

# YACHT NAME

## YACHT MANAGEMENT AGREEMENT

**AGREEMENT** dated this [ ] day of [ ] 201[ ]

### **BETWEEN**

**“A”** Nigel Burgess Limited (Trading as Burgess) (the **“Manager”**) a company duly incorporated and existing under the laws of England with its registered office at Cunard House, 15 Regent Street, St James's, London SW1Y 4LR; and

**“B”** [ ] (the **“Owner”**) a company duly incorporated and existing under the laws of [ ] with its registered office at [ ]

### **AGREEMENT**

It is hereby agreed between the Manager and the Owner that this Agreement shall be performed subject to the conditions contained in this Agreement.

For the purposes of the Maritime Labour Convention, 2006 and related rules and regulations, the Shipowner and therefore the Company that is named on the Maritime Labour Certificate as the Shipowner shall be Nigel Burgess Ltd.

### **Summary of Operational Yacht Management Services**

The following is a summarised list of all the Management Services. The table is completed with the services chosen and this agreement reflects the choices.

|  |   |
|--|---|
| 1. Marine Operations (state “yes” or “no” as agreed) (Cl. 3.1)<br>YES/NO | 2. Technical Management (state “yes” or “no” as agreed) (Cl. 3.2)<br>YES/NO |
| 3. Crew Supervision (state “yes” or “no” as agreed) (Cl. 3.3)<br>YES/NO  | 4. Accounting Services (state “yes” or “no” as agreed) (Cl. 3.4)<br>YES/NO  |
| 5. Safety / ISM (state “yes” or “no” as agreed) (Cl. 3.5)<br>YES/NO      | 6. Security / ISPS (state “yes” or “no” as agreed) (Cl. 3.6)<br>YES/NO      |

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## 1 DEFINITIONS

In this Agreement, save where the context otherwise requires, the following words and expressions shall have the meanings as set out below:

**“Banking Days”** means days (other than Saturdays and Sundays) on which banks are open for business in London, England;

**“Classification Society”** means [ ];

**“Crew”** means the Crew of the Yacht including the Master, officers and other Crew as agreed between the Manager and the Owner (subject always to the terms of this Agreement);

**“Crew Employer”** means Burgess Crew Services (Guernsey) PCC Ltd;

**“Crew Insurances”** means insurances against Crew risks which shall include but not be limited to death, sickness, repatriation, injury, shipwreck and loss of personal effects;

**“Crew Management Company”** means Burgess Crew Services (Guernsey) PCC Ltd the company that employs, manages and controls the crew and administers the crew payroll;

**“Emergency Response Service”** means the Burgess 24 hour service established to provide action plans in the case of an emergency to provide solutions to problems and in liaison with rescue services to co-ordinate a speedy recovery.

**“Flag State”** means [ ];

**“ISM Code”** means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organization (IMO) by resolution A.741 (18) as amended and /or supplemented and including any statutory enactment or re-enactment of the said Code by the Flag state of the Yacht as amended and/or supplemented;

**“ISPS Code”** means the International Code for the Security of Ships and Port Facilities as adopted on 12 December 2002 by the International Maritime Organization (IMO) in an amendment to the International Convention for the Safety of Life at Sea, 1974;

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**“Management Services”** means the services specified in Clause 3;

**“MCA Code”** means the Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels of the Marine and Coastguard Agency of the United Kingdom Department of Transport as amended and/or supplemented and including any statutory enactment or re-enactment of the said Code by the Flag State of the Yacht as amended and/or supplemented;

**“MLC”** means the International Labour Organisation (ILO) Maritime Labour Convention (MLC 2006) and any amendments thereto or substitution thereof;

**“Planned Maintenance System”** means a software based system allowing vessel operators to carry out maintenance at intervals according to manufacturers and Class requirements;

**“Port Agent”** means Shipping Agent responsible for making contact with and drawing up documentation for Customs and Harbour Authorities and associated services;

**“Severance Costs”** means the costs which the employers are legally obliged to pay to or in respect of the Crew as a result of the early termination of any employment contract for service on the Yacht;

**“Shipowner”** means the party named as “shipowner” on the Maritime Labour Certificate for the vessel. In accordance with the MLC Convention (MLC 2006) shipowner means the owner of the ship or other organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this convention, regardless of whether any other organization or person fulfill certain of the duties or responsibilities on behalf of the shipowner;

**“Superintendent”** means a specialist marine engineer experienced in overseeing major refit and repair works;

**“Warranty Support”** means administering the new build or refit warranty process after delivery/redelivery in accordance with contract – including:-  
agreement of delivery defect list; receipt of warranty claims; maintaining warranty register; technical and commercial review of claims; submission of claims to

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shipyard or contractor; agreeing most appropriate solutions in line with contract terms and schedule; overseeing repairs/rectification;

“Yacht” means **YACHT NAME** registered in the name of the Owner.

