

## GENERAL TERMS (MARINA)

### 1. INTERPRETATION

#### 1.1. The following definitions apply to the Agreement (as defined):

**Agreement** means the agreement (whether in writing or otherwise) made between BHC and the Owner under which BHC permits the Owner to keep the Vessel at the Marina, either afloat or ashore, of which these General Terms form part;

**Applicable Laws** means all applicable laws, statutes, regulations and codes from time to time in force;

**Berth** means the land and adjacent water that are allocated from time to time to the Owner for use in connection with the Vessel;

**Berthing Period** means the duration of the Agreement and any extension, in each case subject to any earlier termination of the Agreement;

**Charges** means BHC's then standard charges for berthing in the Marina (based on the Length Overall of the Vessel) and use of ancillary facilities, equipment and utilities, as published by BHC from time to time and available at <https://www.belfast-harbour.co.uk/port/marina/>;

**BHC** means The Belfast Harbour Commissioners of The Harbour Office, Corporation Square, Belfast, BT1 3AL, Northern Ireland, whether acting by themselves or by their employee(s) or agent(s);

**Length Overall** means the length overall of the Vessel including davits, bowsprits, boarding ladders, sterndrives, tenders, outriggers, anchors, pulpits and pushpits and any other extensions fore and aft of the Vessel, temporary or permanent;

**Marina** means all of the land and adjacent water owned or controlled by BHC which comprises the marina facility at the Port from time to time, including slipways, pontoons, quays, drystack, boatyards, car parks, roadways, footpaths and other premises;

**Owner** means the person who owns or has control of the Vessel or any Vehicle;

**Port** means the Port of Belfast;

**Regulations** mean BHC's regulations in force from time to time governing the use and navigation of the Port and Marina and its and their approaches and the operation, management, security and safety of the Port and Marina and its and their users;

**Services** means any services to be provided by BHC to the Owner as set out in the Agreement;

**Vehicle** means any vehicle or trailer which BHC has permitted the Owner to keep at the Marina pursuant to the Agreement; and

**Vessel** means any boat, craft, vessel, ship, yacht, dinghy, multihull, or other marine structure which BHC has permitted the Owner to keep at the Marina pursuant to the Agreement.

#### 1.2. The following rules of interpretation apply to the Agreement: (a) clause headings shall not affect the interpretation of the Agreement; (b) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (c) these General Terms form part of the Agreement and shall have effect as if set out in full in the body of the Agreement and any reference to the Agreement includes these General Terms; (d) a reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established; (e) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the

singular; (f) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders; (g) the Agreement shall be binding on, and ensure to the benefit of, the parties to the Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns; (h) a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; (i) a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision; (j) a reference to **writing** or **written** includes email; (k) any obligation on a party not to do something includes an obligation not to allow that thing to be done; (l) a reference to the **Agreement** or to any other agreement or document is a reference to the Agreement or such other agreement or document, in each case as varied from time to time; (m) references in the Agreement to clauses are to the clauses of the General Terms; (n) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.3. These General Terms (as varied in accordance with clause 1.5) shall apply at all times to the Agreement to the exclusion of any other terms that the Owner seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.4. Even if the Owner has not signed the Agreement the Owner shall be deemed to have accepted the terms of the Agreement and these General Terms by keeping the Vessel at the Marina.
- 1.5. BHC expressly reserves the right to vary these General Terms from time to time in order to comply with Applicable Law and/or the Regulations and/or in the interests of the operation, management, security and safety of the Port and Marina and its or their users, provided that BHC shall use reasonable endeavours to give the Owner at least 30 days' notice of any such variation. The latest version of these General Terms is available at <https://www.belfast-harbour.co.uk/port/marina/>.

## 2. USE & OPERATION OF MARINA

### *General Management*

- 2.1 The Owner shall comply with all reasonable instructions given by BHC in connection with all matters relating to the operation, management, security and safety of the Port and Marina and its or their users.
- 2.2 The Owner shall supply to BHC, in writing, up-to-date contact details, including home address, email address and telephone number. The Owner shall upon request produce evidence of such home address and will notify BHC promptly, in writing, of any change of name of the Vessel or change of address or telephone number of the Owner.
- 2.3 Any and all personal data provided to BHC by or on behalf of the Owner will be processed by BHC in accordance with BHC's privacy policy in force from time to time (latest version available at <https://www.belfast-harbour.co.uk/policies/>).

