

TERMS AND CONDITIONS RELATING TO FALMOUTH HARBOUR

General Terms (All Facilities)

The Organisation's prime concerns when making these rules are the safety of everyone using Falmouth Harbour, moorings, marinas, slipways, their vessels and property and the conservation of the environment. In addition, the Organisation must comply with regulations and the duties under relevant Harbour Revision Orders and its duties under the law.

Definitions: Where the following words appear in these Conditions, the Licence and the Regulations they shall have these meanings:

1. **The Organisation:** as identified in the Licence, including its associated trading arms and any of its servants or agents. Falmouth Harbour is a Trust Port - created by an Act of Parliament "The Falmouth Harbour Order 1870", which created the body corporate of Falmouth Harbour Commissioners to run and manage the Harbour. Falmouth Harbour continues to be managed by a Board of seven commissioners and a CEO. FHC operates under a trading name of "Falmouth Harbour" and has two trading subsidiaries: Falmouth Haven and Falmouth Pilot Services.
2. **Berth** means the space on water or land within the Marina Premises allocated to the Vessel by the Organisation from time to time during the duration of Licence.
3. **Conditions** means these standard terms and conditions.
4. **Facility** means the type of berthing, mooring and/or shore storage facility to be provided by the Organisation to the Owner in relation to the Vessel as set out in the Licence
5. **Licence** means the contract between the Organisation and the Owner for the provision of the Facility, which incorporates these Conditions.
6. **Licence Fee** means the fee payable by the Owner to the Organisation in consideration for the Organisation providing the Facility, as specified in the Licence.
7. **Marina** means the marina, yacht harbour, mooring or any other facility for launching, recovering, mooring or berthing vessels, which is owned and/or operated by the Organisation.
8. **Marina Premises** means the Marina and all the associated land and buildings occupied by or under the control of the Organisation, including docks, bridges, slipways, pontoons, jetties, quays, piers, walkways, mud-berths, sheds, workshops, hardstanding, roadways and carparks.
9. **Owner** means the person or organisation identified in the Licence.



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HARBOUR**

UK's Atlantic gateway.

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HAVEN**

10. **Regulations** mean those regulations (if any) made by the Organisation as the same may be amended from time in accordance with Condition 12, which the Organisation in its absolute discretion, considers necessary to enable the Organisation or those using the Marina Premises to comply with applicable legal requirements or for the safety or security or good management of the Marina Premises.
11. **Vessel** means the vessel identified in the Licence.

The Licence

In consideration for the Owner paying the Licence Fee, the Organisation agrees to provide to the Owner the Facility in the Marina Premises in relation to the Vessel for the duration of the Licence.

The Licence will start on the Start Date and will end on the End Date specified in the Licence, unless terminated sooner under the provisions of Conditions 9 or 10. The Licence will automatically renew after the End Date if not terminated sooner under the provisions of conditions 9 or 10.

Conditions

These terms are not exhaustive and are supplemental to and should be read in conjunction with the Organisation's Supplementary Terms/Conditions and Terms of Business. The Licensee uses the facility entirely at his/her own risk and the Organisation accepts no responsibility for the safety of the vessel moored.

The Organisation:

- May cancel a licence to berth or moor should any of these terms be breached.
- May at our absolute discretion refuse any application for or renewal of a licence without giving any reason for doing so.
- May require the Licensee to remove his/her vessel at any time, should it become necessary to do so in connection with the exercise of our Harbour function, or should there be any breach of any of these Conditions by the Licensee.
- Reserves the right to change these Conditions at any time.

The Licence is personal to the Owner and relates to the Vessel described in the Licence. The Owner may not transfer or assign the Licence to a third party. The Owner may not use the Berth for a vessel other than the Vessel, either temporarily or permanently, without the written consent of the Organisation.

The physical layout of the Marina Premises and other facilities and the operational requirements of the Organisation are such that the Organisation must retain absolute discretion as to the utilisation of space within the Marina or other Premises. Nothing in the Licence or these Conditions entitles the Owner to the exclusive use of any particular space within the Marina Premises. The benefit provided by the Organisation

pursuant to the Licence is accordingly merely a licence to occupy whichever Berth may be from time to time allocated to the Vessel by the Organisation.