## **2 APPOINTMENT OF MANAGER**

With effect from[ ] 201[ ] (the “**Commencement Date**”) and continuing unless and until terminated as provided herein, the Owner hereby appoints the Manager and the Manager hereby agrees to act as the manager of the Yacht.

## **3 BASIS OF AGREEMENT**

Subject to the terms and conditions of this Agreement, during the period of this Agreement, the Manager shall carry out the Management Services in respect of the Yacht as agent only for and on behalf of the Owner. The Manager shall have authority to take such actions as it may from time to time in its absolute discretion consider to be necessary to enable it to perform the Management Services in accordance with sound Yacht Management practice, including but not limited to compliance with all relevant rules and regulations including MLC.

Subject to the Owner's written consent, the Manager may at any time appoint a third party specialist to provide services in addition to those specified in this Agreement. The cost of this service and reasonable travel and subsistence expenses will be for the Owner's account.

## **PRE-DELIVERY OPERATIONAL MANAGEMENT SERVICES**

### **3.a Marine Operations**

- i) Advising on operational matters during the build.
- ii) Assisting in the selection of tenders and toys
- iii) Recommending preferred service providers with Burgess fleet discount arrangements where available (eg. Mobile telephone contracts, VSAT, Sat TV etc)
- iv) Arranging the necessary Class & Flag surveys not provided by the yard.
- v) Working with the crew to establish effective Standard Operating Procedures

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- vi) Assistance with the list of stores, spares and consumables required in each department.

## **3.b Technical Management**

- i) Operational technical input
- ii) Preparations for warranty claim administration
- iii) Assistance with Planned Maintenance System implementation and ensuring an effective inventory system is established and populated pre-delivery.
- iv) Establishing systems and standard operating procedures in conjunction with the Chief Engineer
- v) Registering the yacht with the Classification Society on-line facility

## **3.c Crew**

- i) A crew employment company will be established under the Burgess Crew Services umbrella. This will be governed by a separate Agreement between the yacht owning company and Burgess Crew Services.
- ii) Ensuring compliance with local employment law.
- iii) Drafting up appropriate pre and post-delivery crew employment documents acceptable to the Flag State and the Owner, in line with industry standards.
- iv) Burgess will work closely with the Captain in selecting and recruiting the rest of the crew, administering and setting appropriate terms and conditions for the crew, subject to Owner's approval.
- v) The Burgess operational team will coordinate all activities relating to the employment of the pre-delivery crew such as arranging accommodation, transport, communications, administration of the per diem food allowance, payment of expenses

## **3.d Certification and Insurance**

- i) Registering the yacht with the selected Flag State
- ii) Obtaining Call Sign and MMSI
- iii) Obtaining necessary Certificates where these are the Owner's responsibility

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- iv) Obtaining initial terms for Hull & Machinery, in-build P & I, crew welfare insurance and appropriate cover for the Owner's supply goods using the in-house expertise of Burgess Yacht Financial Services
- v) Liaison with Flag State and Classification Society

## **3.e Finances**

- i) Providing operational budget (pre and post-delivery)
- ii) Set up appropriate bank accounts for the handling of operational funds
- iii) Draw up financial operating procedures
- iv) Produce monthly accounts detailing all pre-delivery operational expenditure
- v) The administration of operation funding which is used to handle the following pre-delivery expenditure:-
  - o Crew salaries (paid via Burgess Crew Services)
  - o Crew travel costs – joining, leaving and rental cars
  - o Crew accommodation
  - o Crew subsistence – managing the per diem food allowance, administering petty cash and expense claims
  - o Communication costs – mobile phones, lap-tops etc.
  - o Crew medical and personal accident insurance premiums
  - o Owner's supply equipment (where appropriate)
  - o Survey costs (where they are the owner's responsibility)
  - o Administration of yacht credit cards

## **3.f Safety and Security (ISM & ISPS)**

Approximately 6 months before delivery, Burgess will introduce the Captain and crew to the approved on-line Safety Management System ('Burgess Manage') and carry out a Security Assessment prior to drawing up a Ship security Plan for submission to Flag State. Burgess will liaise closely with Flag to obtain the Safety Management Certificate and Ship Security Certificate required for a commercially registered yacht. The operational team's early involvement in the design and outfitting helps ensure that the optimum arrangements are in place to maximise the efficiency of safety and security systems and procedures.

