



THESE ARE THE TERMS AND CONDITIONS OF THE AGREEMENT ON WHICH GREATER VICTORIA HARBOUR AUTHORITY (“GVHA”, “we”, “us”, or “our”) GRANTS AN OWNER (“Owner”, “you”, “your”) USE OF GVHA MOORAGE FACILITIES.

Grant and Term

Provided you pay all Fees and subject to your agreement to and compliance with these Terms and Conditions of the Agreement, we grant you a non-transferable, revocable, limited licence, to use the Slip to moor the Vessel for your personal use. You may not let any other person or vessel use the Slip. You agree you do not have any property interest in the Lands or Facilities and you may not assign the Agreement or sub-licence the Slip.

We also give you and your guests, along with other persons we so permit, non-exclusive permission to enter and leave the Slip over such parts of the Lands and Facilities we designate for public access.

The Agreement expires on the expiration date set out in the Agreement, unless it is ended earlier or extended later under these Terms and Conditions. We are not obliged to enter into a new agreement with you after this Agreement ends.

You must not moor any vessel at the Slip other than the Vessel described in the Agreement. You must not transfer the Vessel to any other of our slips or any other Facility without our written permission.

Change of Vessel or Address

If you no longer own the Vessel or replace the Vessel with another vessel; or if you change your address or telephone number or e-mail address you must inform us in writing within 10 days of such change.

Renewal

If:

- (a) your Vessel has remained at our Facilities for the minimum period of time required under the agreed moorage program;
- (b) you do not then owe us any money for any reason; and
- (c) you have proven the Vessel is currently insured as required under this Agreement;

then you may be eligible for renewal at the then current moorage fee rate, subject to our other reasonable requirements about your Vessel, its condition and the use of our Lands and Facilities.

Your representations and warranties

You represent and warrant to us that the Vessel:

- (a) is the type of vessel described in the Agreement;
- (b) is registered, identified and equipped in accordance with Canadian shipping laws;

(c) is in good mechanical and cosmetic condition with operating engine(s); and
(d) shall be operated under its own power in the marina areas in accordance with Transport Canada's safe boating standards, form TP511E

You also warrant that if the Vessel is a Pleasure Vessel you will not carry out any business activity, whether revenue generating or not, connected with boats or boating, including but not limited to unauthorized boat time-sharing, harbour tours, fishing boat brokerage, and any activity associated with such a business in or around the Lands or Facilities. You agree you must not use the address of the Facility for business purposes without our prior written approval. Any approval is entirely at our discretion and may be subject to you entering into a separate licence agreement and paying other fees.

Fees

You agree to pay all fees identified on the front page of the Moorage Agreement in accordance with the payment timelines set out.

You agree that you have been informed that Moorage Fees and other Fees, including payment timelines are generally revised on or before December 31st each year effective April 1st in the next ensuing year, as published on **GVHA's website**.

You also agree to such revised Fees or payment timelines as so published on the **GVHA's website** and that we have the right to further amend the Moorage Fees and Other Fees and payment timelines on 90 days' notice to you at the email or mailing address as set out in the Agreement, or, if you change such address, the address you have provided to us.

You agree that Fees are not refundable except as set out in these Terms and Conditions.

Deposit

As security for the payment of Fees and the performance of all your obligations under this Agreement, you agree that on signing this Agreement you will make a Deposit with us equal to our estimation of the highest amount of all Fees as may become due during any month of this Agreement.

If you are in arrears of payment to us; or if we are required to clean, maintain, repair, or restore any of our Facilities because you have not complied with these Terms and Conditions, or we have to remedy, at our cost, any non-compliance by you with these Terms and Conditions; we may, in addition to any other right or remedy in law, deduct an amount from the Deposit to pay the arrears or pay the costs and expenses of remedying your non-compliance.

If we are required to draw on the Deposit, you agree to immediately on our demand make an additional security deposit with us so that the total amount of the Deposit held by us once again represents an amount equal to our then current estimation of the highest amount of Fees as may become due during any month of this Agreement. If you don't deposit the additional amount within the time stipulated by us, we may terminate this Agreement.

At the expiration or other termination of this Agreement and on your payment to us of all Fees and all costs and expenses incurred by us in correcting or satisfying any failure by you to fulfil your obligations under this Agreement, we will return the balance of the Deposit, if any, to you, without interest. You acknowledge your responsibility to pay Moorage Fees throughout the Term and agree that the Deposit is not intended to be a prepayment of the last month's Moorage Fees.

Any security deposit held by us that is not claimed on or before one year from your departure will be forfeited to GVHA.

