



## GVHA MOORAGE AGREEMENT TERMS AND CONDITIONS

**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.

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.

### **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 safe boating standards.

You also warrant that you will not carry out any business activity, whether revenue generating or not, connected with boats or boating, including but not limited to harbour tours, fishing boat brokerage, and any activity associated with such a business in or around the lands or facilities.

### **FEES**

You agree to pay all fees identified on the front page of this Agreement and you agree that such Fees are not refundable except as set out in these Terms and Conditions.

### **REFUND**

Prepaid daily moorage fees may only be refunded under special circumstances and at the discretion of GVHA.

### **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 DAILY MOORAGE FEES** PAYABLE DURING THE TERM DURING THE PERIOD OF SUCH OCCUPANCY OR USE OF THE SLIP, ACCRUING FROM DAY TO DAY AND SUBJECT ALWAYS TO ALL OF THE OTHER PROVISIONS OF THIS AGREEMENT INSOFAR AS THEY ARE APPLICABLE TO A LICENSEE AT SUFFERANCE.

### **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 Event.

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.

#### **Damage to GVHA Property**

You acknowledge and agree the proper tying of mooring lines, and mandatory use of adequate bumpers for your Vessel is your responsibility. 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 Laws and the Regulations at your expense.

#### **Right to Inspect**

You agree we have the right to inspect 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.

#### **Environmental Matters**

(a) Compliance with Environmental Laws

You agree to promptly and strictly comply with and conform to the requirements of all Environmental Laws including any requirements of our insurers, regarding the proper and lawful storage, disposal, treatment, 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 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, disposal, treatment, 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**

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.

**Notice**

Any notice to us shall be in writing and delivered to: 107-1208 Wharf Street, Victoria, BC V8W 3B9.

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 this 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 this 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.

**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.

**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>

**LOA** means the length overall of the vessel including all spars, brackets, swim grids, motors or other extensions, which the moorage fees are based on.

**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.