



## **MYBA E-Contract Terms and Conditions of Use**

The MYBA Charter Agreement is made available for purchase and use electronically by established Yacht Brokers in exchange for a fee and compliance with the Application requirements and ongoing compliance with the Subscription Terms and Conditions of Use.

This document sets out the Terms & Conditions of Use of the MYBA E-Contract service. Once granted, the subscription may be lost if these Terms & Conditions are not observed. The E-Contract may only be used by Subscribers or approved Individual Users. The use by any other person is prohibited and a breach of these Terms & Conditions. Furthermore, the terms of the E-Contract subscription shall automatically be disappplied in their entirety should they be so misused.

These Terms and Conditions include exclusions and limitations on MYBA's liability, see in particular the section entitled Liability/Disclaimer.

### **Charter Broker and Charter Manager Guidelines**

The Subscriber and each Individual User must read, sign and abide by the MYBA Guidelines for Charter Brokers & Charter Managers for the time being in force. These are available on the E-Contract website [www.myba-econtract.com](http://www.myba-econtract.com) or [click here to download](#).

### **Subscription Terms & Conditions of Use**

#### **Subscribers and Individual Users**

To preserve professionalism, integrity and standards, in order to become a Subscriber, the relevant person must satisfy the Application Requirements for the time being in force. The requirements are available on the E-Contract website [www.myba-econtract.com](http://www.myba-econtract.com).

A Subscriber and/or Individual User must satisfy the relevant existing Application Requirements, as amended by MYBA from time to time.

If a Subscriber undergoes a change of control and/or undergoes a change in the identity of its Individual Users, then the Subscriber must inform MYBA immediately. MYBA may, at its discretion, require the Subscriber to re-submit an application to remain as a Subscriber which will be judged against the then current Application Requirements for new Subscribers. Failure to notify MYBA may incur immediate suspension or loss of access to the site.

A Subscriber which engages self-employed individuals who are exclusively contracted to the Subscriber may nominate them as Individual Users. In all other instances, Individual Users must be employees of the Subscriber themselves.

Each Individual User must sign a form confirming that they cannot share their login with or give access to any other individual either inside or outside the subscriber company.

Users of the service can only be representing the Subscriber under whose name they are applying.

Without prejudice to any action, claim and/or proceeding MYBA may bring against any Individual User, a Subscriber shall be liable for any misconduct, acts, omissions and/or breach of these Terms & Conditions by an Individual User nominated by them as if they were the Subscriber's own misconduct, acts, omissions and/or breaches.

A Subscriber must at all times maintain current professional indemnity / errors and omissions insurance providing cover of no less than either €500,000 or US\$500,000 per claim, no annual aggregate, or at such other level as MYBA may from time to time decide, depending on the currency in which the policy is written, to cover itself and all Individual Users nominated by it.

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Where a US based Subscriber is unable to obtain professional indemnity/errors and omissions insurance then, at the discretion of MYBA, this requirement can instead be satisfied by the Individual Users within the Subscriber having individual equivalent insurance cover in their own name or names (for the same amount as specified by MYBA).

Proof of suitable cover must be provided to MYBA on an annual basis. **Failure to comply will result in loss of access.**

Subscribers' and Individual Users' rights are personal and non-transferable unless by express permission of MYBA and only under exceptional circumstances, the onus being on the Subscriber to seek such approval from MYBA. Non-compliance could result in immediate suspension of access.

If a Subscriber or Individual User believes that its involvement in a dispute process is likely to or may tend to bring the Subscriber, and by extension MYBA, into disrepute, the fact and circumstances of the involvement must be disclosed and this should include details of any judgment or award made against the Subscriber which has not been honored by the Subscriber.

If a Subscriber has applied to and been refused access to any reputable superyacht association or related subscription services, or if the Subscriber has been suspended from any reputable superyacht association or related subscription services, for reasons of unethical behaviour or non-respecting of Industry Best Practice, the Subscriber and/or its employees or agents may neither use the MYBA E-Contract service nor reapply to be an E-Contract Subscriber for one year.

The Subscriber will notify MYBA Admin immediately when any personnel holding an E-Contract login leaves the Subscriber. These logins will then immediately be suspended.

### **Confidentiality and Access Codes**

Every Individual User is issued with their Access Code by MYBA. This Access Code is strictly personal to that Individual User and may not be divulged to or used by, nor transferred to, anyone else.

Allowing another individual to use the Access Code is in breach of these Terms & Conditions of Use and may be sanctioned by cancelling the access of the Individual User, temporarily or permanently together with the use of any other sanctions at the discretion of MYBA.