1 Safety and Environment

1.1 Spillages

The Licensee shall not permit the discharge of any sewage, rubbish, fuel, oil or other pollutant from the vessel. To reduce likelihood of spillage no fuel or potentially polluting substances are to be stored on the pontoons, even temporarily, and all containers are to be secured and closed. As part of our environmental policy, ***all*** spillages must be reported to a member of staff or the Falmouth Haven or Falmouth Harbour master office ***immediately***. Absorbent materials must be carried onboard to mop up any minor fuel or oil spillages.

1.2 In Case of an Emergency

In case of an emergency occurring outside of declared opening/business hours and when a member of the Organisation's staff is not in attendance, please call the Coastguard on VHF Channel 16 or DSC or dial 999 and ask for the Coastguard. They will make contact with the Duty Harbour Master or to assist with the incident, if required.

1.3 Salvage

The Organisation will not be under any duty to salvage or preserve the Vessel or other property from the consequences of any defect in the Vessel or property concerned unless the Organisation has been expressly engaged to do so by the Owner on commercial terms. Similarly, the Organisation will not be under any duty to salvage or preserve the Vessel or other property from the consequences of an accident which has not been caused by negligence or other breach of duty on the part of the Organisation. Nevertheless, the Organisation reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so, the Organisation will be entitled to charge the Owner on a normal commercial charging basis and, where appropriate, to claim a salvage reward.

1.4 Drogues

The Owner shall be responsible for ensuring that any high sided/shallow draft/low displacement vessel (such as lightweight fishing/river cruisers) on their mooring responds to wind/tide in a similar manner to neighbouring vessels by deploying a sea drogue if required. We may, at any time, direct that a sea drogue must be used by a given vessel on a given mooring.

1.5 Animals/Pets

Animals on all Organisation property must be always kept under control. Dogs

must be kept on leads at all times except where on a Vessel or in a Vehicle. Animals should not be left unattended in vehicles parked on Organisation property. Users must ensure that fouling on Organisation property by their animals is cleared up and disposed of immediately and appropriately. If fouling is not cleared and disposed of, we reserve the right to charge users for any clean-up costs. Repeated mistreatment of the Organisation's property in relation to pet ownership may result in termination of the customer's Licence.

1.6 Building and Facilities Access Codes

Access codes must be kept secure. If we have evidence of security access codes being distributed, we reserve the right to cancel any Licence with immediate effect.

2 Vessel

2.1 Name

The Owner must display the Vessel's Name. The Vessel must be clearly marked with its name and sticker, if issued, by the Organisation. The Vessel berthed must be formally registered and any change in vessel details must be confirmed before being placed on a facility.

2.2 Vessel Details/Length

The overall length of the Vessel using the Berth shall not exceed the authorised length of the berth or mooring. We reserve the right at any time during the period of the agreement to measure the Vessel and charge the Owner additional Berthing fees if the Vessel's overall length is greater than the length stated in the Licence.

The declared lengths of each swinging mooring are carefully assessed to minimise the consequences of swinging circles which overlap and to provide clear swinging room for the vessels licensed to use the moorings under normal circumstances. Collisions can still occur in adverse tides and wind; these should be reported immediately to the Organisation in writing so to mitigate against any circumstance where a vessel or mooring may be damaged. In accepting a mooring, a Vessel's Owner must accept this possibility and indemnify the Organisation against claims for damage so caused. The Owner must ensure they carry insurance that covers swinging mooring risks.

The overall length of the Vessel for all purposes includes the overall hull length; defined as the longitudinal distance between the aftermost point and foremost point of Vessel. This does include any hull appendages, sails, rig, mizzen or main boom, rudder, davits, fittings including raised outboard engines and swim platforms/ladders that are normally present when the Vessel is moored or



berthed. Hull weight and an assessment of the windage of a Vessel may be made and this may affect the type of berth or mooring provided; an additional charge over standard charges may be made. It does include the bowsprit if the bowsprit extends beyond the mooring buoy.

2.3 Other Vessel Conditions

- The Berth shall be used for a single vessel.
- The Owner must always ensure that the Vessel is maintained in a clean and tidy state and in a seaworthy or navigable condition (as appropriate). If the Owner's vessel is not maintained in a clean and tidy state and in a seaworthy or navigable condition (as appropriate) at all times and may present a risk to safety or a risk to safe navigation, or affect the commercial operation of the Organisation's facilities, the Organisation reserves the right to lift the vessel and place it ashore and a charge for this service will be made. Where practicable we will give you notice of our intention to lift the Vessel and an opportunity for you to do the necessary work to make the Vessel sound and seaworthy. The Vessel will not be returned to the Berth until we have been satisfied that the Vessel is in a clean and tidy state and in a seaworthy or navigable condition and poses no threat to safety or safe navigation and we may require you to commission a survey report (at your expense) to demonstrate that it is sound and seaworthy. We reserve the absolute right to determine the suitability of the Vessel for the facilities being provided.
- The Licensee uses the Berth entirely at his/her own risk and the Organisation accepts no responsibility for the safety of the Vessel berthed.
 - The Licensee shall ensure in relation to any Vessel:
 - i. warrant to the Organisation that it has (and will continue to have throughout the Licence) adequate insurance for the vessel (and any damage to other Harbour users). The Licensee shall produce evidence of such insurance upon request by the Organisation.
 - i. not permit the use of any noisy or noxious apparatus on the vessel.
 - i. that all parties using the vessel do not behave in such a way as to cause a nuisance, disturb or otherwise offend others.
 - i. Owners or their representatives must check on the safety and security of their vessel, we recommend this is at least fortnightly. In particular before and after heavy wind or storm conditions.
 - i. halyards and other rigging shall be secured so as not to cause a nuisance or annoyance to others.
 - i. vessels moving in the Harbour shall be handled in a seamanlike manner and observe all speed limits and bye-laws. Kill cords, where applicable, should be worn at all times whilst a vessel's engine is running. Lifejackets should be worn on vessels at all times whilst not at berth.
 - i. that their exposed propeller does not cause damage to another vessel. The



Organisation may request or act upon request from a third party, to require a licensee to protect any exposed propeller as a condition of their licence.

- i. It is the Owner's responsibility to ensure the vessel is kept safe and regularly emptied of water. If a vessel is deemed unsafe due to the amount of water inside the hull, the Organisation may take steps on safety grounds to pump the vessel and may then charge for this work. Automatic bilge pumping of vessel with inboard engines is expressly forbidden within the Marina or CHQ basin.
- c. The Owner must ensure that, while moored within the Marina, the Vessel is appropriately secured using such number of fenders and warps of sufficient size and strength and in such configuration as may be appropriate to the Vessel, the mooring, and the anticipated weather conditions. Unless otherwise agreed by the Organisation, such fenders and warps shall be provided by the Owner.
- c.

2.4 Vessel Movements

- The Organisation reserves the right to move the Vessel and any associated gear and equipment at any time for reasons of safety, security or good management of the Marina Premises.
- Where a specific date or tide range for launch of the Vessel has been agreed between the Owner and the Organisation at the time of slipping or lifting out (or arrival by land), the Organisation's published scale of charges for vessel movements will apply. Where the Owner requests a different date or tide range the Organisation reserves the right to charge the Owner for the cost of moving other vessels to gain access to the launch point and for any attendant expenses, such as crane hire. The Organisation will provide the Owner with an estimate of such costs and charges prior to incurring them.

3 Insurance and Liability

- 3.1 The Organisation will not be liable for any loss or damage of whatsoever nature caused by events or circumstances beyond its reasonable control (such as adverse weather conditions, the actions of third parties or any defect in the Owner's or any third party's property); this extends to loss or damage to the Vessel, its gear, equipment or other property whilst in the Marina Premises and to harm to persons entering the Marina Premises and/or using any of the Organisation's facilities or equipment therein
- 3.2 The Organisation will take reasonable and proportionate steps (having regard to the nature and scale of the Marina Premises and the Organisation's business) to maintain security at the Marina Premises and to maintain the facilities and equipment at the Marina Premises in reasonable working order. In the absence of any negligence or other breach of duty on the part of the Organisation, however, the Vessel, its gear, equipment and other property remain at the Owner's own risk and the Owner should ensure that their own personal and property insurance adequately covers such risk.

- 3.3 Where access for vessels to and from the Marina is via a lock gate, swing or lift bridge or other restriction, the Organisation will not be liable for any loss or damage of whatsoever nature suffered by the Owner as a result of the lock gate, swing or lift bridge or other restriction being inoperative, except to the extent that such in operation may be caused by any negligence or other breach of duty on the part of the Organisation.
- 3.4 The Organisation will not be under any duty to salvage or preserve the Vessel or other property from the consequences of any defect in the Vessel or property concerned unless the Organisation has been expressly engaged to do so by the Owner on commercial terms. Similarly, the Organisation will not be under any duty to salvage or preserve the Vessel or other property from the consequences of an accident which has not been caused by negligence or other breach of duty on the part of the Organisation. Nevertheless, the Organisation reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where it does so, the Organisation will be entitled to charge the Owner on a normal commercial charging basis and, where appropriate, to claim a salvage reward.
- 3.5 The Owner must and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Organisation) does, comply with all applicable laws when in the Marina Premises.
- 3.6 The Owner must maintain adequate insurance in relation to the vessel, including third party liability cover for not less than £3,000,000 cover against wreck removal and salvage and, where appropriate, Employers' Liability cover to at least the statutory minimum. The Owner must produce evidence to the Organisation of such insurance within 7 days of a request to do so.

4 Facilities

4.1 Ladder access

Owners should be aware of the risks of accessing their vessels via the quayside ladders. Great care should be taken when climbing up and down the ladders and persons using them must ensure that they are medically fit to do so. Supplies and equipment should not be carried on the ladders, instead the vessel should be moved to a safer access location. Any damage to ladders should be reported to the Organisation. Ladders should not be used if they appear to be damaged or defective.

4.2 Photography/CCTV

The Organisation may from time to time take photography or video that captures

scenes for promotional purposes. The Organisation operates CCTV Surveillance Cameras for security and safety purposes in accordance with the CCTV Code of Practice and the Data Protection Act.

4.3 Quayside Railings

Mooring rings are provided, please use them and do not secure your vessel to the quayside railings.

4.4 Commercial and Residential Use

The Owner must not (and must not allow anyone else to) use the Vessel for any commercial or residential purpose while on any Berth, in the Marina Premises or on a mooring without obtaining the Organisation's prior written consent, which may be withheld in the Organisation's absolute discretion or granted on such terms as the Organisation sees fit. We reserve the right to charge an additional fee for granting this consent. We reserve the right to pass specific residential charges to Owners e.g., Council tax.

For the avoidance of doubt:

- use of the Vessel to provide overnight accommodation in exchange for payment or a reciprocal arrangement is deemed to be commercial use; and
- the Vessel is deemed to be used for residential purposes if, amongst other things, the Owner (or anyone else):
 - a) uses the Vessel as their principal or main place of residence; or
 - b) stays on board the Vessel for in excess of an average of three nights per week over a twelve-week period; or
 - c) uses the Organisation's offices at the Marina Premises as their mailing address.

4.5 Vacant facilities

The Berth must be occupied for more than 10 weeks in a Licence year, or the licence will not be renewed, and the Berth allocated to someone on the waiting list. The Organisation is entitled to make use of the Berth whilst it is left vacant by the Owner.

5 The Waiting List

Applicants that want to join a Waiting List must complete an application form available from the Organisation and pay a registration fee.

Applicants may be contacted from time to time and asked to confirm that they wish to remain on the Waiting List.

6 Storage

The Owner must stow any dinghies, tenders, or rafts aboard the Vessel unless the Organisation allocates a separate facility for them.

7 Parking

Subject always to the availability of parking spaces, the Owner and their crew and guests may only park vehicles in the Marina Premises in accordance with the directions of the Organisation. The Owner must not (and must not allow anyone else to) use a vehicle parked in the Marina Premises for any commercial purpose or for overnight accommodation.

8 Access to and work on the vessel

The Owner must not (and must not allow anyone else to) undertake any work on the Vessel, its gear, equipment or other goods while on the Marina Premises without the Organisation's prior written consent, other than minor running repairs or minor maintenance of a routine nature carried out by the Owner, their regular crew or members of their family not causing any nuisance or annoyance to any other users of the Marina Premises or any other premises or any person residing in the vicinity, nor interfering with the Organisation's schedule of work, nor involving access to prohibited areas. The Organisation's consent will not be unreasonably withheld.

Where the Facility comprises or includes storage ashore, the Organisation may restrict the Owner's access to the Vessel and, where appropriate (having regard to the nature and scale of the Marina Premises and the Organisation's business), the Organisation may prohibit the Owner from accessing the Vessel while it is stored ashore.

9 Termination by Organisation

9.1 The Organisation has the right (without prejudice to any other rights in respect of breaches of the terms of the Licence by the Owner) to terminate the Licence in the following manner in the event of any breach by the Owner of any term of the Licence or these Conditions:

9.1.1 Having regard to the nature and seriousness of the breach and the risk it poses for the financial or other security of the Organisation and/or of the Organisation's customers and if the breach is capable of remedy, the Organisation may serve notice on the Owner specifying the breach and requiring them to remedy the breach within a reasonable time specified by the Organisation. Where the breach is serious or poses an immediate risk or threat to the health, safety or welfare of any other person or property the time specified for remedy may be immediate or extremely short.

9.1.2 If having been served with notice under condition 4.7.1 the Owner fails to affect a remedy within the specified period of time, or if the breach is not capable of remedy, the Organisation may serve notice on the Owner requiring

them to remove the Vessel from the Marina Premises immediately.

- 9.2 If the Owner fails to remove the Vessel on termination of the Licence (whether under this Condition or otherwise), the Organisation will be entitled:
- to charge the Owner at the Organisation's 24-hour rate for overnight visitors for each day between termination of the Licence and the actual date of removal of the Vessel from the Marina Premises; and/or
 - at the Owner's risk (save in respect of loss or damage directly caused by the Organisation's negligence or other breach of duty during such removal) to remove the Vessel from the Marina Premises and thereupon secure it elsewhere and charge the Owner with all costs reasonably arising out of such removal including alternative berthing fees.
 - Any notice of termination served by the Organisation under this Condition may be served personally on the Owner, sent by registered post or recorded delivery service to the Owner's last known address or sent to the email address (if any) set out in the Licence.
 - The Licence will terminate immediately and without notice on the death of the Owner. If the Owner's representatives do not either enter into a new licence with the Organisation or remove the Vessel from the Marina Premises, then Condition 9 will apply as if references to the "Owner" were references to the "Owner's representatives".
 - The Licence will terminate immediately and without notice on the disposal of the Vessel by the Owner.

10 Termination by Owner

- 10.1 The Licence may be terminated on three months' written notice being given by the Owner to the Organisation. In this event the Organisation will be entitled to recalculate the Licence Fee using the rate or rates that would have been applicable to the actual period of the Licence instead of the annual rate; the amount so calculated not to exceed the annual rate originally agreed. If this recalculation results in a balance payable to the Organisation, then the Owner must pay that balance before removing the Vessel from the Marina Premises. If there is a balance in favour of the Owner, the Organisation will pay it to the Owner upon the departure of the Vessel from the Marina Premises
- 10.2 Any notice of termination served by the Owner under this Condition must be served at the Organisation's principal place of business or registered office or sent to the email address (if any) set out in the Licence.

11 Rights of Sale and of Detention

- 11.1 The occupation of the Berth by the Vessel is subject to the provisions of the Torts



(Interference with Goods) Act 1977. This Act confers on the Organisation a right of sale in circumstances where the Owner fails to collect or accept re-delivery of the Vessel (and/or any other property left in the Marina Premises) following termination of the Licence. Such sale will not take place until the Organisation has given notice to the Owner in accordance with the Act. For the purpose of the Act, it is recorded that:

11.1.1 The Licence is granted to the Owner by the Organisation on the basis that the Owner is the Owner of the Vessel or the Owner's authorised agent, and that the Owner will take delivery or arrange collection of the Vessel (and/or any other property left in the Marina Premises) following termination of the Licence.

11.2.1 The Organisation's obligation as custodian of the Vessel (and/or any other property left in the Marina Premises) ends on its notice to the Owner of termination of that obligation.

11.3.1 The place for delivery and collection of the Vessel (and/or any other property left in the Marina Premises) shall be at the Marina Premises, unless agreed otherwise.