- i) Providing Burgess Manage on-line Safety Management System and all associated documentation

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- ii) Crew training
- iii) Establish Standard Operating Procedures based on details risk assessments.
- iv) Arranging the granting of the Interim Safety Management Certificate (required at delivery)
- v) Providing the Flag approved Ship Security Plan and all associated documentation
- vi) Arranging the granting of the Interim Ship Security Certificate (required at delivery)
- vii) Commissioning Ship Security Alert System

## **FULL MANAGEMENT SERVICES ON DELIVERY**

### **3.1 MARINE OPERATIONS**

The Manager shall arrange for the provision of Marine Operations for the Yacht including, but not limited to, the following:

- a) coordinating the renewal/revalidation of Flag State and other statutory certification.
- b) if instructed by the Owner the Manager shall arrange insurances in accordance with Clause 6, on such terms and conditions as the Owner shall have instructed or agreed, in particular regarding conditions, insured values, deductibles and franchises, including, but not limited to the following:
  - i. maintaining insurance cover for hull and machinery;
  - ii. maintaining Insurance cover for war risks;
  - iii. maintaining Owner's liability insurance;
  - iv. administering any insurance claims;
- c) assisting with cruise and voyage planning;
- d) arranging weather routing service;
- e) providing assistance in reserving berths;

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- f) appointing Port Agents worldwide;
- g) coordinating supply of provisions and stores;
- h) coordinating supply of fuel and lubricating oil and handling any disputes;
- i) coordinating supply of charts and nautical publications;
- j) managing the communications arrangements on the yacht;
- k) administering the on-board entertainment subscriptions;
- l) maintaining an inventory of equipment carried by the Yacht; and
- m) managing ancillary watercraft.

### **3.2 TECHNICAL MANAGEMENT**

The Manager shall arrange for the provision of Technical Management Services for the Yacht including, but not limited to, the following ("**Technical Management**"):

- a) provision of competent personnel to supervise the maintenance and general efficiency of the Yacht and provide general advice and support; the Manager shall report to the Company on the status of maintenance (if any) and the general efficiency of the Yacht on a monthly basis;
- b) coordinate Classification Society surveys and requirements and administer any Class survey fee agreements;
- c) assist with establishing a suitable Planned Maintenance System onboard;
- d) review maintenance reports and provide feedback for improvement;
- e) coordinate the creation of a long term maintenance plan of major works;
- f) coordinate all regular maintenance activities and consolidate budgets;
- g) compile a list of ongoing defects for the Yacht;
- h) analyse any major defects to prevent recurrence;
- i) provide round the clock support in the event of technical difficulties;



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- j) provide general technical and commercial advice and guidance;
- k) assist with sourcing engineering spares, supplies or services as required;
- l) provide Technical assistance with Insurance Claims;
- m) administer a Fluid Sampling and analysis program;
- n) administer a Lifting Gear inspection and testing program;
- o) provide concise Technical reports;
- p) inspect the Yacht at least once per year providing a comprehensive technical report on completion;
- q) arrangement and supervision of any routine dry dockings and, repairs, and the upkeep of the Yacht to the standards required by the Owner provided that the Manager shall be entitled to incur the necessary expenditure to ensure that the Yacht will comply with the laws of the Flag State and of the places where she cruises, and all requirements and recommendations of the Classification Society;
- r) during major refit periods and warranty supervision the Manager reserves the right to negotiate an additional project management fee with the Owner and the Manager may, subject to the prior written consent of the Owner, appoint a third-party Superintendent who will report to the Managers. All costs associated with such an appointment will be for the Owner's account.
- s) subject to the prior written consent of the Owner, appointment of such third party special technical assistance (including, but not limited to, surveyors and technical consultants) as the Manager may consider from time to time to be necessary, and which the Owner hereby agrees to pay at cost.

### **3.3 CREW SUPERVISION**

The Manager shall work with the Crew Management Company, Burgess Crew Services Guernsey (PCC) Ltd, in order to oversee the supervision of the crew.

### **3.4 ACCOUNTING / FINANCIAL SERVICES**

The Manager shall arrange for the provision of Financial Services for the Yacht including, but not limited to, the following

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- a) prepare Annual Budget;
- b) carry out annual budget reviews;
- c) compile monthly yacht accounts with receipts;
- d) present monthly actual vs budget comparisons;
- e) present annual reports;
- f) review invoices and arrange payment;
- g) maintain general ledger of expenditure;
- h) operating and monitoring a client account for the Yacht in accordance with Clause 7 for the purposes of managing the funds referenced in Clause 9;
- i) subject to the Owner's prior written approval, issuing and monitoring the use of Yacht credit cards;
- j) administer charter income and funds deposits;
- k) submit fund requests to owners;
- l) arrange supply of petty cash to yacht.

### **TAX**

BURGESS is unable to offer tax advice to clients.