- 2.4** Any and all images captured by CCTV cameras at the Marina will be processed by BHC in accordance with BHC's Use of CCTV policy in force from time to time (latest version available at <https://www.belfast-harbour.co.uk/policies/>).
- 2.5** The Agreement is personal to the Owner and may not be assigned or transferred to any other person. The Owner shall not lend or seek to lend or transfer the Berth to any other person. The Agreement relates to the Vessel or any replacement vessel which BHC has in writing permitted the Owner to keep at the Marina. The Owner shall not, nor shall the Owner encourage or permit any other person to, place any vessel other than the Vessel in the Berth.
- 2.6** The Owner may only replace the Vessel during the Berthing Period with another vessel with BHC's prior written approval in which event BHC may vary the terms of the Agreement (including the Berth and/or the Charges) to take account of any change in vessel.
- 2.7** Any item left secured to BHC's equipment or property may be removed by BHC.

#### *Berth*

- 2.8** Subject to payment of the Charges and compliance with the terms of the Agreement, the Owner may berth the Vessel in the Berth during the Berthing Period.
- 2.9** The Berthing Period for any Berth that BHC reserves from time to time for use by visitors will not exceed 14 days in any calendar month.
- 2.10** The Agreement confers no tenancy upon the Owner and nothing in the Agreement shall be construed as creating a legal transfer or grant of exclusive possession to the Owner or create any greater interest other than a right for the Owner to use the Berth on the terms set out herein. Possession of the Berth is retained by BHC and the Owner agrees not to impede in any way BHC and its officers, employees, servants, agents, invitees and licensees in exercise by it or them of the right of possession, control or use of the Marina or any part of the Marina.
- 2.11** The Owner shall use only the berth as is from time to time allocated to the Vessel by BHC. The operation of the Marina requires that BHC retains absolute control of berth allocation within the Marina and accordingly the Owner shall not be entitled to exclusive use of any particular berth.
- 2.12** The Owner acknowledges and agrees that BHC shall have the right without prior notice to require the Owner to move and re-berth the Vessel or shall itself have the right to move and re-berth the Vessel to any new location within the Marina as BHC may from time to time require.
- 2.13** The Owner acknowledges and agrees that BHC may use any berth allocated to the Vessel by BHC whilst it is left vacant by the Owner.
- 2.14** The Owner shall notify BHC prior to the Vessel's departure from the Marina, together with the anticipated time and date of return.
- 2.15** Dinghies, tenders and rafts shall be stowed aboard the Vessel unless allocated a separate berth by BHC.

### *Vessel Movements*

- 2.16** BHC shall have the absolute right to allow another vessel temporarily to occupy the Berth when it is not occupied by the Vessel and BHC shall not be obliged to account to the Owner for any charges so received.
- 2.17** The Vessel shall be kept in the Berth and shall not be kept elsewhere in the Marina without the BHC's prior approval in writing.
- 2.18** If the Owner returns to the Berth and finds another vessel in the Berth, the Owner must moor the Vessel in the visitors' berth area and not in any other berth.
- 2.19** BHC reserves the right to move any Vessel, gear, equipment or other property at any time for reasons of safety, security or good management of the Port and Marina.
- 2.20** The Vessel shall be berthed or moored by the Owner in such a manner and position as BHC may require and unless otherwise agreed adequate ropes, warps and fenders for the Vessel shall be provided by the Owner.
- 2.21** The Vessel is at all times subject to the speed restrictions, powers, regulations (including the Regulations) and byelaws of the Port and Marina and its and their regulatory authorities, including BHC, the Harbour Master, Maritime and Coastguard Agency and The Health and Safety Executive. Criminal penalties may apply to any breach of any such restrictions, powers, regulations or bye-laws.

