

# **APPLICATION & AGREEMENT FOR WINTER /SUMMER STORAGE TERMS AND CONDITIONS**

## **1. DEFINITIONS**

"Agreement" means this Application and Agreement for Winter Storage and includes these Terms and Conditions.

"Boat" means the boat described on the front page of this Agreement, the trailer or cradle together with any and all personal property of every nature, kind and description, including, without limiting the generality of the foregoing, credit cards and instruments, financial securities and cash, located in or upon the boat or located in the proximity of the boat and owned by or in lawful possession of the Licensee or any other person who has been permitted by the Licensee to board the boat or be in the vicinity of the boat.

"Claims" means any liability, loss, damages, costs and expenses (including legal fees), causes of action, actions, claims, demands, lawsuits or other proceedings.

"Indemnified Parties" means the Marina and its respective directors, officers, employees and agents;

"Licensee" means the registered owner of the Boat, the lessee of the Boat, the duly authorized agent of the owner of the Boat or any other person who has the permission of the owner to be in possession of the Boat;

"Marina" means Hamilton Port Authority, Harbour West, a body corporate,

"Month" means any period of thirty (30) consecutive days;

"Season" means November 1<sup>st</sup> through April 30<sup>th</sup> for winter storage and May 1<sup>st</sup> through October 31<sup>st</sup> for summer storage.

"Storage Area" means the parking lot, storage lot, storage buildings and designated in water storage areas at Harbour West where the Boat and other boats and/or trailers or cradles are stored.

"Storage Facility" means the part of the Storage Area selected by the Marina in its absolute discretion where the Licensee's Boat is stored;

"Term" means the period of time beginning on the Start Date identified on the front page of the Agreement, and ending on the date the Boat is launched in accordance with clause 7.2.

"Worker" means contractor of any type hired by the Licensee to perform repair, improvement, or maintenance to the Boat.

## **2. PROVISION OF STORAGE FACILITY**

Subject to the terms of this Agreement, the Marina shall allow the Licensee to store the Boat in the Storage Facility.

## **3. USE OF STORAGE FACILITY**

3.1 Access: Access to the Storage facility is limited to the hours of 7:30 am to 8:00 pm Monday to Sunday. Licensee will not be granted access to the Storage Facility outside of these times.

3.2 Supervision and security: The Marina does not provide supervision over and security for the Boat or any other boat or boats in the Storage Area, nor does it supervise, regulate or control or attempt to supervise, regulate or control the movement of any person or persons or the movement, management, or control of any boat or boats in the Storage Area whether in proximity to the Boat and regardless of whether any such person has entered into an agreement with the Marina.

3.3 Winterizing services: The Marina does not provide winterizing services. Licensee is responsible for ensuring that all of the Boat's systems are prepared for outdoor storage.

3.4 Utility services: The Marina does not provide any utility service to the Licensee and, notwithstanding the generality of the foregoing, specifically does not provide any electrical energy. If a utility outlet is available, the Licensee may seek to obtain utility service(s) at the Licensee's own cost and risk. The Indemnified Parties shall not be responsible or liable for any Claims which may result from any alleged interruption of service or lack of repair of any pipe, tap, utility hook-up, gas outlet, electrical outlet, electrical conduit and wire or any device used or related to the use and provision of a utility service. Unattended vessels shall not be connected to a utility outlet. If the Boat is found connected to a utility outlet without the Licensee present, the connection will be removed and the Indemnified Parties shall not be responsible or liable for any Claims which may result from any alleged interruption of service or lack of repair of any pipe, tap, utility hook-up, gas outlet, electrical outlet, electrical conduit and wire or any device used or related to the use and provision of a utility service.

3.5 Shrink wrap services: The Marina does not provide "shrink wrap" services.

3.6 Licensee tarp: If the Licensee chooses to provide its own cover or tarp instead of shrink wrap, the Marina is not responsible for the care and maintenance of the tarp. If the tarp has the potential to cause damage or has caused damage to the Boat or any other boat, vessel, trailer or cradle, Marina staff may remove the tarp. The Licensee will be invoiced for staff time and will be responsible for any costs associated with any damage to the Boat of any other boat, vessel trailer or cradle resulting from the tarp.

3.7 Blocking Material: The Licensee shall not adjust or tamper with the boat stands or other blocking material used for the storage of the boat. The Licensee understands and acknowledges that nothing can be attached to boat stands including but not limited to ropes, tamps and chains.

3.8 Antifreeze: The Licensee is responsible for ensuring that all engine antifreeze and any other deleterious substances is drained from engine prior to launching of the Boat. If the Licensee fails to remove antifreeze or other deleterious substances, the Marina may notify the Ministry of Environment Spills Action Center. All antifreeze is to be disposed of according to "Clean Marine" standards.