Not Sufficient Funds (NSF) Cheques

You agree that if your cheque is returned NSF, then:

- (a) an NSF administration fee of \$35.00 plus GST to GVHA shall apply;
- (b) on notice from GVHA, you must pay, within 5 days, the total outstanding amount plus the NSF fee;
- (c) failure to pay the total amount due plus the NSF fee within 5 days will result in late payment fees; and
- (d) we may terminate this Agreement; and
- (e) we will terminate this Agreement if a second NSF cheque is provided within 12 months of a previous NSF cheque.

Late Payment Fees

You agree that if Fees are not paid when due, then the following late payment fees shall apply:

- (a) \$20.00 plus GST will apply if payment is not received by 5th business day after the Fees are due; and
- (b) 30 days after the Fees are due, an additional 2% late payment fee, being 26.82% per year, will be applied monthly to the total outstanding balance.

CONTINUING TO USE THE SLIP WITHOUT OUR PERMISSION

YOU AGREE THAT IF YOU CONTINUE TO USE THE SLIP WITHOUT OUR WRITTEN CONSENT AT THE EXPIRATION OR OTHER TERMINATION OF THE AGREEMENT, THEN YOU AGREE:

(a) YOU SHALL BE A LICENSEE AT SUFFERANCE AND YOU SHALL PAY TO US, AS LIQUIDATED DAMAGES AND NOT AS RENT, FEES, OR A PENALTY, **AN AMOUNT EQUAL TO TWICE THE MONTHLY MOORAGE FEES** PAYABLE DURING THE TERM DURING THE PERIOD OF SUCH OCCUPANCY OR USE OF THE SLIP, ACCRUING FROM DAY TO DAY AND ADJUSTED PRO RATA ACCORDINGLY AND SUBJECT ALWAYS TO ALL OF THE OTHER PROVISIONS OF THIS AGREEMENT INsofar as they are applicable to a LICENSEE AT SUFFERANCE. A LICENCE FROM MONTH TO MONTH OR FROM YEAR TO YEAR SHALL NOT BE CREATED BY IMPLICATION OF LAW.

(b) WE GIVE YOU WRITTEN NOTICE OF DEMAND FOR PAYMENT ALONG WITH A STATEMENT OF THE SUMS CLAIMED.

(c) IF THE FEES AND OTHER CHARGES ARE NOT PAID WITHIN 10 DAYS OF OUR GIVING THE NOTICE, WE MAY, IN ADDITION TO ALL OTHER REMEDIES IN THIS AGREEMENT OR AT LAW, AT OUR OPTION, CLAIM AND ENFORCE A CONTRACTUAL POSSESSORY LIEN ON THE VESSEL UNTIL SUCH SUMS PAYABLE ARE FULLY PAID.

(d) WE ARE NOT A BAILEE OF THE VESSEL AND ARE THEREFORE NOT RESPONSIBLE FOR THE CARE, CUSTODY OR CONTROL OF THE VESSEL.

(e) WE MAY, IN EXERCISING OUR POSSESSORY LIEN, RELY ON THE REMEDIES UNDER THE *WAREHOUSE LIEN ACT* OF BRITISH COLUMBIA, INCLUDING SEIZING THE VESSEL AND REMOVING IT FROM THE SLIP, AND YOU AGREE WE MAY SELL THE VESSEL AT PUBLIC AUCTION TO RECOVER THE UNPAID SUMS AND ALL REASONABLE COSTS, INCLUDING SOLICITORS' COSTS, AS IF WE WERE A WAREHOUSEMAN UNDER THE *WAREHOUSE LIEN ACT*.

(f) THE BALANCE OF SALE PROCEEDS, IF ANY, WILL BE PAID TO OWNER.

Emergencies

You agree that in an emergency, or threat of damage to anything, we may make any emergency repairs, move

the Vessel or replace any mooring lines or fenders, as deemed necessary in our judgement, for the safety of the Vessel, other vessels or facilities, all at your expense, if any.

Notice to move Vessel

You agree we may require you to move the Vessel in any of the following circumstances:

- (a) to optimize slip or electrical power utilization;
- (b) to facilitate maintenance, repairs or construction;
- (c) during Events.

We shall give you at least 5 days' notice to move the Vessel. If you do not move the Vessel within the time specified in the Notice, you agree we shall have the right to move the Vessel without further notice, all at your expense, if any.

GVHA not liable

You agree we shall not be responsible for any damage or mechanical failure to the Vessel that may occur during the moving of the Vessel unless we are grossly negligent.