### *Health, Safety & Environment*

- 2.22** The Vessel shall be berthed by the Owner in such a manner and in such location as BHC may require. No Vessel shall be anchored in the Marina nor moored in such a way as to cause any obstruction to BHC or to the Port or Marina or its or their users.
- 2.23** The Vessel shall only be moored to bollards and equipment designated for such purpose and in such a manner and within berths or such other position as BHC may reasonably require. The Owner will ensure that the Vessel is properly and safely secured and attached to its pontoon at all times and it is the sole responsibility of the Owner to check the security of ropes, warps and fenders and to replace them when necessary.
- 2.24** The Vessel shall not be made fast to any other vessel within the Marina without the prior approval in writing of BHC and the person who owns or controls that other vessel.
- 2.25** The Owner shall navigate and control the Vessel in the Port and in the Marina at all times in full compliance with the navigational guidelines that BHC maintains in force from time to time.
- 2.26** At no point shall the Owner undertake or carry out any action that exceeds its own competency. Without limiting clause 2.25, whilst in the Port or the Marina, the Owner shall:  
(a) navigate and control the Vessel at all times: (i) in a seamanlike manner so as not to cause wash and not to cause danger, damage or inconvenience to any other person or Vessel; (ii) at a speed which is safe in relation to prevailing conditions; and (iii) with due care and at all times relying on good seamanship, paying attention to all navigational signs, signals and directions of BHC; and (b) ensure that the Vessel is not navigated by anyone incapable of properly navigating it or by any person who is under the influence of alcohol or drugs or

otherwise intoxicated so as to render navigation unsafe.

- 2.27** The Owner will (and will procure that its crew, contractors and visitors will) at all times, whilst in the Marina, observe and comply with: (a) all Applicable Laws relating to health and safety; and (b) the health, safety and environmental policies of BHC in force from time to time (latest versions available at <https://www.belfast-harbour.co.uk/policies/>).
- 2.28** BHC shall have the right to board, enter (by force if necessary), lift ashore, slip, move, moor, carry out work on or re-berth the Vessel or any Vehicle, gear, equipment or other property of the Owner or its crew, contractors or visitors at the Marina at any time for reasons of safety, security or emergency or to prevent or stop a nuisance or criminal offence, or carry out any emergency work on the Vessel without prior notice to the Owner if in BHC's opinion such work be necessary for the safety of the Vessel or the safety and or convenience of other users of or visitors to the Marina. The Owner shall pay BHC's reasonable charges for such work.
- 2.29** No dangerous, inflammable, poisonous or noxious substances, spirits, oil or petrol or other inflammable fluid shall be brought into the Marina or stored on the Vessel except in properly secured containers expressly designed to contain such substances against leakage.
- 2.30** The Owner is responsible for conducting regular inspections of any gas appliances on the Vessel. BHC recommends that an annual inspection is carried out by a qualified gas engineer.
- 2.31** Where fuel is required to be transferred in portable containers, the Owner shall ensure that all portable fuel tanks and spare fuel containers are clearly marked with the fuel type, and BHC reserves the right to refuse the use of any container deemed unfit for the purpose.
- 2.32** The Owner shall take all necessary and reasonable precautions against the outbreak of fire in or upon the Vessel and must observe all Applicable Laws relating to fire prevention. The Owner shall provide at least one fire extinguisher, in good working order and ready for use, in or upon the Vessel suitable for the type of engines, fuel and equipment of the Vessel.
- 2.33** No part of the Vessel or other equipment, dinghies, gear, fittings, supplies, stores or similar items shall be stored or left upon the pontoons, jetties, car parks or otherwise within the Marina without the prior approval in writing of BHC.
- 2.34** The hardstanding area occupied by the Vessel must be kept clean and tidy and at the end of the Berthing Period returned to its original condition. BHC reserves the right to clean any area not left in its original condition and to charge the Owner for this service.
- 2.35** The Owner will (and will procure that its crew, contractors and visitors will) report to BHC all accidents involving injury to any person or damage to any public or private property that occurs in the Marina as soon as possible, and in any event within 48 hours of such accident or damage occurring.
- 2.36** No noisy, noxious or objectionable engines, radio, or other apparatus or machinery shall be operated within the Marina so as to cause any nuisance or annoyance to any other users of the Marina or to any person residing in the vicinity and the Owner undertakes for itself and its crew, contractors and visitors that they shall not behave in such a way as to cause any nuisance or annoyance to any other users of the Marina or to any person residing in the vicinity. Halyards and other rigging shall be secured so as not to cause such nuisance or

annoyance.