Each individual user must provide a nominative email address, including the name of the individual and the name of the Subscriber they work for.

### **Copyright and Restrictions**

The reproduction of the electronic MYBA Charter Agreement is prohibited unless pre-authorized by MYBA.

The Company reserves the right to take legal action in any jurisdiction in the event of unauthorised reproduction, transmission or use of material published or displayed on the MYBA E-Contract website.

No linking or publishing of the electronic MYBA Charter Agreement by an external source is permitted unless written permission is given by MYBA.

### **Services**

The Services are the access to the MYBA Charter Agreement in electronic form and licence to use that contract in accordance with these Terms.

MYBA will use its reasonable endeavours to maintain the Services and reserves the right to vary the Services at any time.

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If the Services are totally unavailable for an extended period of 7 consecutive days or more due to circumstances within the control of MYBA, then MYBA may make a pro rata refund of any subscription fees for the relevant Services.

### **Payment of Fees**

All subscriptions must be paid by credit card using the secure online payment facility within the E-Contract website. Only users with administrative rights have access to this facility and must be nominated at the time of application.

The following subscriptions are available:

#### 25 electronic MYBA Charter Agreements to be used within a 12-month period

MYBA Members and YACHTFOLIO Subscribers – 125€ (+ VAT if applicable)

Non-MYBA Members and non-YACHTFOLIO Subscribers – 250€ (+ VAT if applicable)

This subscription may be renewed if the 25 contracts are used before the 12-month period is over.

Any contract left on the subscription once the 12-month period is over will not be carried forward to the renewed subscription.

#### 12-month Unlimited MYBA Charter Agreements

MYBA Members and YACHTFOLIO Subscribers – 250€ (+ VAT if applicable)

Non-MYBA Members and non-YACHTFOLIO Subscribers – unavailable

The consideration for use of the Services by the Subscriber/Individual Users shall be the fees that were notified to the Subscriber at the time of application to become a Subscriber, or as changed by MYBA and notified to the Subscriber from time to time after then. The Subscriber shall pay those fees in the manner notified by MYBA to the Subscriber from time to time both regarding the amounts payable and due dates or other terms for payment, including, but not restricted to, any entitlement to refunds.

### **Housekeeping**

An E-Contract subscription is a corporate subscription and is opened on a one per country basis regardless of the number of offices in that country.

Individual Users are nominated in writing by a Subscriber director or manager. There is no extra cost to add additional Users.

A Subscriber which engages self-employed individuals who are exclusively contracted to the Subscriber may nominate them as Individual Users. In all other instances, Individual Users must be employees of the Subscriber themselves.

Users of the service can only be representing the company under which they are applying.

Users with administrative rights may be changed or added at any time under the same conditions for nominating individual users. An individual user and the administrative user may be the same person.

The watermark on an electronic MYBA Charter Agreement corresponds to the Subscriber that generated the E-Contract, and the unique serial number also corresponds to the Subscriber that generated the E-Contract as well as the date it was generated. Charter Managers should check both when presented with an electronic MYBA Charter Agreement. If there is an anomaly, this should be reported to MYBA Admin.

### **Liability/Disclaimer**

MYBA shall have no liability to any Subscriber or any third party arising from the abuse or misuse of the MYBA Charter Agreement purchased and used electronically or in printed format.

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Subscribers agree to indemnify and hold harmless MYBA from any consequences of any errors or omissions or infringement of third party intellectual property or other rights due to the information provided by them to MYBA.

MYBA shall have no liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by continued use of defective Services after a defect has become apparent or suspected or should reasonably have become apparent.

A Subscriber/Individual User shall give MYBA a reasonable opportunity to remedy any matter for which MYBA is liable before a Subscriber/Individual User incurs any costs and/or expenses in remedying the matter itself.

MYBA shall have no Liability for any:

- loss of profits and/or damage to goodwill;
- special damages;
- aggravated, punitive and/or exemplary damages;
- loss of communications;
- consequential losses and/or indirect losses;
- loss of and loss of use of and/or corruption of data;
- loss of and loss of use of software;
- security breach by any third party in relation to any communications network; and/or
- business interruption, loss of business, loss of contracts, loss of opportunity and/or production.

MYBA has no liability for any downtime and does not guarantee the Services will be available for access by Individual End Users.

MYBA reserves the right to withdraw and/or modify the Services at any time.