Vacancy for 14 days or more

You agree to report to us when the Vessel will be away for 14 days or more, during which time we may use the Slip in any manner we wish. Failure to report on a first occasion will result in a warning letter. Failure to report on a second occasion may result in termination of this Agreement.

Damage to GVHA Property

You agree to check the Vessel regularly, especially after heavy winds, rain or snow. You acknowledge and agree the canvas covering and pump-out of the Vessel is your responsibility, as is the proper tying of mooring lines, and mandatory use of adequate bumpers. You acknowledge liability for any damage to GVHA property or to other vessels as a result of your negligence. You agree to immediately report to us any damage that may be occasioned to our property by you or your guests. You agree that we may assess the damage costs and that you will pay us such amount within 7 days of presentation of our account.

Nuisance

You agree that you shall not do or permit to be done any act or thing on our property that is or would constitute a nuisance to the Lands or Facilities of GVHA or its occupants, or to the public generally.

Alterations

You agree that you must not make any alterations or additions to the moorage facilities or Slip for any purpose, including for the purposes of accessing vessels or constructing fender systems, without first obtaining our written approval.

Applicable Laws, Regulations

You agree to abide by and comply with all Applicable Canadian Federal, Provincial and Municipal Laws and GVHA Regulations at your expense.

Right to Inspect

You agree we have the right to inspect the Slip and the Vessel at all reasonable times (and at any time in the event of an emergency) to determine if you have complied with or are complying with these Terms and Conditions and that no such inspection shall be deemed to constitute an interference with your use.

Insurance

You shall obtain and maintain at all times during the currency of this Agreement general liability insurance, for a minimum amount of \$2,000,000 and in a form acceptable to us. You agree that Greater Victoria Harbour Authority will be named as additional insured on the policy. Evidence of required insurance must be provided before you use the Slip and at any time thereafter on our reasonable request. We reserve the right, in our sole discretion, to revise the insurance requirements, with 30 days' prior notice to you.

Environmental Matters

(a) Compliance with Environmental Laws

You agree to promptly and strictly comply with and conform to the requirements of all Canadian Environmental Laws including any requirements of our insurers, regarding the proper and lawful sale, storage, manufacture, disposal, treatment, generation, use, transport, remediation, release into the environment of, or other dealing with, Contaminants on or in any Vessel.

(b) Contaminants

You shall take all reasonable measures to ensure that any effluent or other substance discharged, spilled, emitted, released or permitted to escape, seep or leak does not contain any Contaminants. Contaminants must be removed from the Lands and Facilities and disposed of strictly in accordance with Applicable Laws.

(c) Reporting

You must immediately report to GVHA and the BC Ministry of the Environment (1-800-663-3456) a discharge or escape of a Contaminant.

(d) Cost of Clean-up

You shall be solely responsible for the cost incurred in the cleanup and any associated environmental remediation and restoration to our satisfaction and that of applicable authorities having jurisdiction.

(e) Ownership of Contaminants

Notwithstanding any rule of law to the contrary, If any person shall bring or create upon the Lands or Facilities any Contaminants then, such Contaminants shall be and remain the sole and exclusive property of that person and shall not become the property of GVHA.

(f) Environmental Report

If, at any time, in our opinion, an inspection of the Premises reveals that:

- (i) the Vessel contains or may contain Contaminants; and
- (ii) you have failed to comply with the proper procedures and requirements of Environmental Laws governing the storage, manufacture, disposal, treatment, generation, use, transport, remediation, release into the environment of, or other dealing with, Contaminants on, in or around the Vessel;

then, on our written request and at your cost, you must obtain and deliver to us, an environmental report from a qualified independent environmental specialist.

(g) INDEMNITY

YOU AGREE TO INDEMNIFY AND HOLD US HARMLESS (INCLUDING OUR DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES) FROM AND AGAINST ALL LOSS, DAMAGE, LIABILITY OR EXPENSE, DIRECT OR CONSEQUENTIAL, OCCASIONED BY OR CLAIMED WITH RESPECT TO, OR AS A DIRECT OR INDIRECT RESULT OF, THE PRESENCE OF ANY CONTAMINANTS ON, IN OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR OTHER RELEASE OF ANY CONTAMINANTS FROM, ANY PART OF THE VESSEL AND TO THE EXTENT CAUSED BY ANY ACT OR OMISSION OF VESSEL OWNER OR ITS EMPLOYEES, AGENTS, CONTRACTORS, SUB-LICENSEE, OR INVITEES, FROM ANY PART OF THE VESSEL INTO THE ENVIRONMENT INCLUDING WITHOUT LIMITATION INTO OR UPON THE LANDS, THE ATMOSPHERE ANY OR YOUR ACTS, OMISSIONS OR NEGLIGENCE OR THOSE OF YOUR DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR GUESTS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