- 2.37** The Owner shall: (a) not pump-out any waste from the Vessel other than at the pump-out berth designated by BHC from time to time and then using only the facilities and equipment provided by BHC at that designated pump-out berth; and (b) ensure that the Vessel is regularly inspected and maintained so as to minimise emissions, discharges and the risk of fuel or oil leakages.
- 2.38** The Owner will only use: (a) suitable absorbents (rather than chemicals or detergents) to deal with on board fuel or oil spillages; and (b) environmentally-friendly cleaning agents (rather than chlorine-based agents such as bleach).
- 2.39** The Owner shall ensure that, if the Vessel is powered by outboard engine(s), the Vessel is equipped with a supply of absorbing material for use in the event of a spillage on board. If the Vessel is powered by an inboard engine, the Owner shall ensure that the Vessel is fitted with internal arrangements such as drip trays, bulkheads, bilge water filters or such other equipment effective in preventing the escape of oil from the bilges into the water. The Owner must not pump oil or oily bilge water from the Vessel into the water of the Marina.
- 2.40** The Owner undertakes and agrees that no refuse shall be thrown overboard or deposited on the pontoons, car parks or on any other parts of the Marina and shall be disposed of only in receptacles provided by BHC or removed entirely from the Marina. BHC's environmental policy will be posted on the Marina's notice board or other prominent place and copies will be available from BHC on request. The safe disposal of out-of-date flares or any other pyrotechnics is the sole responsibility of the Owner (who acknowledges that the abandonment of out-of-date flares on land or sea constitutes illegal dumping and may constitute a criminal offence) and shall be arranged by the Owner through appropriate channels with the competent authority(ies).

#### *Rafting*

- 2.41** Unless expressly permitted in writing in advance by BHC, rafting within the Marina is not permitted. Where so permitted, such permission is conditional upon: (a) the parties involved consenting to the rafting arrangement; (b) all Charges having been paid in full, irrespective of whether the Vessel is rafted or berthed directly alongside pontoons; and (c) the Owner being solely responsible for ensuring both Vessels are adequately secured with fenders deployed.

#### *Vehicles*

- 2.42** Subject to availability of a parking space, any Vehicle is parked at the Owner's risk and is to be parked in accordance with the instructions and directions from time to time of BHC (and/or the Odyssey Trust, if parked on the property of the Odyssey Trust).
- 2.43** The Owner will ensure that any Vehicle parked in the Marina shall not be parked so as to obstruct any of the pontoons, roadways, slipways, craneage platforms or any other working areas within the Marina and BHC reserves the right to remove any Vehicle by towing or other means if it is interfering for any reason with the use and enjoyment of the Marina. BHC reserves the right to charge the Owner for the costs incurred in moving or storing any Vehicle.

- 2.44** The Owner shall ensure that any Vehicle parked in the Marina is registered with the Driver & Vehicle Agency (DVA) Northern Ireland or other applicable driver and vehicle licensing agency, has valid road tax, has a current MOT certificate (if required), is insured, roadworthy and complies with all Applicable Laws. BHC reserves the right not to accept, or to remove and dispose of any Vehicle parked in the Marina if BHC has reasonable grounds to believe the Vehicle does not comply with any of those requirements. BHC reserves the right to charge the Owner for the reasonable costs incurred in removing or disposing of any Vehicle.

*Animals*

- 2.45** Animals may only be brought into the Marina provided that they: (a) are kept on a leash and under the close control of the Owner at all times whilst at Marina; and (b) cause no nuisance, annoyance, damage or inconvenience to BHC, other users of the Marina or any person living near to the Marina (including by means of noise and/or fouling).
- 2.46** No animal which has originated abroad, or which has been taken abroad, shall be brought into or landed in the Marina without the prior written consent of BHC (who reserves the right to report the presence of any animal in the Marina to the competent authority(ies)).

