

## AGREEMENT

between

The Crown Estate – meaning The Crown Estate Commissioners (and their successors), acting under The Crown Estate Act 1961 on behalf of Her Majesty the Queen (and her successors)

and

the Group Elizabeth Evans, Chairman, Douglas Locke, Treasurer, Crvach House, 12 Morrisons Park, Carrick Castle, Argyll PA24 8AF. Robert White, Vice Chairman, Rhumhor, Carrick Castle, Argyll PA24 8AF – meaning the Trustees of Carrick Castle Boat Club and their successors as trustees of the Group or people acting in their capacity as its trustees.

### **Matters agreed**

#### **Position and purpose of mooring**

1. The Crown Estate grants the Club a non-exclusive right (as explained in clause 8) to give permission to Group members to:
  - (a) lay down and maintain a maximum of 40 moorings (“the moorings”) on the seabed below mean low water springs at Loch Goil within the area shown outlined red on the annexed plan (“the mooring area”) and 3 moorings outwith the area shown as red dots on the annexed plan; and
  - (b) to repair and renew the moorings.

The moorings are to be used solely for the mooring of vessels up to 24 metres long belonging to Group members or permitted visitors. The moorings may not be used for commercial purposes.

#### **Length of Agreement; notice period required; removal of moorings when Agreement ends**

2. The Agreement runs from 1<sup>st</sup> January 2007 until it comes to an end. The Agreement can be ended by either party giving the other at least 6 calendar months' written notice, which may be done at any time.

The Agreement can also be ended by The Crown Estate if:

- 2.1 the Group does not pay any amounts due to The Crown Estate within 14 days of the payment date; or
- 2.2 the Group breaches any other terms of the Agreement.

To end the Agreement for non-payment or breach, The Crown Estate must:

- (a) comply with any statutory obligations for ending the Agreement; and
- (b) give the Group 28 days' written notice to pay or put right the breach, as the case may be.

The Group must comply with all its obligations under the Agreement up to the date the Agreement ends, including removal of all moorings.

**Payment of fees; statement of number of moorings laid; interest on late payment; review of mooring fees; taxes, alternatives to paying The Crown Estate**

3. (a) By close of business on 1<sup>st</sup> May each year, the Group should send The Crown Estate a written statement of the total number of moorings laid or to be laid or authorised by the Group in that year (1<sup>st</sup> January to 31<sup>st</sup> December). If the Group does not do so, then the number of moorings authorised or permitted in that year will be regarded as the maximum number of moorings permitted in the Agreement.
- (b) By close of business on 1<sup>st</sup> July each year, the Group must pay The Crown Estate an annual payment. This will be the number of moorings stated (or, in the absence of a statement, the maximum number of moorings permitted in the Agreement) multiplied by the mooring fee rate as stated in clause 4(c).

- (c) If, after giving the statement, the Group authorises or operates any additional moorings above the number given in that statement, it must also pay an extra amount for that year. This will be the number of additional moorings multiplied by the mooring fee rate.
- (d) If any amounts due under the Agreement are not paid when due, interest will run at 3% a year above Bank of Scotland base rate from the date on which payment fell due until paid.
- (e) The mooring fee rate is subject to review at 1<sup>st</sup> January 2010 and at five-yearly intervals afterwards. The reviewed mooring fee rate will be the rate set by The Crown Estate in written notice given to the Group at any time. If the Group does not agree the reviewed mooring fee rate, the Group must give notice of this to The Crown Estate within one month of receiving the notice. If the Group does so, the reviewed mooring fee rate will be decided by the Valuation Office Agency acting as an independent expert. The Valuation Office Agency will take into account the circumstances at the relevant review date and will allow the parties to comment before making a decision. The parties will accept the reviewed mooring fee rate as decided by the Valuation Office Agency. The Valuation Office Agency's fee will be paid equally by The Crown Estate and the Group.
- (f) If the Group does not give notice to The Crown Estate that it does not agree The Crown Estate's reviewed mooring fee rate within one month, then that rate will apply.
- (g) If The Crown Estate informs the Group that it must make payments due under the Agreement to an agent authorised from time to time to receive them on its behalf, the Group must do so.

**Payment of annual fee, VAT, taxes etc**

- 4. (a) The Group must pay all rates, taxes (including stamp duty land tax), charges and assessments arising in respect of the Agreement and the rights granted under it.

("the mooring fee rate"). The initial mooring fee rate payable from the start date of the Agreement is THIRTY FIVE POUNDS (£35)

#### **Condition and marking of moorings**

5. (a) The Association must ensure that all moorings are at all times kept in good and safe condition. At least once a year it must inform all Association members of this requirement.
- (b) The Association must ensure that each mooring is:
  - (i) permanently marked by attaching a surface buoy;
  - (ii) marked by attaching to the surface buoy a marker tag (the tag to be issued by The Crown Estate). If the tag is lost or removed, a replacement tag must be obtained from The Crown Estate, which may charge a fee for it;
  - (iii) included in a list of all tags. The list must state the name of the boat and the owner of the boat to whom the mooring has been allocated. When there is a change in these details, the Association must inform The Crown Estate of the new details in writing.