OWN RISK

YOU AGREE THAT YOU ARE SOLELY RESPONSIBILITY FOR THE SAFETY OF THE MOORED VESSEL. YOU EXPRESSLY AGREE THIS IS A LICENCE TO USE SLIP SPACE ONLY AND CREATES NO BAILMENT AND THAT USE OF THE SLIP AND THE LANDS AND FACILITIES IS SOLELY AT YOUR RISK. YOU ACKNOWLEDGE AND AGREE THAT ALL PERSONS USING THE LANDS AND FACILITIES DO SO AT THEIR OWN RISK. ALL VEHICLES PARKED ON OUR PROPERTY AND THE CONTENTS OF THOSE VEHICLES ARE LEFT AT THE OWNER'S OR OPERATOR'S RISK.

RELEASE AND DISCHARGE

YOU AGREE THAT WE AND THOSE PERSONS FOR WHOM WE ARE IN LAW RESPONSIBLE, SHALL NOT BE RESPONSIBLE IN ANY WAY FOR, AND ASSUME NO LIABILITY ARISING FROM FIRE, THEFT, BREAKAGE, DAMAGE OR LOSS TO YOUR PROPERTY, INCLUDING, WITHOUT LIMITATION, THE VESSEL OR ANY OTHER ITEMS, IN OR ABOUT THE SLIP OR THE LANDS OR FACILITIES, UNLESS CAUSED SOLELY BY OUR GROSS NEGLIGENCE. YOU HEREBY RELEASE AND DISCHARGE US FROM ALL CLAIMS AND DEMANDS FOR LOSS OR DAMAGE, DIRECT, INDIRECT OR CONSEQUENTIAL TO YOUR PROPERTY, OR FOR ANY BUSINESS LOSS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

INDEMNITY AND HOLD HARMLESS

Consequences of Termination

If, on receiving notice of termination, you fail to forthwith vacate the Slip then you agree we may evict and remove the Vessel from the Slip at your expense and repossess the Slip. You shall only be allowed on site for the sole purpose of removing the Vessel from the facility permanently and shall be escorted at all times while on site. You will remain responsible for all fees and costs payable.

Termination by Owner

Annual Moorage

You may terminate this Agreement at any time on 45 days' written notice delivered to us on or before the 1st day of the month, which may be subject to payment of an early termination fee equal to the amount due under a monthly fee and an annual fee.

Winter Program Moorage

Early termination is not available unless arranged at the time of signing the moorage agreement.

Suspension by GVHA for investigation of breach or improper conduct

If we have reason to believe you or your invitees have breached this Agreement, we may, in our sole discretion, suspend your privileges and those of any director, officer, employee, contractor, passenger, crew or guest to access our facility pending an investigation. You agree to cooperate with us in the investigation. During the investigation period, you or your agent shall only be allowed on site after submitting a written request to us and for the sole purpose of performing necessary maintenance or servicing of the Vessel. On completion of the investigation, which shall not be unreasonably delayed, we will inform you in writing that either the suspension has been lifted (with or without conditions); or the Agreement is terminated for breach or improper conduct; in which case you agree to remove the Vessel from the Slip and our Facilities permanently within 48 hours or written notice to you.

Notice

Any notice to us shall be in writing and delivered to: 100-1019 Wharf Street, Victoria, BC V8W 2Y9.

Notice to you shall be in writing by any of the following means:

- (a) personal delivery;
- (b) by email to the email address set out by Owner on the front page of the Moorage Agreement, or such other email address as provided to GVHA in writing;
- (c) by registered mail to the address set out by Owner on the front page of the Moorage Agreement, or such other mailing address as provided to GVHA in writing; or
- (d) posting on the Vessel.

Time of the Essence

Time shall be of the essence hereof.

Applicable Law and Court

This Agreement shall be governed and construed by the laws of the Province of British Columbia. The venue of any proceedings taken in respect of this Agreement shall be at Victoria, British Columbia, so long as such venue is permitted by law, and you agree to consent to any applications by us to change the venue of any proceedings taken elsewhere to Victoria, British Columbia.