**3. VESSEL**

*Name & Condition*

- 3.1** The Vessel and any dinghies, tenders, trailers and cradles shall be clearly marked with the name of the Vessel. Any other equipment which is not stored securely in the Vessel shall also be clearly marked with the name of the Vessel.
- 3.2** The Owner shall maintain the Vessel in good, clean and seaworthy condition and, if requested by BHC, shall demonstrate to BHC that the Vessel is able to proceed under its own power.
- 3.3** BHC may require the Owner to obtain a report prepared by a qualified professional surveyor (at the Owner's expense) to satisfy BHC that the Vessel is capable of self-propelled movement, is structurally sound and poses no threat to safety or safe navigation within the Marina. If the Owner then fails to obtain such a report BHC may engage a professional surveyor itself to prepare the report, and any costs incurred in this will be recharged to the Owner.

*Sale of Vessel*

- 3.4** The Owner shall be permitted to arrange a private sale of the Vessel whilst berthed at the Marina. A private sale shall be deemed to be any sale that is not made in the course of a trade or business. In the event of such a private sale, the Owner must be present at all times during which the Vessel is to be viewed, but the Owner is not permitted to display a "For Sale" notice on the Vessel in or on the Marina.
- 3.5** Upon sale or loss of possession of the Vessel, the Owner must immediately notify BHC in writing of the name and address of the buyer or new owner of the Vessel. Until details of the new Owner are provided, the Owner is responsible for all charges relating to the Vessel.

- 3.6** The Owner has no rights to transfer the Berth to the new owner without the prior approval in writing of BHC.

*Living Onboard*

- 3.7** The Owner must not use or permit the Vessel whilst in the Marina for residential purposes. For the avoidance of doubt, the Vessel shall be regarded as being used for residential purposes if, amongst other things, the Owner or anyone else with the Owner's knowledge: (a) uses the Vessel as its principal or main place of residence; (b) stays on board the Vessel in excess of an average of 3 nights per week over a 12 week period; or (c) uses BHC's offices at the Marina as its mailing address.

*Commercial Activities*

- 3.8** No part of the Marina, or the Vessel whilst in the Marina, may be used by the Owner for any commercial purpose, including hiring or renting for use or accommodation.

*Work on Vessel*

- 3.9** The Owner shall not carry out any work to the Vessel or its gear, equipment or other property whilst in the Marina without the prior approval in writing of BHC other than minor running repairs or minor maintenance of a routine nature.
- 3.10** Any work that is carried out to the Vessel whilst in the Marina must be executed in a safe and workmanlike manner and in such a way that it does not cause a nuisance or annoyance to other users of the Marina, or damage to any other vessel or vehicle in the Marina or any pontoon or Marina equipment. Tools and equipment must not be placed or left on any part of the Marina. The Owner must not spill liquids on or into the Marina. Waste materials must be removed by the Owner after completing work on the Vessel. Where appropriate, BHC will charge the Owner for removing any tools, equipment or waste materials and for making good any damage to the Marina or any vessel or vehicle in the Marina.

*Nuisance*

- 3.11** The Owner shall not do or cause, suffer or permit to be done at the Marina any act or thing which does or may cause a nuisance, annoyance, damage or inconvenience to BHC, other users of the Marina or any person living near to the Marina.
- 3.12** The Owner shall not cause or permit to be caused any obstruction on any of the access roads, pontoons, passageways, car parks or boatyards of the Marina.
- 3.13** The Owner shall not operate or permit to be operated within the Marina any engine generator other machinery radio or any apparatus so as to cause any nuisance annoyance or inconvenience to other users of the Marina or any person living near the Marina.
- 3.14** The Owner will (and will procure that its crew, contractors and visitors will) behave in a considerate manner and in such a way as to cause no nuisance annoyance or inconvenience to any other users of the Marina. Drugs and excessive alcohol consumption are strictly prohibited in the Marina. If the Owner or its crew, contractors or visitors are found to be in possession of, or in BHC's opinion considered to be under the influence of, drugs, excessive alcohol or otherwise intoxicated, such person will be asked to leave the Marina immediately.



- 3.15** The Owner shall ensure that at all times halyards, flags, banners and other items attached to the Vessel shall be secured so as not to cause any noise, nuisance, annoyance or inconvenience to other users of the Marina or any person living near the Marina.

