

Shareholders' Agreement

Ownaship Limited

BoatCo R3500-8 Limited

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Agreement dated 10 December 2019

Parties

- 1 **Ownaship Limited** of 29c Ngake street Street, Orakei, Auckland, New Zealand, trading as 'Ownaship' ('Ownaship')
- 2 **BoatCo R3500-8 Limited** at 29c Ngake Street, Orakei, Auckland, New Zealand ('BoatCo')

Background

- A BoatCo was established for the purposes of implementing the Offer.
- B BoatCo will issue Shares in BoatCo to the Shareholders pursuant to the Offer.
- C The Vessel will be acquired by BoatCo from Ownaship using the proceeds from the issue of the Shares.
- D BoatCo and Ownaship wish to record the terms and conditions that will apply between the Shareholders, BoatCo and Ownaship in relation to the Scheme.

Agreement

1 Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

'**Additional Charge**' has the meaning given to it in the Management Agreement;

'**Agreement**' means this agreement including background recitals and the Schedules as may be amended pursuant to clause 16.3;

'**Board**' means the board of directors of BoatCo;

'**Business**' means the business of owning, maintaining, operating and administering the Vessel;

'**Deed of Adherence**' means a deed in the form set out in Schedule 2;

'**Event of Default**' means any of the events specified in clause 14.2;

'**Founding Director**' means the person listed in Schedule 1;

'**GST**' means goods and services tax payable under the Goods and Services Tax Act 1985;

'**Management Charge**' has the meaning given to it in the Management Agreement;

'**Management Agreement**' means the management agreement between BoatCo and Ownaship to be entered into simultaneously with this Agreement;

'**Manager**' means Ownaship or such other person appointed to manage the Business;

'**Offer**' means the offer of Shares to be made to prospective Shareholders by BoatCo;

'Respective Proportion' means, in respect of a Shareholder, the proportion of the issued capital of BoatCo held by that Shareholder from time to time;

'Scheme' means the scheme whereby BoatCo will issue Shares pursuant to the Offer and purchase the Vessel with the proceeds of the issue of those Shares;

'Services' has the meaning given to it in the Management Agreement;

'Shares' means fully paid ordinary shares in the capital of BoatCo issued pursuant to the Offer;

'Shareholder' means a holder of Shares and **'Shareholders'** means all of the shareholders of BoatCo;

'Simple Majority' means a majority that together holds not less than 51% of the total voting rights of the Shareholders or directors present, and entitled to vote and voting, at a meeting of Shareholders or directors, as the case may be;

'Special Resolution' has the meaning given in the Companies Act 1993;

'Transfer' means to sell, assign, transfer, convey or otherwise dispose of;

'Transfer Fee' means the fee payable to the Manager set out in Schedule 1;

'Vessel' means the vessel as set out in Schedule 1 together with certain assets associated with details of which are set out in Schedule 1 or any vessel subsequently purchased by BoatCo in its place;

'Vessel Rules' means the rules for operation of the Vessel as may be amended by the Manager from time to time in accordance with the Management Agreement and published on the Ownaship website;

'Working Day' means any day (other than a Saturday or Sunday) on which registered banks are open for business in Auckland; and

1.2 **'Year'** means the period of one calendar year from the date of allotment of the Shares pursuant to the Offer and thereafter each period of one calendar year from day after the last day of the previous Year.

1.3 **General construction**

In interpreting this Agreement the following rules must be applied unless the context otherwise requires:

- a **Currency:** References to currency and a reference to '\$' or 'dollar' are, unless otherwise stated, to New Zealand currency;
- b **Parties:** References to a party are to a party to this Agreement and include that party's executors, administrators, successors in title and permitted assigns;
- c **Periods of Time:** All periods of time include the day on which the period commences and also the day on which the period ends;
- d **Non-Working Day:** Any date which is not a Working Day, upon or by which anything is due to be done by any party, will be deemed to be a reference to the next Working Day;

- e **Joint Obligations:** All warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person will be deemed to have been given or entered into jointly and severally;
- f **Payment:** Any reference to or any obligation in this Agreement which requires payment of money will be a reference to, or deemed to include an obligation requiring, payment in immediately available cleared funds and requiring payment be made free and clear of all deductions or withholdings unless the deduction or withholding is required by law; and
- g **Number and gender:** Words importing the plural include the singular and vice versa and words importing one gender include the other genders.

