

# ALL YACHTING SAS

## (AYSAS)

### YACHTFOLIO Subscriber Application Criteria

These criteria are to ensure that, as far as possible, genuine and reputable yacht brokers use the services of YACHTFOLIO, to minimise complaints and maximise customer service. These criteria may be varied from time to time at the absolute discretion of the Company. Definitions in the Terms and Conditions shall apply to Definitions used in these Criteria.

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#### 1. SUBSCRIBER FIRM — INITIAL APPLICATION CRITERIA:

- 1.1 A company, firm or other business which subscribes to YACHTFOLIO must meet the following minimum criteria:
- 1.1.1 The principal business of the Subscriber Firm (and no less than 75%) shall be the charter/management/brokerage of professionally and permanently crewed Yachts and Vessels of the highest quality, commercially made available for whole vessel charter, and over 20m in load line length (mono hulls) and 17m (multi hulls). Proof of this, along with a statement from an external accountant, bank manager or lawyer, shall be supplied to the Company as part of the application procedure and should demonstrate consistent evidence of business in the industry. For the avoidance of doubt, where a Director of an intended Subscriber Firm also acts as a Captain of a charter yacht it is unlikely that such an applicant will be able to satisfy this requirement. For the further avoidance of doubt, a franchisee will be treated as a separate Subscriber Firm from another franchisee: and at the discretion of the Company, a Certificate of Incumbency, Certificate of Good Standing or other evidence as to the status of the Subscriber Firm may be requested: AND
- 1.1.2 The Subscriber Firm shall ensure that Professional Indemnity/Errors & Omissions Insurance with a minimum liability cover of €500k or US \$500k (**the US\$ level applies only to US-based Subscriber Firms, and by agreement with the Company**) per claim and with no aggregate limit is in place covering the charter broker activity and each of its Individual End Users as below. Where a US based Subscriber Firm is unable to obtain professional indemnity/errors and omissions insurance then, at the discretion of the Company, this requirement can instead be satisfied by the Individual End User within the Subscriber Firm having individual equivalent insurance cover in their name or names for the same amount as specified by the Company; AND
- 1.1.3 Proof shall be provided that a separate bank account solely for holding client and stakeholder funds in relation to the Services has been opened and the Subscriber Firm shall use such accounts for all client and stakeholder funds received in relation to the Services. If the Subscriber Firm is also the Yacht Owner then the stakeholder account shall be held by a Third-Party Stakeholder; AND
- 1.1.4 In order to show that a Subscriber Firm has a track record of reliably handling client funds, Subscriber Firms shall satisfy one of the following criteria:
- 1.1.4.1 Provide evidence of a minimum of 20 executed and completed term charters in total, each no less than 5 days in duration, that have been carried out on professionally and permanently crewed Yachts or Vessels of the highest quality over 20m in length (mono hulls) and 17m (multi hulls). Such contracts must meet with all of the following criteria:
- (i) To have been carried out on at least 10 different yachts;
  - (ii) At least 10 such charters to have been carried out within the last 12 months and all charters within the last 24 months;
  - (iii) To have been carried out with at least 10 different charterers;
  - (iv) Of the 20 charters submitted, for no more than 20 percent the Subscriber Firm shall have acted as both broker and Stakeholder.;
  - (v) Of the 20 charters submitted, at least 5 must have a minimum charter fee of €50,000/\$50,000; OR

# ALL YACHTING SAS

## (AYSAS)

- 1.1.4.2 provide evidence that it has been in the past a Subscriber Firm in good standing for a minimum of 3 years of YACHTFOLIO, together with enhanced levels of provision of references and executed term charters related to the applying company; OR
- 1.1.4.3 For the use of 1.1.4.3 please note that the selection of sub-clause 1.1.4.3(B) is acceptable for Central Agent Level Applications only and does not enable Retail access. If both Central Agent and Retail access is required, then 1.1.4.3(A) should be selected:
- A. Provide evidence demonstrating that the Subscriber Firm has handled different clients' charter funds on 10 occasions, each in respect of professionally and permanently crewed Yachts or Vessels of the highest quality over 20m in length (mono hulls) and 17m (multi hulls) to a minimum average of €75,000/US\$75,000 per transaction, in a satisfactory manner. Evidence shall consist of copies of executed and completed charter contracts or such other evidence that shall be acceptable to the Panel. The Panel reserves the right to request original documents. Such transactions must meet with all of the following criteria:
- (I) At least 5 transactions were carried out on different yachts;
  - (II) All transactions took place in the last 12 months;
  - (III) At least 7 transactions were with different clients;
  - (IV) Of the 10 transactions submitted for no more than 20 percent the Subscriber Firm shall have acted as both broker and Stakeholder.
- B. provide evidence demonstrating the Subscriber Firm has handled different clients' funds on 10 occasions, each in respect of professionally and permanently crewed Yachts or Vessels over 20m in length (mono hulls) and 17m (multi hulls) of the highest quality to a minimum average of €75,000/US\$75,000 per transaction in a satisfactory manner. Evidence shall consist of executed and completed charter contracts or such other evidence that shall be acceptable to the Panel. Such transactions must meet with all of the following criteria:
- (I) All transactions took place in the last 12 months;
  - (II) At least 7 transactions were with different clients;
  - (III) Of the 10 transactions submitted for no more than 20 percent the Subscriber Firm shall have acted as both broker and Stakeholder;
- OR
- 1.1.4.4 Provide evidence of a minimum of 15 years' experience as a reputable Yacht Charter Broker of good standing, together with enhanced levels of provision of references and executed term charters; OR
- 1.1.4.5 Provide an equivalent standard at the final discretion of the Company; AND
- 1.1.5 Include at least one Individual End User who satisfies the criteria for Individual End User below; AND
- 1.1.6 The Subscriber Firm shall accept and agree to be bound by the YACHTFOLIO Terms and Conditions of Use (Charter) in force from time to time.
- 1.1.7 If, when dealing with an initial application, the Company receives a complaint against, or becomes aware that a judgement, award or other finding has at any time been made against an applicant, the Company shall be entitled to investigate the matter using Part 1 of the YACHTFOLIO Disciplinary and Dispute Resolution Procedures for the time being in force, and which would have applied if the applicant was already a Subscriber Firm.