### **3.5 SAFETY / ISM**

The Manager shall arrange for the provision of safety management and assistance including, but not limited to, the following ("**Safety Management**"):

- a) carrying out initial safety audit of the Yacht;
- b) development, implementation and maintenance of a Safety Management System ("SMS") in accordance with the ISM Code where applicable;
- c) provision of a shore based point of contact in the event of emergency;
- d) reviewing the effectiveness of the SMS;
- e) obtaining the "Safety Management Certificate" for the Yacht;

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- f) arrange production of Safety Training and SOPEP manuals;
- g) ensuring the correct certification is held by the Yacht and Crew;
- h) administration of an Emergency Response Service;
- i) voyage monitoring;
- j) reviewing and acting upon significant defect reports from the Yacht;
- k) investigating accidents, incidents and hazardous occurrences;
- l) monitoring safety related Crew training;
- m) monitoring the Planned Maintenance System;
- n) conducting ISM Code audits internally and co-ordinating ISM Code audits externally;
- o) establishing the contingency plans and monitoring the drills.

### **3.6 SECURITY / ISPS**

The Manager shall arrange for the provision of security management and assistance including, but not limited to, the following ("**Security Management**"):

- a) conducting an initial survey and threat assessment for the Yacht;
- b) the development of on board ISPS Code procedures specific to Yacht;
- c) implementation and maintenance of a Ship Security Plan in accordance with the ISPS Code;
- d) obtaining the "International Ship Security Certificate" for the Yacht;
- e) providing a "Company Security Officer" for ISPS Code purposes;
- f) arranging for the training of the "Ship Security Officer" and provide him with shore based support;
- g) obtaining Flag Administration approval of the Security Plan;
- h) reviewing and acting on breaches, threats and system or equipment failures.
- i) coordinating changes in security level with Flag Administration;

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- j) provision of a shore based point of contact in the event of a security incident or breach;
- k) the administration of a Ship Security Alert system;
- l) conducting ISPS Code audits internally and coordinating ISPS Code verifications externally;
- m) ensuring the Ship Security Plan is reviewed periodically;
- n) coordinating amendments with Flag Administration.

**3.7** Notwithstanding the content of Section 3 above Burgess would be pleased to discuss adding additional Yacht Management services at any time at the Owner's request. In the event of additional services being agreed then this will be confirmed by an addendum to this Agreement confirming the revised scope of services and agreed fee adjustment.

## **4 MANAGER'S OBLIGATIONS**

The Manager undertakes to use all reasonable endeavours to provide the Management Services as agent only for and on behalf of the Owner in accordance with sound Yacht management practice and to protect and promote the interests of the Owner in all matters relating to the provision of the Management Services.

### **4.1 MARINE OPERATIONS**

In the event that the Manager is contracted to provide Marine Operations then the Manager shall procure that the requirements of the law of the Flag of the Yacht are satisfied.

### **4.2 TECHNICAL MANAGEMENT**

In the event that the Manager is contracted to provide Technical Management then the Manager shall procure that the requirements of the Classification Society of the Yacht are satisfied.

### **4.3 CREW SUPERVISION**

In the event that the Manager is contracted to provide Crew Supervision then the Manager shall ensure that the requirements of the Flag of the Yacht are satisfied.

### **4.4 ACCOUNTING**

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In the event that the Manager is contracted to provide Accounting then the Manager shall ensure that there will be a full provision of financial services in relation to the Yacht.

## **4.5 SAFETY**

In the event that the Manager is contracted to provide Safety Management, the Manager is deemed to be the "Company", assuming responsibility for the Safety of the Yacht.

## **4.6 SECURITY**

In the event that the Manager is contracted to provide Security Management, the Manager is deemed to be the "Company", assuming responsibility for the Security of the Yacht.

## **4.7 MLC**

In the event that the yacht is operated commercially and the Manager is contracted to provide Safety and Security Management, the Manager shall, to the extent of the Management Services, assume the Shipowner's duties and responsibilities imposed by the MLC for the Yacht, on behalf of the Owner and shall ensure that the requirements of the MLC are satisfied.

## **5 OWNER'S OBLIGATIONS**

**5.1** The Owner shall pay all sums due to the Manager punctually in accordance with the terms of this Agreement.

**5.2** The Owner shall at all times remain solely responsible for all taxes, duties, levies and imposts whatsoever and howsoever arising, incurred or imposed in relation to the ownership, operation and management of the Yacht and any equipment used in connection with the Yacht, the Manager shall have no liability therefore and the Owner hereby agrees to indemnify the Manager against any such taxes, duties, levies and imposts which may be paid, suffered or incurred by the Manager.

**5.3** The Owner shall allow the manager reasonable access to the yacht in order for them to carry out their management duties.