2 Objectives

2.1 Objectives

The objectives in establishing BoatCo are:

- a to implement and conduct the Scheme; and
- b to conduct the Business; and
- c to facilitate Shareholders selling and transferring Shares to other persons; and
- d to provide for the management and operation of the Vessel.

2.2 Shareholder Responsibilities

Each Shareholder must:

- a use best endeavours to ensure that BoatCo fulfils the objectives and complies with the Management Agreement;
- b not unreasonably delay an action, approval, direction, determination or decision which is required of that Shareholder;
- c comply with the terms and conditions of this Agreement and the Vessel Rules; and
- d act in good faith in the Shareholder's activities and dealings with BoatCo, the Manager and other Shareholders.

3 Structure of BoatCo

3.1 Issued Share Capital

The issued share capital of BoatCo following successful completion of the Offer will be 6 Shares.

3.2 Use of Vessel

Each Share carries with it the right to use the Vessel for a total of 57 days per Year in accordance with and subject to the terms of this Agreement and the Vessel Rules.

3.3 **Additional Use**

Additional daily standby use may be requested by a Shareholder in accordance with and subject to the terms of this Agreement and the Vessel Rules.

3.4 **Owner of Vessel**

BoatCo is the owner of the Vessel.

3.5 **Rules**

The Shareholders are bound by the Vessel Rules.

4 **Assent to repurchase initial share and waiver of pre-emptive rights**

4.1 **Repurchase**

Following the successful completion of the Offer, BoatCo will repurchase the initial share held by Ownaship (**Initial Share**) for \$1.00. Upon the repurchase of the Initial Share, the Initial Share will be cancelled.

4.2 **Wavier of pre-emptive rights**

The Shareholders waive any pre-emptive rights conferred on them (as at the date of this Agreement or in the future) by section 45 of the Companies Act 1993, or otherwise in respect of the issue of Shares.

4.3 **Entitled persons agreement**

This Agreement constitutes an agreement of all “entitled persons” pursuant to section 107(2) of the Companies Act 1993.

5 **Board of directors**

5.1 **Number**

The number of directors (excluding alternate directors) shall not exceed three.

5.2 **Initial Directors**

As at the date of this Agreement, the sole director of BoatCo will be the Founding Director.

6 **Decision making**

6.1 **Simple Majority**

Subject to the Companies Act 1993 and this Agreement, all decisions of the Board or the Shareholders in general meeting will be made by Simple Majority vote.

6.2 **Special Resolution**

The following decisions must be approved by the exercise of a Special Resolution:

- a authorisation of the Transfer of the Vessel;
- b authorisation of the termination of the Management Agreement by BoatCo;

- c the appointment or removal of a director of BoatCo during the term of the Management Agreement; and
- d the issue of any shares in BoatCo or securities that are convertible into or exchangeable for shares in BoatCo or the consolidation or subdivision of shares in BoatCo other than in connection with the Offer.

7 Management

7.1 Management Agreement

The Board will instruct the Manager to manage the Vessel on a day-to-day basis under the terms of the Management Agreement.

7.2 Authorisation

BoatCo and the Shareholders hereby authorise the Manager to carry out the Services in accordance with the Management Agreement and this Agreement.

8 Use charges

8.1 Charges

In consideration for the use of the Vessel in accordance with clause 3.2:

- a each Shareholder must pay to BoatCo a use charge ('**Use Charge**') equal to that Shareholder's Respective Proportion of the Management Charge; and
- b each Shareholder may also be required to pay an additional charge ('**Additional Use Charge**') equal to that Shareholder's Respective Proportion of any Additional Charge charged to BoatCo by the Manager.

8.2 First Year

The first year's prorated Use Charge is due by each Shareholder no later than 1 September 2020.

8.3 GST

No GST will be charged on the Use Charge. BoatCo is not GST registered.

8.4 Payment

Subject to clause 8.5:

- a the Use Charge is payable within 10 Working Days of the Management Charge becoming payable by BoatCo; and
- b any Additional Use Charge is payable within 10 Working Days of a written request from BoatCo.

8.5 Monthly Option

A Shareholder may elect, by notice in writing, to pay the Use Charge (plus any Additional Use Charges) in 12 monthly instalments (a '**Monthly Payment Election**'). Monthly Payment Elections will be subject to such additional payment terms (including the charging of interest

to reflect the additional costs incurred by BoatCo) as may be notified to the Shareholders by BoatCo upon application.