3.9 Maintenance and repairs: The Licensee shall obtain the prior written approval of the Marina for any painting, scraping or repairing of gear in the Storage Facility, Storage Area or elsewhere at Harbour West. The extent of the repairs and/or maintenance to be made will be at the discretion of the Marina. Before retaining and Workers to undertake any work on the Boat in the Storage Facility, Storage Area, or at Harbour West, the Licensee shall get approval in writing from the Marina for the workers to attend on specific days. Such approval is required for reasons of security. If Workers attend on days not approved by the Marina, the Marina reserves the right to eject the Workers from the Marina or refuse entry to the Workers. All work is required to be performed to "Clean Marine" standards.

3.10 Refuse: The Licensee shall not leave refuse of any kind on the Boat or at the Storage Facility, Storage Area or Harbour West and shall deposit garbage and recycling in the bins supplied for that purpose. Charges for this service will be applied following.

3.11 Advertising: The Licensee shall not advertise or solicit in, on or from the Storage Facility, Storage Area or any other location at Harbour West without prior written approval of the Marina.

3.12 Storage of other materials: The Licensee shall not store supplies, accessories, debris, vehicles or other materials or construct any lockers, chests or other structures, in the Storage Facility, Storage Area or in any other location in Harbour West.

3.13 Moving of Boat by Marina: The Marina may move the Boat for any reason. If the Marina is required to move the Boat, it shall take all reasonable care in doing so. The Indemnified Parties shall not be liable for any damage to the Boat that may occur during the moving of the boat, unless such damage is caused by the Marina's negligence.

3.14 Assignment of Agreement/Sale of Boat: Without the prior written approval of the Marina, the Licensee shall not assign this agreement or the use of the Storage Facility or any part of such interest, and shall not store or cause or allow to be stored at Harbour West any boat, vessel or trailer or cradle other than the Boat and shall not transfer the Boat to another storage facility in the Storage Area. If the Licensee sells the Boat and the new owner wishes to keep the Boat in storage at the Storage Facility, the Licensee shall give immediate written notice to the Marina of the change in name and registration and shall provide the Marina with a copy of the Application & Agreement for Winter Storage signed by the new owner.

3.15 Conduct toward Marina staff or other persons: The Licensee shall not engage in any improper conduct towards Marina employees or any other person at Harbour West, including but not limited to: (a) harassment, (b) conduct that may be considered threatening, including but not limited to yelling, and use of profane language, (c) any disorderly, indecorous or other inappropriate conduct that has endangered or might endanger safety, has injured or might injure any person, has caused or might cause damage to the Marina property, or has harmed or might harm the reputation of the Marina. For the purposes of this section, harassment includes course of vexatious comment or conduct, based on one or more of the prohibited grounds (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex orientation, age, marital status, same-sex partnership, family status or disability) under the Human Rights Code, R.S.O. 1990, c.H.19, as amended.

## **4. FEES & PAYMENTS**

4.1 Payment of fees: The Licensee shall pay all fees identified on the front page of this Agreement in full.

4.2 Payment of other costs: The Marina will invoice Licensee under this agreement. The Licensee shall pay all invoices within thirty (30) days of receipt of the invoice.

4.3 Debts: If Licensee fails to pay an amount invoiced by or otherwise demanded by the Marina, such amounts will be a debt due owing to the Marina by the Licensee and the Licensee shall pay such debts immediately demanded by the Marina. If no demand is made, such debts become due and payable without demand upon the termination or expiration of this Agreement.

## **5. SIGNING & DOCUMENTATION**

5.1 Signing: This Agreement is not valid unless signed by the appointed representatives of the Marina AND the Licensee. If the Licensee is an individual, the signature shall be witnessed.

5.2 Documentation: On signing this Agreement, the Licensee shall provide to the Marina the following written documentation to the satisfaction of the Marina: a) a certificate of registration of the Boat; b) a valid Certificate of Insurance and a renewal replacement as may be necessary for the Boat, confirming the insurance requirements and stating any pertinent exclusions as applicable, contained by the policy; and c) an agency agreement between the registered owner of the boat and the authorized agent, where the Licensee is an agent of the registered owner of the Boat, showing the authority of the authorized agent to fulfill all obligations under this Agreement; or d) a leasing agreement between the registered owner of the Boat and the lessee, where the Licensee is a lessee of the Boat.

## **6. LIABILITY**

6.1 Assumption of risk and limitation of liability: This Agreement is for the provision of a storage facility only, and the storage services, equipment and other facilities are to be used entirely at the risk of the Licensee and any partner, director, officer, employee, agent, contractor, lessee, passengers, crew, and guests of the Licensee. The Indemnified Parties shall not be liable for the care or protection either of the Boat or of the Licensee, or of any partner, director, officer, employee, agent, contractor, passenger, crew or guest of the Licensee, or for any loss, theft, damage, injury (including death) occasioned to the Boat or person of the property of the Licensee, or of any partner, director, officer, employees, agents, contractors, passenger, crew or guest of the Licensee howsoever caused.