**5.4** During the term of this Agreement the Parties will work with each other in good faith and the Owner will provide in a timely manner all reasonable and proportionate assistance to enable the Manager to fulfil its obligations hereunder including but

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not limited to assistance relating to compliance with Flag State, regulatory and taxation issues. Such assistance shall be provided by the Owner for the Manager's benefit free of charge. Should any delay occur due to the Owner's actions or failure to act then the Manager shall not be liable and any critical dates or deadlines shall be extended by the length of such delay, to the extent that the Manager's own actions or failure to act have not contributed to the same.

- 5.5** Where the Manager is not providing Operational Management, the Owner shall procure that the requirements of the laws of the Flag of the Yacht are satisfied.
- 5.6** Where the Manager is not providing Technical Management, the Owner shall procure that the requirements of the laws of the Flag of the Yacht are satisfied and all rules of the Classification Society are met if applicable.
- 5.7** Where the Manager is not providing Crew Supervision, the Owner shall ensure that the Crew obey all reasonable orders of the Manager in connection with the application of this Agreement.
- 5.8** Where applicable, the Owner shall procure, whether by instructing the Manager under Clause 6 or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.
- 5.9** The Owner (as defined in "B" on page 1 of this Agreement) shall ensure that the Crew Employer as stated above shall be fully compliant with the MLC as required by clause 1.4 of the Maritime Labour Convention 2006.
- 5.10** Where the Crew Employer is not Burgess Crew Services (Guernsey) PCC Ltd, the Owner shall ensure that all requirements of the MLC are met regarding the employment of Crew and that the Owner shall be responsible for all financial obligations of the crew's employment under MLC. Furthermore, the Owner relinquishes the Manager from any financial obligations resulting from MLC.
- 5.11** Where the Manager is not providing Safety Management (ISM), the Owner shall procure that the requirements of the laws of the Flag of the Yacht are satisfied.
- 5.12** Where the Manager is not providing Security Management (ISPS), the Owner shall procure that the requirements of the laws of the Flag of the Yacht are satisfied.

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## 6 INSURANCE POLICIES

6.1 The Owner shall procure, whether by instructing the Manager under Clause 3.1 or otherwise, that throughout the period of this Agreement:

6.1.1 at the Owner's expense, the Yacht is insured for not less than her sound market value or entered with a protection & indemnity association for her full gross tonnage, as the case may be, for:

usual hull and machinery marine risks (including Crew negligence) and excess liabilities;

protection and indemnity risks (including pollution risks and Crew Insurances); and

war risks (including protection and indemnity and Crew risks) in accordance with the best practice of prudent owners of Yachts of a similar type to the Yacht, with first class insurance companies, underwriters or associations (the "**Owner's Insurances**");

6.1.2 all premiums and calls on the Owner's Insurances are paid promptly by their due date;

6.1.3 the Owner's Insurances name the Manager, Nigel Burgess Ltd, and subject to underwriters' agreement, any third party designated by the Manager as a joint assured, with full cover, with the Owner obtaining cover in respect of each of the insurances specified in this Clause 6.1 on terms such that neither the Manager, the Technical Manager nor any such third party shall be under any liability in respect of premiums or calls arising in connection with the Owner's Insurances or on such other terms as may be agreed in writing; and

6.1.4 written evidence is provided, to the reasonable satisfaction of the Manager, of the Owner's compliance with its obligations under this Clause 6.1 within a reasonable time of the Commencement Date, and of each renewal date and, if specifically requested, of each payment date of the Owner's Insurances.

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- 6.2** If the Manager is not instructed under Clause 3.1 then the Manager shall keep the Owner fully and punctually informed of all matters relative to the condition and certification of the Yacht, her operation and the Crewing thereof, where such matters require to be notified to the insurance underwriters of the Yacht in order to maintain the Yacht fully insured under the terms of the policy or policies from time to time pertaining in respect thereof, copies of which shall be given by the Owner to the Manager.
- 6.3** Where the crew are employed by a company other than Burgess Crew Service (Guernsey) PCC Limited, the Owner (as defined in "B" on page 1 of this Agreement) shall ensure MLC compliant insurance is in place for the duration of this Agreement. This insurance shall include, but not be limited to, repatriation, a minimum of 16 weeks crew sick leave cover including medical expenses, 2 month's salary guarantee, crew personal effects cover and death in service benefit.

## **7 INCOME COLLECTED AND EXPENSES PAID ON BEHALF OF OWNER**

Any monies collected by the Manager under the terms of this Agreement (other than monies payable by the Owner to the Manager) and any interest on such monies shall be held to the credit of the Owner in a separate bank account.