In no event shall the Liability of MYBA to a user of the Services exceed ten times the annual fees paid by that user or €500,000, whichever is the lower.

Each of the limitations and/or exclusions in these terms and conditions shall be deemed to be repeated and apply as a separate provision for each of:

- Liability in contract (including fundamental breach);
- Liability for breach of duty of care (including negligence);
- Liability for breach of statutory duty; and
- Liability for breach of common law and/or under any other legal basis;

except that the clauses above placing a financial cap on MYBA liability shall apply once in respect of all of the said types of liability.

Nothing in these terms and conditions shall exclude or limit MYBA's liability for death or personal injury due to its negligence or any liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

MYBA shall have no liability for any delay or failure in performing its obligations or the provision of Services as a result of a Force Majeure Event.

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If the event causing such delay or failure continues for in excess of 1 month the agreement formed by these terms and conditions may be terminated immediately on written notice at the option of the party not affected by the event.

### **Complaints**

If MYBA shall receive any complaints from any parties as to the unethical conduct and/or the non-respecting of industry best practices and/or the misuse of the contract and/or the E-Contract service by a Subscriber and/or Individual User, MYBA may investigate such complaint following which MYBA may in its absolute discretion seek input from the Subscriber and/or Individual User in relation to the Subscriber and/or Individual User (or suspend/terminate the application).

If a Complaint is upheld and not appealed or upheld on appeal in accordance with the Complaints Procedure then MYBA may impose sanctions on the relevant Subscriber/Individual User which may include suspension or termination of the Subscription.

If a Subscriber undergoes a change of control and/or undergoes a change in the identity of its Individual Users, then the Subscriber must inform MYBA immediately. MYBA may then, at its discretion, either (i) require the Subscriber to re-submit an application to remain as a Subscriber which will be judged against the then current Application Requirements for new Subscribers; (ii) permit the Subscriber to continue the Subscription with the charges; or (iii) suspend the Subscription until it has investigated. Failure to notify MYBA may incur an immediate suspension of access.

All complaints will be handled according to the complaints procedure available on request.

### **Suspension or Termination of Service**

Access to the Services by an Individual User and/or a Subscriber may be terminated or suspended by MYBA in the following circumstances:

- An Individual User/Subscriber contacting directly owners or captains of Yachts with a view to directly arranging charters unless such direct contact has been previously agreed with the Central Agency;
- An Individual User/Subscriber giving or allowing access to the E-Contract service to unauthorised users;
- Unprofessional and/or unethical behavior as determined by MYBA in its absolute discretion;
- Conviction of a Subscriber/Individual User or one of its employees of a serious criminal offence, or a criminal offence involving dishonesty;
- Any breach of these terms and conditions which is not remedied within 14 days of a written notice from MYBA;
- Any repeated or persistent breach of these terms and conditions;
- Provision of false, incorrect or misleading information to MYBA regarding the Individual User and/or Subscriber;
- The misrepresentation of any Subscriber or Individual User that they are a MYBA Member or YACHTFOLIO Subscriber or a Central Agent or any other party which they are not, by using a fake or unauthorised ID or holding themselves as such on their website, marketing material or otherwise; or
- A Subscriber is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstance.

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- An Individual User/Subscriber being in a position of conflict, or allowing a conflict of interest to arise, in relation to the MYBA Charter Agreement.

If the access to Services is suspended or terminated for a Subscriber that shall also apply to all the Individual Users nominated by that Subscriber. In any one of the above cases MYBA reserves the right to apply other disciplinary action and to publish details in its absolute discretion.

A party may immediately terminate the agreement formed by these Terms and Conditions by written notice if the other party:

- breaches these terms and conditions (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
- persistently breaches any one or more terms of these terms and conditions;
- ceases or threatens to cease to carry on business; and/or
- is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.

MYBA may in its absolute discretion determine whether it is appropriate to suspend or terminate access to the Services. In accordance with MYBA's dispute procedure (from time to time in force) in serious cases MYBA may suspend access to the Services in the interim whilst making its determination.

The right of MYBA to suspend or terminate access to the Services shall extend to the relevant Individual User, any Subscriber nominating that Individual User and all other Individual Users nominated by that Subscriber.

The Individual User agrees that notwithstanding any other provision of these Conditions MYBA shall have no liability to the Individual User as a result of termination of the Services.

Once access to the Services has been terminated, an Individual User (under the umbrella of a Subscriber) and/or Subscriber shall be required to reapply for access to the Services. An application to regain access to the Services may not be presented until one year after the date of termination.