#### **Moving of moorings**

6. When so required by The Crown Estate, the Association must move any of the moorings to a substitute position as set by The Crown Estate. Once moved, the moorings are subject to the Agreement as if the Agreement had applied to the new position from the start.

#### **Damage or injury arising from moorings**

7. The Association must indemnify (protect against loss) Her Majesty and The Crown Estate against all actions, proceedings, claims, demands, costs and expenses resulting from the Association's exercise of the rights granted in the Agreement or by defects in any mooring.

#### **Consideration for rights of others**

resulting from the Group's exercise of the rights granted in the Agreement or by defects in any mooring.

#### **Consideration for rights of others**

8. Her Majesty, The Crown Estate and the public retain all rights that any of them are or may be entitled to exercise. These include all public rights whether of navigation, fishing or otherwise over the mooring area. The rights granted by the Agreement take into account all such rights. The Group may not authorise or permit the owners of vessels using the moorings to do anything that causes annoyance, nuisance or disturbance to the owners or occupiers of neighbouring property, to the public or to vessels moored or anchored nearby. The rights granted in the Agreement are subject to the rights of others who are or may be permitted to keep a mooring within the mooring area; they are entitled to exercise their rights without interference. At any time, The Crown Estate may grant rights to others over the area to which the Agreement relates.

#### **No right of transfer; limit on fees charged to Group members**

9. The Group must not transfer, sub-grant, share or dispose of the rights granted by the Agreement in any way except permitting Group members or their authorised visitors to use the moorings. A person using the moorings may not be required to make a payment intended to generate a gain over the fee per mooring payable to The Crown Estate plus the Group's proper administration costs.

#### **Consent needed to lay and maintain moorings**

10. Before laying any moorings, the Group must get any consent required under Section 34 of the Coast Protection Act 1949 as amended by the Merchant Shipping Act 1988 and any other consents or permissions necessary to lay and keep the moorings.

#### **Removal of moorings at end of Agreement**

11. When the Agreement ends, the Group must (1) pay all or any money due with interest where applicable; and (2) ensure that the moorings are removed. If all moorings are not removed within one month of the Agreement ending, The Crown Estate may arrange for them to be removed and charge the cost to the Group.

### **Altering mooring area**

12. From time to time, the Crown Estate may alter the extent of the mooring area to which the Agreement relates and the number of moorings it authorises by giving the Group written notice saying so.

### **Suitability of moorings**

13. By entering into the Agreement, The Crown Estate does not imply that the mooring area is suitable for moorings. The Group acknowledges that any moorings are laid entirely at its own risk.

### **Notices; notifying changes in Trustees**

14. Any notice given under the Agreement must be in writing. Notices to The Crown Estate must be sent by recorded delivery or registered post to its office in Edinburgh (or any other address The Crown Estate may notify from time to time). Notices to the Group must be sent to each Group Trustee.
  - (a) When there is any change in the Association's Trustees, the Group must give written notice of it to The Crown Estate. Failing this, The Crown Estate will deal with those trustees last notified to it as being the Group's.
  - (b) The Crown Estate acknowledges that the people named as the Association's Trustees are parties to the Agreement in their capacity as Trustees of the Group rather than as individuals.

### **Whole contract**

15. The Crown Estate and the Group agree that the Agreement contains all the terms of the contract between them for the Group's use of the mooring area.

### **Obligations in any existing agreement**

16. If there is an agreement between the parties for the mooring which has not been validly ended before the date from which this Agreement will run, then any existing agreement will end on the day before the date of this Agreement. If the Group has not fulfilled any obligations under the existing agreement, The Crown Estate has the right to enforce them.

## Interpretation

17. Headings to clauses in the Agreement are for the reader's convenience only and are not to be used to interpret the Agreement.

The Agreement is interpreted according to Scots law.

## Consent to registration of Agreement; signatures

18. The parties consent to registration of the Agreement. This Agreement typewritten on this page and the six previous pages is signed as follows:

Signed in terms of Act of Parliament  
by MICHAEL NORVAL



authorised by the Crown Estate  
to act on behalf of a Secretary of the  
Office of The Crown Estate  
at PERTH  
on the 01/05/07  
before me VIRGINIA FERGUSON

Witness

Signature Virginia Ferguson

Full name in  
block capitals VIRGINIA FERGUSON

Address 5 ATHOLL PLACE PERTH PH1 5NE

and signed by the Trustees of the Group  
all together at Carrick Castle  
on 14th April 2007  
before me



Witness

Signature Claire France

Full name in  
block capitals CLAIRE FRANCE

Address RHUMHOR, CARRICK CASTLE, PA24 8AF