## **8 MANAGEMENT FEE**

- 8.1** The Owner shall pay to the Manager an initial set up fee of [ ] [**Amount and currency in words**] within 10 working days of the Commencement Date of this Agreement. This is a one-off payment for the implementation of Burgess Manage, the on-line safety management system and includes the provision of an off-line facility.
- 8.2** The Owner shall pay to the Manager for its services as manager under this Agreement a monthly management fee (pro rata) of: [ ] [**Amount and currency in words**] which shall be payable monthly in advance, the first monthly management fee being payable on the Commencement Date and thereafter at monthly intervals.
- 8.3** The management fee shall be subject to review annually and the management fee shall be increased at review by at least a percentage equivalent to the increase (if any) for the 12 months preceding that anniversary shown by the



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General Index of Retail Prices as published by the UK Office for National Statistics or any body or organization which may take over or succeed to publish the source and any successor of such index. In addition where Management Services are wholly or partly provided by third parties, the fee shall be adjusted immediately to take account of increases on the cost of such services. The Manager will, however, use all reasonable endeavours in negotiations with such third parties to minimize such increases. In the event of the appointment of the Manager being terminated by the Owner or the Manager in accordance with the provisions of Clauses 16 and/or 17 or if the Yacht is lost, sold or otherwise disposed of, the management fee payable to the Manager according to the provisions of Clause 8.2, shall continue to be payable for a further period of one calendar month as from the termination date unless termination is by reason of default by the Manager.

**8.4** Burgess Financial Services (BFS) provide an Insurance broking service to our clients. In the event that the Owner decides to place insurance through BFS then BFS will earn insurance brokerage commission.

**8.5** The management fee covers normal office expenses but the reasonable and properly incurred expenses pertaining to the provision of the Management Services including travel and accommodation expenses shall be reimbursed by the Owner at cost. The Manager shall supply accounts of these expenses to the Owner with the necessary vouchers or receipts attached.

**8.6** When traveling in connection with management activities, the manager will use Economy Class where practical but will be entitled to travel Business Class (or nearest equivalent) on flights of more than four hours duration.

## **9 BUDGETS AND MANAGEMENT OF FUNDS**

**9.1** The Manager shall present to the Owner annually a budget for the following twelve months in such form as the Owner may reasonably require. The budget for the first year of management shall be presented for approval within fourteen (14) days of the signing of this Agreement. Subsequent annual budgets shall be prepared by the Manager and submitted to the Owner not less than two months before each anniversary date of the Commencement Date.

**9.2** The Owner shall indicate to the Manager its acceptance and approval of the annual budget within one month of presentation and in the absence of any such

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indication the Manager shall be entitled to assume that the Owner has accepted the proposed budget.

- 9.3** Following the agreement of the budget, the Manager shall prepare and present to the Owner its estimate of the working capital requirements of the Yacht and the Manager shall every month up-date this estimate. Based on such estimate as updated, on the Commencement Date the Owner shall pay to the Manager the funds required to run the Yacht for the next two months, and thereafter the Manager shall every month, commencing on the date one month from the Commencement Date, request the Owner in writing for the funds required to run the Yacht for the next month in order that at the beginning of each such month the Manager shall have received the funds required to run the Yacht for the next two months, and each monthly payment shall include the payment of any occasional or extraordinary items of expenditure, such as emergency repair costs, additional insurance premiums, bunkers or provisions.

Such funds shall be received by the Manager within seven (7) Banking Days after the receipt by the Owner of the Manager's written request or shall otherwise be paid, by prior agreement between the Owner and the Manager, by way of standing order in which case the funds for any occasional or extraordinary items of expenditure shall be received by the Manager within seven (7) Banking Days after the receipt by the Owner of the Manager's written request, and all such funds shall be held to the credit of the Owner in a separate bank account.

- 9.4** The Manager shall produce each month a comparison between budgeted and actual income and expenditure of the Yacht.
- 9.5** The Manager shall at all times maintain and keep true and correct accounts and shall make the same available for inspection and auditing by the Owner at such times as may be mutually agreed. On the termination, for whatever reasons, of this Agreement, the Manager shall release to the Owner, if so requested, the originals where possible, or otherwise certified copies, of all such accounts and all documents specifically relating to the Yacht and her operation.
- 9.6** Notwithstanding anything contained herein to the contrary, the Manager shall in no circumstances be required to use or commit its own funds to finance the provision of the Management Services.

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## **10 MANAGER'S RIGHT TO SUB-CONTRACT**

a) Subject to the Owner's consent, the Manager shall have the right to sub-contract any of its obligations hereunder, including those mentioned in Clause 3, provided that the Manager shall remain fully liable for the due performance of its obligations under this Agreement. There will be no increase in the management fee specified in 8.2 as a result of the appointment of a subcontractor not already identified in this agreement.

b) Subject to the Owner's consent during major refit periods or warranty supervision, the Manager may appoint a third party Superintendent to oversee the work and act as Owner's representative. The cost of this supervision and reasonable travel and subsistence costs will be the Owner's account.