YOU AGREE WE WILL NOT BE LIABLE AND YOU WAIVE ALL CLAIMS AGAINST US FOR ANY INJURY, LOSS OR DAMAGE, DIRECT OR CONSEQUENTIAL, TO ANY PERSON OR PROPERTY IN OR ABOUT THE SLIP OR THE LANDS OR FACILITIES, BY OR FROM ANY CAUSE WHATSOEVER, EXCEPT INJURY OR DAMAGE TO YOU RESULTING FROM OUR ACTS OR OMISSIONS OR THOSE OF PERSONS FOR WHOM WE ARE IN LAW RESPONSIBLE. YOU AGREE TO INDEMNIFY AND HOLD US HARMLESS (INCLUDING OUR DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES) FROM AND AGAINST ALL LOSS, DAMAGE, LIABILITY OR EXPENSE, DIRECT OR CONSEQUENTIAL, OCCASIONED BY OR CLAIMED ARISING FROM ANY OR YOUR ACTS, OMISSIONS OR NEGLIGENCE OR THOSE OF YOUR DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR GUESTS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

Termination by GVHA without cause

We may terminate this Agreement on 45 days' written notice and without liability. Any prepaid fees will be refunded after deduction of any amounts due to us.

Termination by GVHA for cause

We may terminate this Agreement on 48 hours' written notice to you where you, or any of your directors, officers, employees, agents, contractors, passengers, crew, invitees or guests breaches any term of this Agreement including the Regulations or engages in any illegal conduct.

Counterparts and Electronic Copies

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts and transmitted electronically or by facsimile. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Definitions

In this Moorage Agreement and the Terms and Conditions:

Agreement means this Moorage Agreement including the Terms and Conditions.

Applicable Laws means all applicable laws, bylaws, rules and regulations of the federal, provincial, regional district, or municipal authority having jurisdiction and order of a court, if any, concerning the operation of vessels or vehicles and the use of the Lands and Facilities

Contaminants means any pollutants, contaminants, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws.

Environmental Laws means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands and Facilities with respect in any way to the environment, health or occupational health and safety, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time.

Events means that period of time as published on GVHA's Website when GVHA sponsors community and harbour events that may require a Vessel to vacate a slip or relocate to another slip or Facility.

Facilities means those improvements, structures, buildings, docks, wharfs, ramps, fixtures, equipment and systems which now exist, or which may be constructed on the Lands by GVHA including without limitation hard landscaping, equipment and all necessary services and ancillary facilities, and all other improvements of any kind from time to time constructed upon or affixed or appurtenant to the Lands.

Fees means all moorage and any other fees or payments required or contemplated by this Agreement.

GVHA ("we", "us", "our") means Greater Victoria Harbour Authority, incorporated under the *Society Act* of British Columbia.

GVHA's Website means <http://www.gvha.ca>

Lands means all of GVHA's parcels or tracts of lands and premises in the City of Victoria in the Province of British Columbia, including without limitation those located at: Ogden Point, Fisherman's Wharf, Inner Harbour Causeway, Ship Point, Wharf Street Wharf, Johnson Street Wharf, Broughton Street Wharf, CPR Steamship Terminal Building, Hyack Terminal, and Mermaid Wharf.

LOA means the length overall of the vessel including all spars, brackets, swim grids, motors or other extensions.

Moorage Fees means the moorage fee as set out on the front page of this Agreement.

Owner ("you", "your") means (a) the registered owner(s) of the Vessel, (b) the lessee(s) of the Vessel, (c) the duly authorized agent of the owner(s) of the Vessel, or (d) any other person who has the permission of the owner to be in possession of the Vessel and has signed this Agreement.

Regulations means all rules, regulations, codes, policies and directives promulgated by GVHA from time to time in respect of all aspects of the Lands and Facilities management and operations including vessels, motor vehicle traffic control, safety, security, environmental and ground transportation procedures as the same may be amended, restated or supplemented from time to time.

Slip means the dock or slip as set out on the front page of this Agreement, or such other dock or slip as may be designated by GVHA during the Term.

Term means the length of term of this Agreement as set out on the front page of the Agreement.

Terms and Conditions means these terms and conditions of the Agreement.

Vessel means the vessel described on the front page of the Agreement together with any and all personal property of any nature, kind and description, located in or on the vessel or located in proximity to the vessel and owned by or in lawful possession of the Owner or any other person who has been permitted by the Owner to board the vessel or be in possession of the vessel.



CODE OF CONDUCT

Addendum to 2017-18 Moorage Agreement

*GVHA reserves the right to terminate this agreement, per clause **Termination by GVHA for cause**, p.8 of the Terms & Conditions, as a direct result of any conduct by the Owner that is deemed inappropriate by GVHA. This includes, but is not limited to, any physical, verbal or written abuse of GVHA staff, other moorage clients, local business patrons and/or the general public.*