9 Transfers of Shares

9.1 Transfer

Unless all the Shareholders otherwise agree in writing, a Shareholder may not Transfer Shares except in accordance with clauses 9, 10 and 14.

9.2 Issue of Transfer Notice

A Shareholder wishing to Transfer a Share must issue a transfer notice to the Manager in accordance with clause 10.

9.3 Conditions of Transfer

No Transfer will be effective, unless the following conditions of Transfer are satisfied:

- a where a Share is proposed to be transferred to a third party:
 - i the third party has delivered an executed copy of a Deed of Adherence to the Board; and
 - ii the Board is reasonably satisfied that the third party is of good standing, financial substance and reputation; and
- b the Shareholder wishing to Transfer its Share has paid all amounts owing by it to BoatCo under this Agreement; and
- c the Shareholder has paid the Transfer Fee to the Manager.

10 Procedure on transfer of Shares

10.1 Transfer Notice

Any transfer notice issued or deemed to have been issued by a Shareholder will appoint the Manager as the agent of the Shareholder that issued or was deemed to have issued a transfer notice (**'Selling Shareholder'**) for the sale of its Share (**'Sale Share'**).

10.2 Finding a Purchaser

The Manager will endeavour to find a purchaser for the Sale Share. The Manager may, but will not be required to, in the first instance offer the Sale Share to existing Shareholders. In such case and where more than one existing Shareholder wishes to purchase the Sale Share, the Manager in its sole discretion will determine the successful purchaser. Once a purchaser has been found by the Manager and notified to the Selling Shareholder, the Selling Shareholder may:

- a direct the Manager to enter into the sale of the Sale Share as the agent of the Selling Shareholder; or
- b withdraw the transfer notice and sell to a third party.

10.3 Seller Remains Responsible

The Seller will remain responsible for all payments due under this Agreement until such time as the Sale Share is sold and transferred to the purchaser.

11 Dispute procedure

11.1 Mediation

Any dispute arising out of or relating to this Agreement may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator.

The mediation shall be terminated by:

- a the signing of a settlement agreement by the parties; or
- b notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
- c notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or
- d the expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

11.2 Arbitration

If no mediation is agreed to or if the mediation should be terminated as provided in 11.1b, c or d above, any dispute or difference arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

The decision of such arbitrator will be final and binding between the parties and such arbitration will be carried out pursuant to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

12 Acknowledgments and warranties

12.1 No Representation

To the maximum extent permitted by law, each of the Shareholders severally agrees that neither BoatCo, the Manager nor any Shareholder makes any representation or warranty to any other Shareholder other than as expressly referred to in this Agreement.

12.2 Own Investigations

To the maximum extent permitted by law, each Shareholder enters into this Agreement and (where applicable) becomes a Shareholder or acquires Shares entirely on the basis of its own investigations and decisions and not in reliance on any act or representation made by any other Shareholder or by BoatCo.

13 Termination

13.1 Termination

This Agreement may be terminated:

- a by mutual agreement in writing of all Shareholders;
- b in respect of any one Shareholder, when it ceases to hold, directly or indirectly, any Shares;
- c upon the distribution of any proceeds following the sale of the Vessel; and
- d when BoatCo is wound up by an order of a court.

13.2 Accrued Rights

Termination of this Agreement will be without prejudice to any accrued rights of the parties to this Agreement.

14 Default

14.1 Transfer Notice

If there is an Event of Default then the Shareholder who is responsible for the Event of Default (**'Defaulting Shareholder'**):

- a will be deemed to have issued a transfer notice for all its Shares, and clause 9 shall apply to the sale of those Shares; and
- b will have its rights to use the Vessel pursuant to clause 3.2 and the Vessel Rules suspended until such time as the Event of Default is cured or the Shares have been transferred pursuant to clause 9.

14.2 Events of Default

The Events of Default are:

- a use of the Vessel for any illegal purpose;
- b wilful or reckless damage or abuse of the Vessel;
- c being in charge of or skippering the Vessel while intoxicated, inebriated, under the influence of a prohibited substance, or, in some similar condition;
- d a change in control of a Shareholder that is a corporate entity, without the prior written consent of the Board;

- e breach of any provision of this Agreement or the Vessel Rules and failure to rectify that breach within 10 Working Days of a notice of that breach from another Shareholder or the Manager requesting that the breach be remedied; and
- f failure to pay any amount due under this Agreement on the due date for payment.