## **11 RESPONSIBILITIES**

### **11.1 FORCE MAJEURE**

Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent that the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Agreement, provided they have made all reasonable efforts to avoid, minimise or prevent the effect of such events and/or conditions:

- (i) acts of God;
- (ii) any Government requisition, control, intervention, requirement or interference;
- (iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (iv) riots, civil commotion, blockades or embargoes;
- (v) epidemics;
- (vi) earthquakes, landslides, floods or other extraordinary weather conditions;

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- (vii) strikes, lockouts or other industrial action, unless limited to the employees (which shall not include the Crew) of the party seeking to invoke force majeure;
- (viii) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure;
- (ix) any other similar cause beyond the reasonable control of either party.

### **11.2 LIABILITY TO OWNER**

Without prejudice to Clause 11.1, the Manager shall be under no liability whatsoever to the Owner for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit and/or loss of enjoyment arising out of or in connection with detention of or delay to the Yacht) and howsoever arising in the course of performance of the Management Services **UNLESS** same is proved to have resulted solely from the gross negligence or default of the Manager or its employees, agents or sub-contractors employed by it in connection with the Yacht, in which case the Manager's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of one hundred and twenty times the last paid monthly management fee hereunder.

Notwithstanding anything that may appear to the contrary in this Agreement, the Manager shall not be liable for any of the actions of the Crew, even if such actions are grossly negligent, except only to the extent that they are shown to have resulted from a failure by the Manager to discharge its obligations under Clause 3, in which case its liability shall be limited in accordance with the terms of this Clause 11.

### **11.3 INDEMNITY**

Except to the extent and solely for the amount therein set out that the Manager would be liable under Clause 11.2, the Owner hereby undertakes to keep the Manager and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of this

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Agreement, and against and in respect of all costs, losses, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Manager may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.

## **11.4 LIABILITY OF EMPLOYEES AND AGENTS**

It is hereby expressly agreed that no employee or agent of the Manager (including every sub-contractor from time to time employed by the Manager) shall in any circumstances whatsoever be under any liability whatsoever to the Owner for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his/her part while acting in the course of or in connection with his/her employment and, without prejudice to the generality of the foregoing provisions in this Clause 11, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Manager or to which the Manager is entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Manager acting as aforesaid and for the purpose of all the foregoing provisions of this Clause 11 the Manager is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Agreement.

## **12 DOCUMENTATION**

**12.1** The Manager shall make available, upon the Owner's request, all documentation and records related to the Safety Management System and/or the Crew which the Owner needs in order to demonstrate compliance with ISM and the Crewing Requirements or to defend a claim against a third party. The Burgess ISM Safety Management System and the Burgess prepared ISPS Ship Security Plan remain the property of Burgess and are to be returned to Burgess on the Termination of this Agreement.

**12.2** The Owner shall make available, upon the Manager's request, all documents relating to the classification of the Yacht and the Owner shall procure that the Manager is authorised to communicate directly with and receive information directly from the Classification Society.

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## **13 GENERAL ADMINISTRATION**

- 13.1** The Manager shall handle and settle all claims arising out of the Management Services hereunder and keep the Owner informed regarding any incident of which the Manager becomes aware which gives or may give rise to claims or disputes involving third parties.
- 13.2** The Manager shall, as instructed by the Owner (and confirmed in writing by the Owner), bring or defend actions, suits or proceedings in connection with matters entrusted to the Manager according to this Agreement.
- 13.3** The Manager shall also have power to obtain legal or technical or other third party expert advice in relation to the handling and settlement of claims and disputes and all other matters affecting the interests of the Owner in respect of the Yacht.
- 13.4** The Owner shall arrange for the provision of any necessary guarantee, bond or other security.
- 13.5** The Owner shall reimburse any costs reasonably incurred by the Manager in carrying out its obligations according to this Clause 13.

## **14 AUDITING**

The Manager shall at all times maintain and keep true and correct accounts and shall make the same available for inspection and auditing by the Owner at such times as may be mutually agreed. On the termination, for whatever reasons, of this Agreement, the Manager shall release to the Owner, if so requested, the originals where possible, or otherwise certified copies, of all such accounts and all documents specifically relating to the Yacht and her operation.

## **15 COMPLIANCE WITH LAWS AND REGULATIONS**

The Manager will not do or permit to be done anything within the Manager's control, which might cause any breach or infringement of the laws and regulations of the Yacht's Flag, or of the places where she cruises.