#### *Electricity & Water*

- 3.16** If the balance of the Owner's electricity account reaches £0, then the supply of electricity to his/her electricity meter will automatically disconnect and will not reconnect until such times as the Owner pre-purchases electricity via BHC's Harbour Assist online portal.
- 3.17** It is the sole responsibility of the Owner to monitor his/her electricity meter and the balance of his/her electricity account and to pre-purchase electricity via BHC's Harbour Assist online portal. The Owner should note that the processing of a request for a pre-purchase of electricity can take up to 48 hours and that BHC will have no liability for the disconnection of any electricity meter due to the Owner's failure to monitor his/her electricity meter or the balance of his/her electricity account or to pre-purchase electricity via BHC's Harbour Assist online portal.
- 3.18** BHC will not have any liability to the Owner for any interruption or failure: (a) of any utility service (including electricity or water); or (b) in the use and/or availability of BHC's Harbour Assist online portal.
- 3.19** Potable water is made available to the pontoons via standpipe taps but may be restricted by BHC, without notice, during winter months or during periods of cold weather. The Owner is responsible for providing his/her own hose to connect to the standpipe taps.

#### **4. CHARGES & PAYMENT**

- 4.1** BHC may vary the Charges in line with BHC's standard charges for berthing in the Marina (based on the Length Overall of the Vessel) and use of ancillary facilities, equipment and utilities, as published by BHC from time to time and available at <https://www.belfast-harbour.co.uk/port/marina/>;
- 4.2** The Charges are based on the Length Overall of the Vessel. Any changes or corrections of the Length Overall of the Vessel must be notified to the Marina office and additional charges may be made. BHC reserves the right to measure the Vessel to verify Length Overall.
- 4.3** The Charges are payable irrespective of whether the Berth is occupied or not. No refunds will be made by BHC to the Owner for any period during the Berthing Period when the Berth is not occupied.
- 4.4** All Charges must be paid in full prior to the Vessel leaving the Marina.
- 4.5** All invoices issued by BHC: (a) must be paid in full within 7 days of date of invoice; and (b) are subject to the addition of UK VAT or such other applicable tax.
- 4.6** If the Owner fails to pay any sum to BHC by its due date, then, without prejudice to any other right or remedy it may have, BHC may: (a) suspend the further provision of Services to the Owner; and/or (b) charge the Owner interest calculated at the rate of 8% per week (or part of a week) that such sum is due but not paid, as well as after as before judgment; and/or (c) allocate any payment made by the Owner as BHC sees fit; and/or (d) exercise a general lien (that is the right to take possession of and prevent the Owner from gaining access to, using

or moving the Vessel and/or other property) over the Vessel, any Vehicle or any other property of the Owner at the Marina until such time as any sums due to BHC (including interest and BHC's costs in enforcing the general lien and obtaining from the Owner payment of any sum due to BHC under the Agreement) is paid in full; and/or (e) retain possession of the Vessel, any Vehicle or other property of the Owner pending payment of all sums due to BHC, including any interest that may be due on late payments; and/or (f) sell the Vessel, any Vehicle or any other property of the Owner, provided that such sale will not take place until BHC has used its reasonable endeavours to give notice in writing to the Owner; and/or (g) arrest the Vessel through the Courts to recover a debt or damages. Any costs involved in any legal action will be recovered from the Owner.

**4.7** Notwithstanding any other provision in these General terms, the Owner irrevocably appoints BHC as its agent and attorney for the sale and disposal of the Vessel and/or any other property belonging to the Owner or its crew, contractors or visitors which is left at the Marina without BHC's consent (including following termination of the Agreement), and BHC shall be entitled to charge and apply all usual commissions and expenses incurred by BHC or any third party in connection with such sale or disposal.

**4.8** The Owner shall at any time be entitled to remove the Vessel, any Vehicle or any other property upon providing proper security, for example a letter of guarantee from a Bank or a cash deposit, sufficient to cover the debt (including interest and any costs incurred and/or likely to be incurred by BHC in enforcing the general lien and obtaining from the Owner payment of any sum due to BHC under the Agreement) and, where the debt is contested, a reasonable provision for BHC's actual or prospective legal costs.

**4.9** The Owner may opt to pay the Charges by monthly instalments. The Owner shall not be invoiced for the payments and shall be responsible for ensuring payment to BHC of each instalment on the first day of each month. Failure to pay an instalment by the due date may result in the total outstanding amount becoming due. Payment by instalments shall not absolve the Owner from liability for all charges incurred during the Agreement.