# ALL YACHTING SAS

## (AYSAS)

### 2. INDIVIDUAL END USER – INITIAL APPLICATION CRITERIA

- 2.1 Each Individual End User must be an employee or subcontractor of a Subscriber Firm and must provide a statement to this effect and must be covered by that Subscriber Firm's professional indemnity/errors and omissions insurance, or must provide other satisfactory proof of personal professional indemnity/errors and omissions insurance cover. Confirmation of this coverage will be required on an annual basis. A Subscriber Firm which engages self-employed individuals who are exclusively contracted to the Subscriber may nominate them as Individual Users, however, Individual Users of the service can only be representing the Subscriber Firm under which they are applying.
- 2.2 In order to demonstrate that Individual End Users have the required knowledge and/or experience they shall satisfy one of the following criteria:
- 2.2.1. have received sufficient relevant training to ensure that the Individual End User has the required knowledge to the reasonable satisfaction of the Subscriber Firm and the Company; OR
  - 2.2.2. must have worked for a minimum of one year in the brokerage, charter or management of professionally crewed yachts within the Subscriber Firm that they are presently employed by or subcontracted to, or another business which was also a Subscriber Firm and the Company approves their suitability; OR
  - 2.2.3. have passed a competency examination to the reasonable satisfaction of the Company; OR
  - 2.2.4. submit proof of a minimum of 5 (five) executed and completed term charters that have been carried out on 5 different yachts as co-broker of record on professionally crewed yachts or vessels within the last 12 months;
- 2.3 Each Individual End User shall at all times meet the standards required by the Competency Framework from time to time in force; AND
- 2.4 Each Individual End User shall provide a minimum of three independent references from reputable charter brokers of good standing with whom executed charters have been concluded and performed within 12 months, together with copies of the contracts in question.
- 2.5 Final decisions on all applications will be overseen and made in its absolute discretion by a panel appointed by the Company for that purpose and, if requested by a panel, the Individual End User applicant shall attend an interview with members of the panel in person or by telephone or similar video conference, to provide evidence as to the criteria submitted under clause 2.2 above. Proceedings at any interview may be recorded by the panel; AND
- 2.6 The Individual End User shall accept and agree to be bound by the YACHTFOLIO Terms and Conditions of Use (Charter) in force from time to time.
- 2.7 If, when dealing with an initial application, the Company receives a complaint against, or becomes aware that a judgement, award or other finding has at any time been made against an applicant, the Company shall be entitled to investigate the matter using Part 1 of the YACHTFOLIO Disciplinary and Dispute Resolution Procedures for the time being in force, and which would have applied if the applicant was already an Individual End User employed by or a sub-contractor of a Subscriber Firm.
- 2.8 An Individual End User who moves to another Subscriber Firm shall not be required to reapply, provided notification by way of a fresh Application Form only is given to the Company within 12 months of the date of departure from the previous employer, and provided also that the access is not the MD/CEO access, which is not transferable.

### 3. SUBSCRIBER FIRM CRITERIA

- 3.1 In order to maintain its subscription a Subscriber Firm shall:
- 3.1.1 maintain professional indemnity/errors and omissions insurance with a minimum cover of €500k or US\$500k (the US\$ level applies only to US based Subscriber Firms and by agreement with the Company) per claim and with no aggregate limit covering charter broker activity and covering each of its Individual End Users. Where a US based Subscriber Firm is unable to obtain professional indemnity/errors and omissions insurance then, at the discretion of the Company, this requirement can instead be satisfied by the Individual End User within the Subscriber Firm having individual equivalent insurance cover in their name or names for the same amount as specified by the Company; AND

# ALL YACHTING SAS

## (AYSAS)

- 3.1.2 maintain a separate bank account solely for holding client and stakeholder funds in relation to the Services and use such account for all client and stakeholder funds received in relation to the Services. If the Subscriber Firm is also the Yacht Owner then the stakeholder account shall be held by a Third Party Stakeholder; AND
- 3.1.3 pay the required fees; AND
- 3.1.4 abide by the YACHTFOLIO Terms and Conditions of Use (Charter) in force from time to time.