14.3 Use of Proceeds

Proceeds from the sale of Shares pursuant to clause 9 will be applied first to repay any outstanding financial default, and secondly to repay any costs or commissions incurred in the sale of the Shares. The balance of the proceeds will be repaid to the Seller.

15 Guarantee and indemnity

15.1 Guarantee

Each Shareholder that is not a natural person may be required by the Board to provide a guarantor reasonably acceptable to BoatCo.

15.2 Indemnity

The guarantor must:

- a guarantee the performance by the Shareholder of its obligations under this Agreement; and
- b indemnify BoatCo and each Shareholder from loss or damage arising from the failure of the Shareholder to comply with its obligations under this Agreement.

16 General provisions

16.1 Entire Agreement

To the maximum extent permitted by law, this Agreement contains all of the terms, representations and warranties made between the parties and supersedes all prior understandings, discussions, correspondence and agreements (whether written or oral) covering the subject matter of this Agreement.

16.2 Further Assurances

Each party will, at its own expense and when requested by another party, promptly sign and deliver, execute, procure, pass and do all such further documents, acts, matters, resolutions and things as may be necessary or desirable for effecting the transactions contemplated by this Agreement.

16.3 Amendments

No amendment to this Agreement will be effective unless it is in writing and signed by all the parties.

16.4 Waiver

Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement or under any of the documents delivered in connection with this Agreement by any party will not in any

way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement or other document. Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party. No waiver of a breach of any term of this Agreement will operate as a waiver of any subsequent breach of that term or of a breach of any other term of this Agreement.

16.5 No Assignment

Other than as expressly provided under this Agreement no party may assign or be relieved of its rights or obligations under this Agreement without the prior written consent of all parties.

16.6 Time of Essence

Time will be of the essence in the performance by any party of its obligations under this Agreement.

16.7 Notices

Any notice given pursuant to this Agreement must be in writing and (with the exception of email) signed by a person duly authorised by the sender. Any such notice will be deemed to be validly given if personally delivered, posted, or forwarded by facsimile transmission or email to the address of the party set out in the relevant Deed of Adherence or to such other address as the party to be notified may designate by written notice given to all other parties.

16.8 Costs

Except as may be otherwise provided in this Agreement, each party shall bear its own costs in relation to the negotiation, preparation, execution and performance of this Agreement.

16.9 Partial Invalidity


In the event of the invalidity of any part of the provisions of this Agreement such invalidity shall not affect the enforceability of any other part or provisions of this Agreement.

16.10 Choice of Jurisdiction and Law


This Agreement will be governed by and construed in accordance with the laws of New Zealand and the Shareholders submit to the non-exclusive jurisdiction of the New Zealand Courts.

Execution

Signed for and on behalf of
Ownaship Limited
by its sole director in the presence of:



Ownaship Limited


Witness signature 

Maria Taylor
Solicitor
Auckland

Signed for and on behalf of
BoatCo R3500-8 Limited
by its sole director in the presence of:



BoatCo R3500-8 Limited

Witness signature 

Maria Taylor
Solicitor
Auckland

Schedule 1 The Vessel

Name of Vessel:	TBA
Description of Vessel:	2020 Rayglass 3500 Legend
Equipment:	As per the attached specification sheet
Founding Director:	Simon Barker
Transfer Fee:	\$1,000. A further 6.5% plus GST of the transfer price of the Shares shall be payable if Ownship acts as an agent for the shareholder in the sale pursuant to clause 10.2a.

Specification Sheet 2020 Rayglass 3500

Overall length	37ft	Toilet(s)	Electric (1)
Overall beam	3.85m	Shower(s)	Inside/Outside (2)
Displacement	TBA	Fridge/Freezer	Electric (1)
Engines(s)	Twin Mercury diesel 270 HP engines	CD Stereo(s)	Yes
Fuel Capacity	600L (approx.)	BBQ	Stainless steel LPG
Water Capacity	400L (approx.)	Chart Plotter/Fish Finder	Simrad
Batteries	House + Start	Speed/Depth	Yes
Electric Capstan	Auto with remote operation	Compass	Yes
Trim Tabs	Yes	VHF	Yes
Hot Water	Yes	Safety Equipment	Life jackets, flares, EPIRB
Pressure Water	Yes	Galley Equipment	Yes
Cabins	2	Linen	Yes
Berths	6 (fold down table)		
Tender	Yes		
Tender motor	TBA		