## **5. COMPLIANCE**

**5.1** In performing its obligations under the Agreement, the Owner shall at all times comply with all Applicable Laws.

**5.2** The Owner shall at all times observe and comply with the Regulations in force from time to time. Without limiting the foregoing, the Owner: (a) will 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; and (b) will not discharge sewage into the Marina and acknowledges that any such discharge will result in the immediate termination of the Agreement by BHC and ejection of the Vessel from the Marina.

**5.3** The Owner and its crew, contractors and visitors are advised that their conduct and that of the Vessel is regulated and governed by statutory, local authority and harbour regulations (including the Regulations) and that breach may result in criminal penalties.

## **6. LIABILITY & INSURANCE**

**6.1** The Owner agrees to indemnify BHC against any loss, damage or costs incurred by, and all claims or proceedings instituted against, BHC or its servants or agents which may be caused by the Vessel or any Vehicle or by the Owner or its crew, contractors or visitors, except to the

extent that such loss, damage, costs, claims or proceedings may be caused by an act or omission of BHC or its employees, agents or contractors. The Owner further agrees to indemnify BHC against any and all reasonable costs of enforcing its rights under these General Terms, including the cost of letters and telephone calls and costs (including legal costs) payable to third parties.

- 6.2** Notwithstanding anything to the contrary in the Agreement, BHC shall not be liable to the Owner or any third party by reason of any representation or implied warranty, condition or other term or any duty at common law or under any express term of the Agreement for any consequential loss or claim (whether for loss of profit, enjoyment or use of the Vessel or otherwise whether occasioned by negligence of BHC or its employees, agents or contractors) arising out of, or in connection with any act or omission of BHC relating to the use of the Marina or its facilities or the provision of the Services, including the pontoons and car parks.
- 6.3** All persons using any part of the Marina or its facilities for whatever purpose and whether by invitation or otherwise do so at their own risk and BHC shall not be liable for any loss or damage occasioned thereby (save in the case of death or personal injury caused by or resulting from any negligent act or omission of BHC or its employees, agents or contractors).
- 6.4** BHC shall not be liable for the loss, theft or any other damage of whatsoever nature caused to the Vessel or any Vehicle or any other property (whether insured or not) belonging to the Owner or others claiming through the Owner, except to the extent that such loss, theft, or damage is caused by an act or omission of BHC or its employees, agents or contractors.
- 6.5** Where access to and from the Marina is via a lock gate or other restriction, BHC shall not be liable for loss, damage or costs of whatsoever nature suffered by the Owner as a result of the lock gate or other restriction being inoperative, except to the extent that such inoperation is caused by the act or omission of BHC or its employees, agents or contractors.
- 6.6** No warranty or representation is expressed or implied by BHC as to the suitability of the Berth for the Vessel or of any berth structure gear or other facility provided or made available by BHC.
- 6.7** BHC shall not be liable for any loss or damage caused by any event or circumstance beyond its reasonable control, including weather conditions, the acts or omissions of any third party, or any defect in the Vessel or any other vessel.
- 6.8** BHC shall take reasonable steps to maintain security at the Marina, and to maintain the facilities at the Marina and in the Marina in reasonably good working order. Subject to this, and in the absence of negligence or breach of duty on the part of BHC, the Vessel, any Vehicle, or any other property is left at the Marina at the Owner's own risk and Owner shall ensure that its own personal and property insurance adequately covers such risks.
- 6.9** BHC shall not be under any duty to salvage or preserve the Vessel or any other property arising from any defect in the Vessel or that property unless BHC has been expressly engaged to do so by the Owner on commercial terms. Similarly, BHC shall not be under any duty to salvage or preserve the Vessel or any other property from the consequences of an accident for which BHC is not responsible. However, BHC reserves the right to do so in circumstances where there is a risk to the safety of people, property or the environment. Where it does so, it shall be entitled to charge the Owner on a normal commercial charging basis and, where appropriate, to claim a salvage reward.