These terms and conditions and any disputes or claims connected with these terms and conditions and/or the Services shall be subject to English Law.

Subject to the above, in relation to any dispute arising out of, or in connection with, this Agreement the parties will follow the then current dispute procedure (if any) published by MYBA in relation to the Services.

Subject to above, any dispute arising out of, or in connection with, this Agreement shall be referred to arbitration in London (unless the parties agree a different location) by a single arbitrator appointed by agreement between the parties or, in default of agreement within 14 days, nominated on the application of either party by the President for the time being of The Law Society of England and Wales or his delegate.

The terms of appointment for the arbitrator shall be agreed between the parties and, in the absence of agreement within 14 days, the terms of appointment shall be negotiated and fixed on the application of either party by the President for the time being of The Law Society of England and Wales or his delegate. The parties to the dispute shall initially pay and bear the fees of the arbitrator equally. This clause shall not prevent either party seeking interim injunctive relief from a court of law.

Any arbitration shall be conducted in the English Language.

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The above provisions shall not apply to any claim by MYBA which is merely a debt collection action or which involves seeking interim injunctive relief and MYBA shall be free to pursue any such claim in a court and jurisdiction of its choosing.

### **Industry Best Practice**

**Subscribers and Individual Users are expected to follow industry best practice.**

It is the obligation of all Users of the service who are responsible for signing electronic MYBA Charter Agreements to fully understand the terms and conditions of the Agreement.

When using the electronic MYBA Charter Agreement, Users are obliged to ensure that only current MYBA Charter Agreements with a unique serial number on pages 1 & 2 are used in all transactions. Photocopies or computer-generated copies should not be accepted as they may contain modifications and/or errors that may not be immediately apparent.

Subscribers/individual users should obtain a clear authority to charter a vessel prior to embarking on any commercial charter activity.

Subscribers/individual users accept that charter requests for any yacht must be made solely through the Yacht's Central Agent.

Charter Funds are held by the Stakeholder and disbursed as per the MYBA Charter Agreement and it is the responsibility of the Stakeholder to be fully conversant with the provisions of the Charter Agreement.

The Stakeholder shall ensure the safety of the Buyer and/or Charterer's funds in accordance with the relevant clauses of the MYBA Charter Agreement.

### **DIRECT MARKETING**

An Owner should not be solicited by a "Broker" for the specific business for which he is under contract with another "Agent" until such contract expires.

It is acknowledged that some clients may be listed in their respective data bases by both the "Central Agent" and "Broker" and will therefore receive general marketing approaches from both sources.

In such circumstances, should a Charter Agreement be entered into, the recommended procedure is for the "Central Agent" to check their Firm's database and to inform the "Broker" in writing if the client is already registered with the "Central Agent" and, if so, will continue to be marketed to, but within a generic context only.

The targeted soliciting of a client by a "Central Agent" in these circumstances is not permissible.

It is recommended that the exposure of a "Central Agent's" marketing material on board a Central Agency vessel is kept out of sight of any client, and his guests, of a third party "Broker", for the duration of a charter, even if the client has been identified as a "shared client" by the "Central Agent".

Subscribers must ensure that they are not listing on their websites yachts under Central Agency with a competing brokerage company without the authorisation of that Central Agent, and failure to observe this may result in immediate suspension of any and all accounts held by the offending brokerage company.

### **GDPR**

Information provided to MYBA in relation to the E-Contract service is used only for the administration and provision of services; the administration and operation of the E-contract website; and any associated purposes. MYBA does not sell information to third parties.

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Please read our Terms of Service and Privacy notice here <https://www.myba-econtract.com/en/gdpr-compliance.cfm>

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**Anyone using the electronic MYBA Charter Agreement form agrees to abide by the current subscription Terms and Conditions of Use as amended from time to time.**

**MYBA reserves the right to check at any time without prior notice that the Subscriber still complies with the Application requirements and subscription Terms and Conditions of Use. The Subscriber/Individual User agrees to comply with MYBA's reasonable requests in this regard and failure to do so may result in immediate suspension. If MYBA finds that it does not comply, MYBA reserves the right to withdraw use of the E-Contract service for non-compliance.**

**I hereby confirm that I have read and understand these Terms and Conditions and that I agree to abide by them as a condition of my Subscription. I have signed below and initialled each page.**

Signed .....

Print Name .....

Status .....

Company .....

*JAB/CT/SK/AC/GJB/MYBA/PD/AE/Gateley/19<sup>th</sup> July2019*