## **16 DURATION OF THE AGREEMENT**

This Agreement shall come into effect on the Commencement Date and thereafter it shall continue until terminated by either party giving to the other notice in writing,

# YACHT NAME

in which event this Agreement shall terminate upon the expiration of a period of one month from the date upon which such notice was given.

## **17 TERMINATION**

### **17.1 OWNER'S DEFAULT**

The Manager shall be entitled to terminate this Agreement with immediate effect by notice in writing if any monies payable by the Owner under this Agreement shall not have been received in the Manager's nominated account within ten (10) Banking Days of receipt by the Owner of the Manager's written request.

If the Owner:

- i. fails to meet its obligations under Clauses 5 and 6 of this Agreement for any reason within its control; or
- ii. proceeds with the employment of or continues to employ the Yacht in any illegal activity, or on a voyage which in the reasonable opinion of the Manager is unduly hazardous or improper, the Manager may give notice of the default to the Owner, requiring it to remedy it as soon as practically possible. In the event that the Owner fails to remedy it within a reasonable time to the satisfaction of the Manager, the Manager shall be entitled to terminate this Agreement with immediate effect by notice in writing.

### **17.2 MANAGER'S DEFAULT**

If the Manager fails to meet its obligations under Clauses 3 and 4 of this Agreement for any reason within the control of the Manager, the Owner may give notice to the Manager of the default, requiring it to remedy it as soon as practically possible. In the event that the Manager fails to remedy it within a reasonable time to the satisfaction of the Owner, the Owner shall be entitled to terminate this Agreement with immediate effect by notice in writing.

### **17.3 EXTRAORDINARY TERMINATION**

This Agreement shall be deemed to be terminated in the case of the sale of the Yacht or if the Yacht becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned.

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## **17.4 FOR THE PURPOSE OF CLAUSE 17.3**

The date upon which the Yacht is to be treated as having been sold or otherwise disposed of shall be the date on which the Owner ceases to be registered as owner of the Yacht; the Yacht shall not be deemed to be lost unless either she has become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or, if such agreement with her underwriters is not reached, it is adjudged by a competent tribunal that a constructive loss of the Yacht has occurred.

**17.5** This Agreement shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

**17.6** In the event of the appointment of the Manager being terminated by the Owner or the Manager in accordance with the provisions of Clauses 16 and/or 17 or if the Yacht is lost, sold or otherwise disposed of, the management fee payable to the Manager according to the provisions of Clause 8.2, shall continue to be payable for a further period of one calendar month as from the termination date unless termination is by reason of default by the Manager.

**17.7** The termination of this Agreement shall be without prejudice to all rights accrued between the parties prior to the date of termination.

## **18 ASSIGNMENT**

This Agreement is personal to the parties and neither the Owner nor the Manager shall be entitled to assign or purport to assign its rights hereunder without the prior written consent of the other party.

## **19 LAW AND ARBITRATION**

This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The



## YACHT NAME

reference shall be to three arbitrators. In cases where neither the claim nor any counterclaim exceeds the sum of £20,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

### **20 CONFIDENTIALITY**

The terms and provisions of this agreement and all other information and knowledge arising from or in connection with the yacht management services relating to the Managers the Owners, the vessel and the ultimate beneficial ownership of the vessel (the "confidential information") are confidential. The Manager shall not disclose any confidential information to any person (other than to their professional advisors or as may be required in connection with the due performance of the Management Services or as required by law or regulation or by any court or tribunal of competent jurisdiction) without the prior consent of the Manager or Owners, such consent not to be unreasonably withheld. The Managers undertake to exercise all reasonable precautions to prevent the unauthorised disclosure of any confidential information by their directors, employees, servants, agents, suppliers, consultants, and/or sub-contractors. The provisions of this clause shall survive the termination or expiry of this agreement for any reason.

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## 21 NOTICES

**21.1** Any notice to be given by either party to the other party shall be in writing and may be sent by fax, registered or recorded mail or by personal service.

**21.2** The addresses of the parties for service of such notices and other communications shall be as follows:-

To the Manager:-

Burgess  
Cunard House  
15 Regent Street  
St James's  
London SW1Y 4LR

Attention: Mark Binnie  
Email: [mbinnie@burgessyachts.com](mailto:mbinnie@burgessyachts.com)

To the Owner:-

{ \_\_\_\_\_ }

Attention: [ \_\_\_\_\_ ]  
Tel: [ \_\_\_\_\_ ]  
Fax: [ \_\_\_\_\_ ]

In witness whereof the Manager and the Owner have duly executed this Agreement in duplicate on the date first above written:

For and on behalf of BURGESS

Signed \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_  
Burgess is a trading name of Nigel Burgess Limited

For and on behalf of [ \_\_\_\_\_ ]

Signed \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_