- 6.10** The Owner must comprehensively insure the Vessel and any Vehicle against loss or damage however caused, which insurance must include cover for liability to third parties (including cover against wreck removal and salvage and, where relevant, employer's liability cover to at least the statutory minimum) in respect of itself, the Vessel, any Vehicle and the Owner's crew, contractors and visitors in a sum of not less than £3,000,000 in respect of each accident or damage and must maintain in respect of the Vessel adequate removal of wreck insurance.
- 6.11** The Owner shall not cancel surrender or materially alter the terms of such insurance policy without the prior approval in writing of BHC.
- 6.12** The Owner will upon request furnish BHC with evidence of the insurance maintained in accordance with clause 6.11, together with evidence that all premiums have been paid.
- 6.13** Without prejudice to any other rights or remedies that BHC may have, the Owner acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the terms of the Agreement by the Owner. Accordingly, BHC shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Agreement.

## **7. TERMINATION**

- 7.1** Unless terminated earlier, the Agreement shall terminate automatically upon expiry of the Berthing Period.
- 7.2** Without affecting any other right or remedy available to it, BHC may terminate the Agreement with immediate effect by giving written notice to the Owner if: (a) the Owner sells or otherwise disposes of the Vessel without the prior approval in writing of BHC; or (b) BHC requires the Berth and no other berth at the Marina is available; or (c) the Owner fails to pay any of the Charges in full within 7 days of their due date; or (d) the Owner commits a breach of any other term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or (e) the Owner or its crew, contractors or visitors cause unreasonable interference, nuisance or annoyance with the proper and safe operation of the Port or Marina or use intimidating behaviour or language towards BHC or any of the other users of the Marina; or (f) the Owner suffers an event of bankruptcy or insolvency (or any event that has an equivalent or similar effect).
- 7.3** Without affecting any other right or remedy available to it, BHC may terminate the Agreement at any time by giving 7 days' written notice to the Owner.
- 7.4** On termination or expiry of the Agreement, the right granted in clause 2.8 shall cease and the Owner will immediately remove the Vessel and any other equipment or property belonging to it or its crew, contractors or visitors and will vacate the Berth leaving it clean and tidy and returned to its original condition.
- 7.5** If the Owner fails to remove the Vessel on termination or expiry of the Agreement, BHC shall be entitled: (a) to charge the Owner at BHC's standard daily rate for each day between termination or expiry of the Agreement and the actual date of removal of the Vessel from the Marina; and/or (b) at the Owner's risk, to remove the Vessel from the Marina and secure it or store it elsewhere and charge the Owner for all costs arising out of such removal and securing or storage.

**7.6** On termination or expiry of the Agreement, the following clauses shall continue in force: 1, 6, 7, 9 and 11; and (b) termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of BHC that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **8. FORCE MAJEURE**

**8.1** **Force Majeure Event** means any circumstance not within a party's reasonable control including: (a) acts of God or other natural disaster; (b) weather events including storms, floods or surges; (c) epidemic or pandemic; (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (e) nuclear, chemical or biological contamination or sonic boom; (f) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition; (g) collapse of buildings, fire, explosion or accident; and (h) interruption or failure of utility service.

**8.2** Provided it has complied with clause 8.4, if the other party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

**8.3** The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

**8.4** The Affected Party shall: (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 2 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

**8.5** If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the party not affected by the Force Majeure Event may terminate the Agreement immediately by giving written notice to the Affected Party.

## **9. GENERAL**

**9.1** The Owner shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement. BHC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

**9.2** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by BHC in exercising any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any

right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 9.3** The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 9.4** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement. If any provision or part-provision of the Agreement is deemed deleted under this clause 9.4, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 9.5** The Agreement and the documents referred to in the Agreement constitute the entire agreement between the parties and supersede and extinguish all previous licences, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.
- 9.6** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 9.7** Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, and the rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

## **10. NOTICES**

- 10.1** Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand, by pre-paid first-class post or by email, in each case to the address provided by the other party as part of the Agreement.
- 10.2** Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the address; or (b) if sent by pre-paid first-class post, at 9.00 am on the second business day after posting; or (c) if sent by email, at the time of transmission (so long as no delivery failure notice is received) or, if sent outside of BHC's business hours, at 9.00 am on the next business day after sending.
- 10.3** This clause 10 does not apply to the service of any proceedings or any documents in any legal action.

## **11. LAW & COURTS**

- 11.1** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Northern Ireland.

**11.2** Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.