings, reputation or goodwill and/or damages to third parties; and
  - 7.4.2 our total aggregate liability to you in respect of any claims made in any twelve (12) months in relation to all other direct losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lesser of the sum of one hundred thousand Euros (€100,000) (or the equivalent) or the total aggregate fees paid for Services under the Contract in the Contract Year in respect of which the claim arises.
- 7.5 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 This clause 7 shall survive the termination of the Contract.

## **8 EVENTS OUTSIDE OUR CONTROL**

- 8.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 8.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or

other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, unavoidable accident, failure of electronic payments systems or failure of public or private telecommunications networks affecting the provision of the Services by Us and/or a Service Provider.

8.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:

8.3.1 we will contact you as soon as reasonably possible to notify you; and

8.3.2 our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our performance of Services to you, We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.

8.4 You may cancel the Contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Services. Please see your cancellation rights under clause 9. We will only cancel the Contract if the Event Outside Our Control continues for longer than thirty (30) days in accordance with Our cancellation rights in clause 9.

## **9 YOUR RIGHT TO CANCEL OR CHANGE ORDERS**

9.1 Before We begin to provide the Services, you have the following rights to cancel an Order for Services, including where you choose to cancel because We are affected by an Event Outside Our Control or if We change these Terms under clause 3.1 to your material disadvantage:

9.1.1 You may cancel any Order for Services at any time before the start date for the Services by contacting Us. We will confirm your cancellation in writing to you.

9.1.2 If you cancel an Order under clause 9.1.1 and you have made any payment in advance to Us for Services that have not been provided to you, We will refund these amounts to you, except where we have paid a deposit or made a pre-payment to a Service Provider on your behalf in advance for

the Services, in which case any refund will be subject to the Service Provider's terms and conditions.

9.1.3 If you cancel an Order for Services under clause 9.1.1 and We or the Service Provider have already started work on your Order by that time, you will pay any costs We or the Service Provider have reasonably incurred in starting to fulfil the Order, and this charge will be deducted from any refund that is due to you (subject to the Service Provider's terms and conditions) or, if no refund is due to you, invoiced to you. We will tell you what these costs are when you contact Us.

9.2 Once We or the Service Provider have begun to provide the Services to you, you shall not be entitled to cancel the Services, unless otherwise agreed by Us or the Service Provider.

9.3 Please note that some Service Providers (for example, hotels and car hire companies) may reserve the right to debit your credit or debit card in the event that you cancel the reservation or fail to take up the arrangement.

9.4 Airline tickets ordered will be subject to the rules applicable to the type of ticket purchased by Us or a Service Provider on your behalf.

9.5 You may make a change to the Order for Services at any time before the start date for the provision of the Services by contacting Us. Where this means a change in the total price of the Services, We will notify you of the amended price. You can choose to cancel the Order in accordance with clause 9.1 in these circumstances, however, please note that the Service Provider may charge for the cancellation or amendment of an Order at the Service Provider's discretion.

## 10 **OUR RIGHT TO CANCEL ORDERS**

10.1 We may have to cancel an Order before the start date for the Services, due to an Event Outside Our Control or the unavailability of a Service Provider, key personnel or key materials without which We or the Service Provider cannot provide the Services. We will promptly contact you if this happens.

10.2 If a Service Provider has to cancel an Order after you have made any payment in advance for Services, any refund will be subject to the Service Provider's terms and conditions.

- 10.3 We do not provide as part of the Service a call answering or a general messaging service, conference call facilities or a business research or consultation service and we reserve the right to refuse to supply the Services to you, on three (3) Business Days' written notice to you, if we have reasonable grounds for suspecting that the Services are being put to such use by you.

## 11 **TERMINATION**

- 11.1 We reserve the right to cancel or suspend your Membership at any time at Our discretion for any reason whatsoever. You will not be entitled to a refund of the Membership Fee except in exceptional circumstances to be determined by Us at Our sole and absolute discretion.
- 11.2 On termination of your Membership or the Contract for any reason, you shall immediately pay to Us all of Our outstanding unpaid invoices.
- 11.3 The termination of your Membership or the Contract will not affect the rights of either party that have accrued as at termination.

## 12 **CONFIDENTIALITY**

- 12.1 We shall (except as authorised by you or as required to carry out the Services on your behalf) not disclose to any third party (other than our agents, subcontractors, employees, directors and professional advisors) any confidential information that We may have acquired concerning you.
- 12.2 The Services provided to you will be treated by Us as confidential information and We will take reasonable steps to keep such information confidential as may reasonably be required by you in writing save for such information which:
- 12.2.1 is now or hereafter becomes available in the public domain other than through the fault of Us or any of Our employees, subcontractors or agents;
  - 12.2.2 is already known to Us or any of Our directors and employees at the time of its disclosure; or
  - 12.2.3 is required to be disclosed by law by any court of competent jurisdiction or by a governmental or regulatory authority, or where there is a legal duty or requirement to disclose.

- 12.3 You acknowledge and accept that due to the nature and extent of the Services it is not practical for Us to obtain confidentiality agreements from the Service Providers. You are advised to check the terms and conditions of each Service Provider for information on how your confidential information may be used by them.

## 13 HOW WE MAY USE YOUR PERSONAL INFORMATION

- 13.1 By submitting your completed application form, you acknowledge and agree that we may use the personal information you provide to Us and/or share it with a Service Provider in order to:
- 13.1.1 provide the Services;
  - 13.1.2 process your payment(s) for the Services; and
  - 13.1.3 inform you about similar products or services that We and/or a Service Provider provide, but you may stop receiving these at any time by contacting Us.
- 13.2 Where applicable, you agree that We may share your personal information and information about how you use the Services with the Broker, who may use the information for direct marketing and customer relationship purposes.

## 14 INFORMATION ABOUT US AND HOW TO CONTACT US

- 14.1 We are a company registered in England and Wales. Our company registration number is 7839489 and Our registered office is at 1st Floor, 24/25 New Bond Street, Mayfair, London W1S 2RR.
- 14.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning Our customer service team at +44 (0)20 7989 0110 or by emailing Us at [mail@theyachtconcierge.com](mailto:mail@theyachtconcierge.com).
- 14.3 If you wish to contact Us in writing, or if any clause in these Terms requires you to give Us notice in writing (for example, to cancel the contract), you can send this to Us by email, by hand, or by post to The Yacht Concierge at the address or email address above. If We have to contact you or give you notice in writing, We will do so by email to the email address you provide to Us in your application form (unless agreed otherwise).

15 **OTHER IMPORTANT TERMS**

- 15.1 We may at Our sole and absolute discretion sub-contract any of Our obligations under this Agreement without the need to consult with or obtain approval from you.
- 15.2 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.
- 15.3 You may only transfer your rights or your obligations under these Terms to another person if We agree in writing.
- 15.4 The Contract is between you and Us. No other person shall have any rights to enforce any of its terms and nothing in these Terms shall grant to any third party the right to take action on it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 15.5 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 15.6 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 15.7 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts.