

Terms of Use

Acceptance of the Terms of Use

These terms of use are entered into by and between You, BoatyBall, LLC ("Company", "we", or "us"), and certain owners of mooring facilities, including but not limited to MoorSeacure, Ltd. and the Virgin Islands Professional Charter Association, Inc. ("VIPCA") (which, together with other independent owners, marina owners, resort owners, restaurant owners, lessors, managers or operators of certain mooring facilities listed on our Platforms, are each referred to as a "Provider" and collectively referred to as "Providers"). The following terms and conditions, together with the Privacy Policy (collectively, these "Terms of Use"), govern your download, registration with, and access to the BoatyBall App (the "App"), the use of www.BoatyBall.com including any content, functionality, and services offered on or through [www.boatyball.com (the "Website"), whether as a guest or a registered user, and your use of any mooring listed on the Website ("Mooring") owned by a Provider.

Please read the Terms of Use carefully before you start to use the Website or the App (collectively the "Platforms"), or utilize any Mooring. By using the Platforms and / or any Mooring, you accept and agree to be bound and abide by these Terms of Use and our Privacy Policy, found at www.boatyball.com, and incorporated herein by reference. If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the Platforms or any Mooring.

Changes to the Terms of Use

We and / or a Provider may revise and update these Terms of Use from time to time in their sole discretion. All changes are effective immediately when posted and apply to all access to and use of the Platform and Moorings thereafter. Your continued use of the Platform or Mooring following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

Moorings and Rules Regarding Mooring Use

Unless otherwise noted, all Moorings listed on the Platforms are maintained by its Provider. Each Provider has taken reasonable efforts to install and test its designated "regular moorings" and found them to be suitable moorings for a single vessel with a maximum length of sixty (60) feet and a maximum weight of twenty (20) net tons. Each Mooring is inspected and maintained by its Provider on a regular basis. Providers are solely responsible for establishing the prices for reservation of their Moorings, the operation thereof, and for determining Mooring availability.

You agree to only use a Mooring in compliance with the following terms and conditions:

1. The Moorings are not designed for storm conditions and if surface winds exceed forty (40) knots, or if such weather conditions are forecast to occur within twelve (12) hours, and you agree to remove any vessel or object from a Mooring immediately.

2. You will comply with any use restrictions posted on the Platform or Mooring itself regarding the use of a particular Mooring (ie: “day use only,” or “dive use only” restrictions).

3. The length of a Mooring pennant will not be extended, and no portion of a Mooring system will be modified or changed in any manner.

4. Any vessel which you place on any Mooring will be covered by a marine protection and liability insurance policy in full force and effect which covers the Risks as defined in these Terms of Use, and you will provide proof thereof at our or the Provider’s request.

5. You will notify us immediately in the event of any damage to a Mooring system, any situation in which a Mooring reasonably appears to be unsafe for normal use, or any illegal or improper use of any Mooring.

6. Any vessel which you place on any Mooring will comply with all applicable legal requirements of the jurisdiction in which the Mooring is located, including any applicable environmental regulations.

7. You will immediately vacate any Mooring upon the reasonable request of a Provider or its agent.

Limited Scope of Our Services

Unless expressly stated otherwise, the services provided by us ("Marketing Services") are limited to informing users of the location and potential availability of certain Moorings and facilitating Reservations (as defined below) by displaying Moorings, processing Reservations and collecting fees on behalf of Providers. Any fees and/or consideration paid to us is paid to us in connection with these Marketing Services unless otherwise indicated. We are not responsible for any of the Provider services, and are not the agent nor affiliated with any Provider. While we make every effort to provide accurate information regarding the Moorings listed on the Site, at times such information may become inaccurate and we shall not be liable for any such inaccuracy.

Although we do not guarantee the availability of a specific Mooring, if a booked Mooring is unavailable at your time of reservation, we will attempt to locate an alternate Mooring, provide you with a refund and/or otherwise resolve any issues in accordance with our standard customer service practices.

The map provided on the Platforms is designed for reference and planning purposes only. It is not to be used for navigation and does not take the place of proper navigation charts. Every boater is responsible for making sure they have the appropriate navigation charts for the areas in which they plan to boat. Neither we nor any Provider assume any liability for any loss or damage of any kind incurred from the use of the Site.

Fees and Payments

You are responsible for all charges, fees, duties, taxes, and assessments arising out of any mooring ball reservation, the use of our Marketing Services (as defined below), the use of the

Platforms or any Mooring. You agree to pay to us all fees for (including any overage fees) for our provision of the Marketing Services, in accordance with the pricing and payment terms presented to you for such Marketing Services on the Platforms. Where applicable, you will be billed using the billing method you select through your User Account management page. Except as provided in these Terms of Use or when required by law, all fees paid by you are non-refundable. We may change the fees for any Marketing Services, including any Marketing Services billed pursuant to a Subscription (as defined below), at any time.

Subscriptions

In the event that any of the Marketing Services are billed on a Subscription basis ("Subscriptions"), you will be billed in advance on a recurring, periodic basis (each period, a "Billing Cycle"). Billing Cycles are typically weekly, monthly or annual, depending on what Subscription you select when purchasing a Subscription. Your Subscription will automatically renew at the end of each Billing Cycle unless you cancel auto-renewal through your User Account management page, or by contacting our customer support team at support@boatyball.com. While we will be sad to see you go, you may cancel auto-renewal on your Subscription at any time, in which case your Subscription will continue until the end of the then-current billing cycle before terminating. If we change the fees for any Marketing Services billed pursuant to a Subscription, the change will become effective only at the end of the then-current billing cycle. We will provide you with reasonable prior written notice of any change in fees to give you an opportunity to cancel your Subscription before the change becomes effective.

Taxes and Overage Fees

In connection with facilitating your transaction, you authorize us or a third-party vendor selected by us to and we or it will charge your credit card for the total reservation price, which includes the amount for the mooring balls, a fee retained by us for providing the Marketing Services, and all anticipated applicable taxes. We will retain a service fee as compensation for facilitating reservations and for providing Marketing Services. The amounts paid to the Licensors in connection with your reservation include all anticipated applicable taxes for the mooring balls. The Licensors are responsible for remitting applicable taxes to the applicable taxing jurisdictions. We do not collect or remit taxes to the applicable taxing authorities nor serve as a co-vendor associated with the vendor with whom we reserve its customer's mooring balls. If you are required by law to withhold any taxes from your payments to us, you must provide us with an official tax receipt or other appropriate documentation to support such payments. Nevertheless, such payments are your sole responsibility, and we are not responsible for ensuring payment of the same. Unless otherwise stated, any overage fees incurred by you will be billed in arrears on a monthly basis. Overage fees which remain unpaid for 30 days after being billed are considered overdue. Failure to pay overage fees when due may result in your access to the Platforms being limited, suspended, or terminated (subject to applicable legal requirements), which may result in a loss of your data associated with that service.

Notice Required

We are not required to collect, and do not collect Oklahoma, South Dakota and Vermont sales or use tax. Any purchase made is subject to Oklahoma, South Dakota and Vermont use tax unless it is specifically exempt from taxation. The purchase is not exempt merely because

it is made over the internet, by catalog or other remote means. The States of Oklahoma, South Dakota and Vermont, require all resident purchasers to report all purchases that were not taxed and pay tax on those purchases. The tax may be reported and paid on the individual income tax return for each state or by filing a consumer use tax return. All use tax forms and corresponding instructions are available on the website of each state's Department of Revenue: for Oklahoma, www.tax.ok.gov; for South Dakota, www.state.sd.us; and for Vermont, www.state.vt.us/tax, as they may change from time to time.

Cancellations and Refunds

Reservations purchased through the Platforms are fully refundable up to twenty-four (24) hours before the start of the reservation unless noted otherwise. You can cancel a reservation for any reason before that time unless noted otherwise. Within twenty-four (24) hours of the start of the Reservation, all Reservations are non-refundable, regardless of your use or non-use of the reservation and regardless of any circumstance surrounding the use or non-use of a Reservation (i.e., boater traffic, mechanical issues, weather delays, cancellation of a related event).

We may from time-to-time partner with third parties ("Partner"), and reservations purchased on Partner websites are not refundable for any reason.

Promotional Marketing Incentives

From time to time, we may issue promotional marketing incentives in the form of promotional codes, promotional discounts, coupon codes, Referral Credits (as defined below) or other marketing incentives ("Marketing Incentives"). The Marketing Incentives are given for no exchange of value or other consideration and you therefore have no ownership interests or rights in the Marketing Incentives. We reserve the right to deactivate any Marketing Incentive at any time and for any reason. Further, we reserve the right to terminate or discontinue any promotional program or other program offering Marketing Incentives at any time.

Referral Program

If you use our referral program ("Referral Program") to recommend the Platforms to a potential new user (the "Referral") about in exchange for the opportunity to earn promotional codes for Marketing Services ("Referral Promotional Codes"), we will ask you for the Referral's name, email address and other information. We will automatically send the Referral a one-time email inviting the Referral to visit the Platforms. We store the Referral's information for the purpose of sending this email and tracking the success of our referral program. You may only earn Referral promotional codes totaling up to \$100 within any one-year period. Once you have reached the \$100 limit (which limit may be increased or decreased at any time in our sole discretion), you will no longer receive promotional codes for any Referrals until one year after your first earned reward. We reserve the right to deactivate any Referral promotional codes at any time and for any reason. Referral promotional codes are given for no exchange of value or other consideration and are strictly promotional vouchers with no monetary value. Referral promotional codes must be redeemed by you or the Referral, as applicable, within eighteen (18) months after provided by to you or the Referral, as applicable, or they shall be forfeited. Further, we reserve the right to terminate or discontinue the Referral Program at any time. Notwithstanding the foregoing, we

may administer the Referral Program itself or may use a third-party service to fulfill referral promotions at its discretion. In the event that we use a third-party service to administer our referral program, participation in such program shall be subject to the program terms and conditions provided through such third-party service.

Reservation Rates

The rate for a Reservation made on the Platforms may not be combined with any additional coupons, special offers or other promotion when exiting a mooring field after using the mooring ball underlying a reservation. Special discounts do not apply.

Platform Access and Account Security

We reserve the right to withdraw or amend the Platforms, and any service or materials provided therethrough, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Platforms is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Platforms, or both in their entirety, to users, including registered users.

You are responsible for:

Making all arrangements necessary for you to have access to the Platforms.

Ensuring that all persons who access the Platforms through your internet connection are aware of these Terms of Use and comply with them.

To access the Platforms, you may be asked to provide certain registration details or other information. It is a condition of your use of the Platforms that all the information you provide on the platforms is correct, current, and complete. You agree that all information you provide to register with the Platforms or otherwise, including but not limited to through the use of any interactive features on the Platforms, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

You must treat the username and password with which you register to use the Platforms as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the Platforms or portions of it using your user name, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any user name, password, or other identifier at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.

Intellectual Property Rights

The Platforms and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by the Company, its Licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

These Terms of Use permit you to use the Platforms for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our Platforms, except as follows:

Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.

You may store files that are automatically cached by your Web browser for display enhancement purposes.

You may download a single copy of our App to your computer or mobile device solely for your own personal, non-commercial use, provided you agree to be bound by our end user license agreement for such applications.

You must not:

Modify copies of any materials from this site.

Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from this site.

You must not access or use for any commercial purposes any part of the Platforms or any services or materials available through the Platforms.

If you wish to make any use of material on the Platforms other than that set out in this section, please address your request to:
Support@boatyball.com

If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Platforms in breach of the Terms of Use, your right to use the Platforms and the services provided therethrough will stop immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title, or interest in or to the Platforms or any content on the Platforms is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the Platforms not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark, and other laws.

Trademarks

The Company's and Providers' names, logos, and all related names, logos, product and service names, designs, and slogans (collectively, "marks") are trademarks of the respective Company, Provider or their affiliates or licensors. You must not use such marks without the

prior written permission of the owner. All other names, logos, product and service names, designs, and slogans on the Platforms are the trademarks of their respective owners.

Prohibited Uses

You may use the Platforms only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Platforms:

In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).

For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.

To transmit, or procure the sending of, any advertising or promotional material, including any “junk mail”, “chain letter”, “spam”, or any other similar solicitation.

To impersonate or attempt to impersonate the Company, a Company employee, any Provider, another user, or any other person or entity (including, without limitation, by using email addresses associated with any of the foregoing).

To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Platform, or which, as determined by us, may harm the Company, a Provider or users of the Platform or expose them to liability.

Additionally, you agree not to:

Use the Platforms in any manner that could disable, overburden, damage, or impair the site or interfere with any other party’s use of the Platforms, including their ability to engage in real time activities through the Platforms, if offered.

Use any manual process to monitor or copy any of the material on the Platforms or for any other unauthorized purpose without our prior written consent.

Use any device, software, or routine that interferes with the proper working of the Platforms. Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.

Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Platforms, the server on which the Platforms are stored, or any server, computer, or database connected to the Platforms.

Attack the Platforms via a denial-of-service attack or a distributed denial-of-service attack. Otherwise attempt to interfere with the proper working of the Platforms.

User Contributions

The Platforms may contain message boards, personal profiles, or review forums, and other interactive features (collectively, "Interactive Services") that allow users to post, submit, publish, display, or transmit to other users or other persons (hereinafter, "post") content or materials (collectively, "User Contributions") on or through the Platforms.

All User Contributions must comply with the Content Standards set out in these Terms of Use.

Any User Contribution you post to the site will be considered non-confidential and non-proprietary. By providing any User Contribution on the Platforms, you grant us and our licensees, successors, and assigns the right to use, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any such material for any purpose.

You represent and warrant that:

You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our licensees, successors, and assigns.

All of your User Contributions do and will comply with these Terms of Use.

You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Company, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness.

Neither we nor any Provider are responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the Platforms.

Monitoring and Enforcement; Termination

We have the right to:

Remove or refuse to post any User Contributions for any or no reason in our sole discretion.

Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates the Terms of Use, including the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Platforms or the public, or could create liability for the Company.

Disclose your identity or other information about you to the Providers, or to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.

Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Platforms.

Terminate or suspend your access to all or part of the Platforms for any or no reason, including without limitation, any violation of these Terms of Use.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Platforms.

YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ANY PROVIDER FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY THE COMPANY OR PROVIDER DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER THE COMPANY, A PROVIDER OR LAW ENFORCEMENT AUTHORITIES.

However, we cannot review all material before it is posted on the Platforms and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

Content Standards

These content standards apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local, and international laws and regulations. Without limiting the foregoing, User Contributions must not:

Contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable.

Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.

Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person.

Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use and our Privacy Policy.

Be likely to deceive any person.

Promote any illegal activity, or advocate, promote, or assist any unlawful act.
Impersonate any person or misrepresent your identity or affiliation with any person or organization.

Involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising.

Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

Changes to the Service

We may update the content on the Platforms from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the Platforms may be out of date at any given time, and we are under no obligation to update such material.

Information About You and Your Visits to the Platforms

All information we collect on the Platforms is subject to our Privacy Policy. By using the Platforms, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

Linking to the Platforms

You may link to our homepage, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part.

Links from the Platforms

If the Platforms contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party services linked to the Platforms, you do so entirely at your own risk and subject to the terms and conditions of use for such services.

Geographic Restrictions

The Company is based in the state of North Carolina in the United States. We make no claims that the Platforms or any of its content is accessible or appropriate outside of the United States. Access to the Platforms may not be legal by certain persons or in certain countries. If you access the Platforms from outside the United States, you do so on your own initiative and are responsible for compliance with local laws and with these Terms of Use.

Disclaimer of Warranties

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or Platforms will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data.

TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE PLATFORMS OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE PLATFORMS OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY SERVICE LINKED TO IT.

YOUR USE OF THE PLATFORMS, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE PLATFORMS IS AT YOUR OWN RISK. THE PLATFORMS, ITS CONTENT, YOUR USE OF ANY MOORING OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE PLATFORMS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE COMPANY AND THE PROVIDERS, OR ANY PERSON ASSOCIATED THEREWITH, MAKE NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE PLATFORM OR ANY MOORING. WITHOUT LIMITING THE FOREGOING, THE COMPANY AND THE PROVIDERS, AND ANYONE ASSOCIATED THEREWITH, DO NOT REPRESENT OR WARRANT THAT THE PLATFORMS, THEIR CONTENT, THE USE OF ANY MOORING, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE PLATFORMS WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SERVICE, ANY MOORING OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SERVICE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY AND PROVIDERS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Limitation on Liability

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ANY PROVIDER, THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, INSURERS, DIRECTORS, CONTRACTORS, FUNDING AGENCIES OR AGENTS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, ANY DELAYED USE, OR INABILITY TO USE, THE PLATFORMS, ANY MOORING, ANY DAMAGE TO MOORING SYSTEMS, DEBRIS, WEATHER CONDITIONS, ANY SERVICES LINKED TO THE PLATFORMS, ANY CONTENT ON THE PLATFORMS OR SUCH OTHER SERVICES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE (COLLECTIVELY, THE “RISKS”).

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Indemnification

You agree to defend, indemnify, and hold harmless the Company, the Provider of any Mooring you utilize, their respective affiliates, licensors, and service providers, and their respective officers, directors, employees, contractors, agents, insurers, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use or your use of the Platforms, Marketing Services, or any Mooring, including, but not limited to, your User Contributions, any use of the Platform's content, services, and products other than as expressly authorized in these Terms of Use or your use of any information obtained from the Platforms.

Governing Law and Jurisdiction

A. Claims Against the Company

Whether your country of residence is in the United States or elsewhere, all matters relating to the Platforms, the Marketing Services and these Terms of Use relating thereto, and any dispute or claim against the Company arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of the State of North Carolina and the United States of America without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction).

Any legal suit, action, or proceeding against the Company arising out of, or related to, these Terms of Use or the Platforms shall be instituted exclusively in the federal courts of the United States or the courts of the State of North Carolina in each case located in the City of Raleigh and County of Wake, although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms of Use in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

B. Claims Against a Provider

Whether your country of residence is in the United States or elsewhere, all matters relating to any Mooring or your use thereof, these Terms of Use relating thereto, and any dispute or claim against a Provider arising therefrom or related thereto (in each case, including non-contractual disputes or claims), or the arbitrability thereof, shall be exclusively resolved by mandatory, binding arbitration before a single arbitrator sitting in St. Thomas, Virgin Islands conducted in accordance with the Commercial Rules of the American Arbitration Association, or such other procedures as the parties may agree to utilize. The parties agree to each bear their own costs, fees and expenses, including their attorney's fees, with respect to any arbitration, but the arbitrator shall have jurisdiction to allocate such fees and expenses in favor of the prevailing party as part of his or her award, and to issue sanctions. The arbitrator's award shall be final, binding, and may be enforced in any court of appropriate jurisdiction.

Waiver and Severability

No waiver by the Company or Provider of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company or Provider to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

If any provision of these Terms of Use is held by a court, arbitrator or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

Entire Agreement

The Terms of Use and our Privacy Policy constitute the sole and entire agreement between you and BoatyBall, LLC and the Providers regarding the Platforms, the Marketing Services, or any use of a Mooring, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the same.

Your Comments and Concerns

The Platforms are operated by BoatyBall, LLC, 2759 Weaver Hill Drive, Apex, North Carolina 27502.

All feedback, comments, requests for technical support, and other communications relating to the Platforms and the services offered thereon should be directed to: support@boatyball.com.