3.2 The Company reserves the right to add to or vary the criteria for Subscriber Firms from time to time.

#### 4. INDIVIDUAL END USER CRITERIA

4.1 In order to maintain his or her subscription an Individual End User is required:

- 4.1.1 to be covered by professional indemnity/errors and omissions insurance with a minimum cover of €500k or US\$500k (the US\$ level applies only to US based Subscriber Firms and by agreement with the Company) per claim and with no aggregate limit covering charter broker activity. Where a US based Subscriber Firm is unable to obtain professional indemnity/errors and omissions insurance then, at the discretion of the Company, this requirement can instead be satisfied by the Individual End User within the Subscriber Firm having individual equivalent insurance cover in their name or names for the same amount as specified by the Company;
- 4.1.2 pay or have paid on their behalf the required fees; AND
- 4.1.3 abide by the YACHTFOLIO Terms and Conditions of Use (Charter) in force from time to time.

4.2 The Company reserves the right to add to or vary the criteria for Individual End Users from time to time.

#### 5. ASSISTANTS

5.1 A Subscriber Firm may additionally apply for logins and passwords for Assistants, Trainees, Interns, Marketing Assistants and Listing Secretaries (together "Assistants"). Each Assistant must be an employee of and exclusively contracted to a Subscriber Firm and directly supervised by an Individual End User, who shall supervise no more than two Assistants at any given time. Evidence of employment may be required.

5.2 The Supervising Individual End User will, upon request by the Company, provide a record of the supervision of each Assistant, who shall comply with the or any Competency Framework for their level of experience that is in place from time to time.

5.3 Responsibility for the actions and activities in relation to the use of the system by any Assistant lies with the Supervising Individual End User who shall be liable for any misconduct, acts, omissions and/or breach of these Conditions as if they were their own misconduct, acts, omissions and/or breaches.

5.4 Applications shall be made on the relevant form for each type of Assistant, and the Subscriber Firm and the Supervising Individual End User undertake to ensure that Assistants only use their access code and login details to undertake activities as directed by the Supervising Individual End User. It is the responsibility of the Supervising Individual End User to notify the Company if the Assistant's role changes or if their employment is terminated.

5.5 Should an Assistant wish to apply for Individual End User access the Criteria in accordance with Clause 2 must be met.

5.6 Assistants are defined as:

- 5.6.1 **Assistant** shall mean a person who assists the Individual End User under supervision and who is given access to the system for such purpose.
- 5.6.2 **Trainee** shall mean a person who it is intended shall be able to apply to become an Individual End User after completion of a **minimum** of one year training period with the Subscriber Firm and whose use of the system is supervised.
- 5.6.3 **Intern** shall mean a person gaining work experience with the Subscriber Firm who shall be allowed limited access to the system under supervision for a period of no more than 6 months after which time their access will become inactive.

# ALL YACHTING SAS

## (AYSAS)

- 5.6.4 **Marketing Personnel** shall mean personnel whose access is restricted to the listing of information on the Yachts being listed by the Subscriber Firm and whose use of the system is supervised.
- 5.6.5 **Listing Secretary** shall mean a person who assists with the listing of the Subscriber Firm's Central Agency yachts and whose access is restricted to the listing information on the Yachts being listed by the Subscriber Firm and whose use of the system is supervised.

### 6. ADMINISTRATION FEES AND SUPPORTING DOCUMENTS

- 6.1 A non-refundable Administration Fee (as shall be determined by the company from time to time), and currently 2,500 Euros, shall be paid prior to forwarding the complete set of supporting documents.
- 6.2 All applications shall be accompanied by the relevant supporting documents. Any outstanding supporting documents shall be delivered within three months of the date upon which the application is received by the Company. If any supporting documents are outstanding for more than three months, the application will be archived and the initial Administration Fee will be forfeited. After that date any applicant wishing to proceed shall submit a fresh application with supporting documents and pay a new Administration fee.

### 7. DISCLOSURES

- 7.1 If a Subscriber Firm believes at the time of its application that its involvement in a dispute process is likely to, or may tend to bring it, and by extension AYSAS, into disrepute, it should disclose the fact and circumstances of the involvement and this should include details of any judgment or award made against it which has not been honoured by it.
- 7.2 Once the Application has been received, as part of the process, the Applicant's name and fact of the Application may be published both on the public page of the YACHTFOLIO website, [www.yachtfolio.com](http://www.yachtfolio.com) and the MYBA public website, [www.myba-association.com](http://www.myba-association.com).