Advice regarding the Act may be obtained from the Citizens Advice Bureau, Law Centre or any firm of solicitors.

Maritime Law entitles the Organisation in certain other circumstances to bring an action against the Vessel to recover a debt or damages. Such action may involve the arrest of the Vessel through the Courts and its eventual sale by the Court. Sale of the Vessel may also occur through the ordinary enforcement of a judgment debt against the Owner.

The Organisation reserves a general right ("a general lien") to detain and hold onto the Vessel or other property pending payment by the Owner of any sums due to the Organisation. If the Licence is terminated or expires while the Organisation is exercising this right of detention it shall be entitled to charge the Owner at the Organisation's 24-hour rate for overnight visitors for each day between termination or expiry of the Licence and the actual date of payment (or provision of security) by the Owner and removal of the Vessel from the Marina Premises. The Owner shall at any time be entitled to remove the Vessel or other property upon providing proper security, for example a letter of guarantee from a bank or a cash deposit sufficient to cover the debt with interest, and where the debt is contested a reasonable provision for the Organisation's prospective legal costs.

11.2 Notifications

All mooring failures or issues must be reported immediately to the Organisation below,

in writing.

Licencees should always inform the Organisation of any reports of contact or near contact with adjacent vessels or other damage to their vessels or moorings.

12 Regulations

- The Owner must and must ensure that any other person on board or accessing the Vessel while in the Marina Premises (excluding the Organisation) observes the Regulations published from time to time by the Organisation, including Organisation's Health, Safety and Environmental policies.
- The Organisation will supply the Owner with a copy of the Regulations current at the time of granting the License. The Organisation reserves the right to introduce new Regulations where required on legal grounds or for the safety or security or good management of the Marina Premises, and to amend such Regulations as from time to time may be necessary. Such Regulations and any amendments to them will become effective on being displayed on the Organisation's public notice board or other prominent place at the Marina Premises, and a breach of any of the Regulations will amount to a breach of these Conditions.
- The Owner must ensure that they themselves and any other person on board or accessing the Vessel while in the Marina Premises (excluding the Organisation) reports to the Organisation all accidents involving injury to any person or damage to any public or private property that occur in the Marina Premises as soon as reasonably possible after they occur.
- The Owner must ensure that they themselves and any other person on board or accessing the Vessel while in the Marina Premises (excluding the Organisation) does not throw any refuse overboard or dispose of it anywhere in the Marine Premises, other than in the receptacles provided by the Organisation or by removal from the Marina Premises.
- The Owner must provide and maintain at least one fire extinguisher, which is approved and manufactured to EN3 standards for portable fire extinguishers, and ensure it is fit for purpose for the Vessel and ready for immediate use in case of fire.

13 Data Protection

The Organisation is a data controller for the purposes of the EU General Data Protection Regulation and the UK Data Protection Act 2018. A copy of the Organisation's Privacy Policy is available from the Organisation on request.

13.1 Law & Jurisdiction

The Licence, these Conditions and any non-contractual obligations arising out of, or in connection with, the Licence shall be governed by and construed in accordance with

English Law.

Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with the Licence shall:

- if one party acts as consumer (meaning a natural person acting for purposes outside of a trade, business or profession), be subject to the non-exclusive jurisdiction of the English courts; or
- where no party acts as consumer, be subject to the exclusive jurisdiction of the English courts.

13.2 Dispute Resolution Scheme

The Yacht Harbour Association recommends that, before commencing court proceedings, the parties to a dispute arising out of or in connection with the License should endeavour to resolve their dispute by negotiation or, failing that, by mediation.

14 Address details and subsequent change of details

The Owner must supply to the Organisation details of the Owner's home address and email address. The homeaddress must be a different address to the address of the Marina Premises. The Owner must produce evidence to the Organisation of such home address within 7 days of a request to do so.

The Owner must notify the Organisation in writing (which includes by email) of any change of name of the Vessel or change of address, email address or telephone number of the Owner, within 7 days of such change taking place.

15 Communication with the Organisation

Written communications are to be sent to: 44 Arwenack Street, Falmouth, Cornwall. TR11 3JQ.

The email address is welcome@falmouthhaven.co.uk