Standard Features

Hull and Decks
Slimline hatches on foredeck
Stainless steel grab rails on Hard Top
Stainless steel bow rail
Stainless steel bow sprit and over bow roller
Stainless steel cleats
Rubber fender strip
Anchor locker
Auto capstan winch 20m chain plus warp

Transom

BBQ station
Closing transom door
Platform live bait tank

Cockpit

Teak
Large stowage hold
Locker
Saltwater washdown pump

Drainage system
Cockpit shower
Rear seat with folding back rest

Saloon

V Shaped lounge with table (converts to bed)
Overhead LED lights
Bi-fold entry door and folding galley door

Galley

Sink and mixer tap
12v electric fridge with freezer
4 burner gas cooker, grill and oven

Island workbench
Drawers port and starboard
LED overhead lighting

Helm Station

Captains chair
Steering wheel
Compass
VHF radio
Bluetooth stereo

Hard Top

Fully enclosed windscreen
Sliding sunroof (2)
Sliding windows
Upholstery hard top panels
Stereo speakers
Stainless steel grab rails port and starboard
Navigation lights
Aerials
3 pantograph wipers with fresh water wipers

Master Cabin

Twin berth walk in changing room
Queen size bed with mattress
Carpet flooring
Bulkhead lighting
Overhead hatch

Forward cabin

Double berth starboard side
Bulkhead lighting
Storage under berth
Carpet flooring
Overhead hatch

Toilet

Electric toilet with macerator and holding tank
Vanity cupboard with basin and mixer tap
Hot and cold pressure water

Bulkhead light
Toilet roll holder

Engine Room

Self draining engine hatch
Auto bilge pump
High Water alarm
House and start batteries
Shore power and battery charger
Hydraulic engine hatch lift
Twin Mercury diesel 270 HP engines
Shower
Hot and cold pressure water
Cupboards
Non-skid floor
Bulkhead light
Overhead hatch

Dash to fit electronics and instruments
Engine controls with full management
instruments
USB power outlet
Trim tabs controls with indicator
Switches for wipers/washers, bilge pump, lights,
gauges.
Auto anchoring

Extras

Blue underwater lights
Teak cockpit flooring
Diesel heater
2nd fridge under Captains chair
Sunlounger on bow
Inflatable dinghy
Outboard (TBA)
Dinghy davets
Bowthruster
Wifi booster
Safety equipment
Livebait tank
Solar Panels
Inverter

Schedule 2 Deed of Adherence

Agreement dated

Parties

1 of (**'Adhering Party'**)

Background

- A This Deed is supplemental to the Shareholders' Agreement between the shareholders listed in the Schedule to this Deed (the **'Current Shareholders'**) and **BoatCo R3500-8 Limited ('BoatCo')** (**'Agreement'**).
- B The Adhering Party has acquired an interest in BoatCo for valuable consideration.
- C The Current Shareholders (who together with the Adhering Party are the owners of the entire Shares of BoatCo) and BoatCo have agreed to the Adhering Party acquiring such interest.
- D The Adhering Party will by virtue of this Deed become a party to the Agreement and the Adhering Party will perform its respective obligations under the Agreement as if it were an original contracting party to the Agreement.

Agreement

1 Adherence to Agreement

- 1.1 The Adhering Party:
 - a. confirms that it has been supplied with a copy of the Agreement; and
 - b. confirms that it has been given access to a copy of the Management Agreement referred to in the Agreement.
- 1.2 The Adhering Party covenants with the Current Shareholders and with BoatCo to observe, perform and be bound by all the terms of the Agreement to the intent and effect that it will be deemed, with effect from the date (**'Adherence Date'**) on which the Adhering Party is registered as a shareholder of BoatCo, to be a party to the Agreement as a Shareholder.
- 1.3 The Address of the Adhering Party for the purposes of the Agreement will be as set out in the Schedule.
- 1.4 It is intended for the purposes of the Contract and Commercial Law Act 2017 that the Current Shareholders and BoatCo should have the benefits of this Deed.

Executed as a Deed by

in the presence of:

Witness Signature

Name

Occupation

City of Residence

Adhering Party's Address for Notices

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