6.2 Indemnity: Licensee shall indemnify and hold harmless the Indemnified parties from and against the Claims, by whomever made, sustained or brought, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributed to anything done or omitted to be done by the Licensee, its partners, directors, officers, employees, agents, contractors, lessees, passengers, crew or guests in the course of using the Storage Facility or Storage Area or any of the Marina services, equipment, or other facilities used by the Licensee, or by its partners, directors, officers, employees, agents, contractors, passengers, crew or guests.

6.3 Insurance: The Licensee shall put into effect and maintain for the duration of this Agreement, at its own costs and expenses, with insurers acceptable to the Marina, complete marine coverage insurance for the Boat including Protection & Indemnity, to an inclusion limit of not less than \$2,000,000 per occurrence. The Policy is to include Hamilton Port Authority as an Additional Insured. The Licensee shall provide the Marina with proof of its coverage when the Licensee signs this Agreement and when the insurance is renewed.

## **7. TERMS & TERMINATION**

7.1 Term: The Agreement shall be in effect for the Term, unless terminated earlier in accordance with this agreement.

7.2 Removal of Boat on launch dates: (1) Unless terminated earlier in accordance with clause 7.4, 7.5 or 7.7 of this Agreement, and subject to paragraph (2) of this clause, the Boat shall be launched by the Licensee on the launch dates determined by the Marina Manager ("Launch Dates"). Actual dates for launch shall be confirmed by the Marina Manager. The Marina Manager may reschedule the Launch Dates for convenience in his or her absolute discretion without prior notice to the Licensee and the Marina shall not be liable to the Licensee for any loss suffered by the Licensee as a result of rescheduling. The Licensee may not launch on any date other than the Launch Dates. Unless negligent, the Marina shall not be responsible for any damage to the Boat that may occur during the launch. (2) Despite anything else in this Agreement, the Licensee may not launch the Boat until the following conditions precedent are fulfilled: (a) the Licensee shall pay in full all outstanding fees; and (b) if the Licensee wishes to moor at Harbour West for the summer season, a Summer Mooring Agreement shall be executed by the Licensee and the Marina.

7.3 Removal of Boat after launch dates: If the Licensee has not satisfied the conditions precedent set out in clause 7.2 paragraph 2 or for any other reason fails to launch the Boat on the Launch Dates, this Agreement shall continue month to month in accordance with section 7.9 until such times as all fees are paid and the Boat is removed from Harbour West.

7.4 Termination by Marina without cause: The Marina may terminate this Agreement on fifteen (15) Days' written notice without cause and without liability.

7.5 Termination by Marina for breach or improper conduct: Without fault or liability, the Marina may terminate this Agreement: 7.5.1 on one (1) days' written notice to the Licensee where, in the sole opinion of the marina, the Licensee, or any partner, director, officer, employee, agent, contractor, lessee, passenger, crew or guest of the Licensee has breached and term of this Agreement. 7.5.2 immediately upon giving notice where, in the sole opinion of the Marina, the Lessee or any of its partners, directors, officers, employees, agents, contractors, lessees, passengers, crew or guests engage(s) in: (i) any illegal conduct; (ii) any conduct toward Marina employees or any other person that may be considered threatening, including but not limited to yelling and use of profane language; or (iii) any disorderly, indecorous or other inappropriate conduct that has endangered safety, has injured or might injure any person, has caused or might cause damage to the Marina property or has harmed or might harm the reputation of the Marina.

7.6 Consequences of termination by Marina: On termination under clause 7.4 or 7.5, the Marina may evict or remove the Boat, its licensee and any partner, director, officer, employee, lessee, contractors, passenger, crew, and guest of the Licensee from the Storage Facility, Storage Area or elsewhere at Harbour West at the Licensee's expense and risk and retake possession of the Storage Facility. Any outstanding fees shall be immediately payable to the Marina.

7.7 Termination by Licensee: The Licensee may terminate this Agreement at any time by giving fifteen (15) days' written notice to the marina. No part of the monetary consideration for this Agreement will be returned to the Licensee in the event of termination under this clause.

7.8 Removal of Boat on early termination: Upon any termination of this Agreement under clause 7.4, 7.5 or 7.7, unless the Boat has been removed in accordance with clause 7.6, the licensee shall remove the Boat from the Storage Facility, Storage Area and Harbour West by 4 p.m. on the effective date of termination. If licensee fails to remove the Boat by this time, the Licensee shall be liable for all costs incurred by the Marina in relation to the continued storage of the Boat or the moving of the Boat by the Marina, including, but not limited to any labour, equipment and transport costs. At any time after 4 p.m. on the effective date of termination, the Marina may in its absolute discretion move the Boat at the Licensee's expense to another place of storage within Harbour West or elsewhere. The Licensee shall pay all amounts owing as liquidated damages, expenses and storage fees to the Marina immediately upon demand. Any outstanding amounts shall be a debt and owing from the Licensee to the Marina under this Agreement and the Marina shall have a lien against the Boat in respects such amounts owing as liquidated damages, expenses, and storage fee, in accordance with clause 8.3 of this agreement.

7.9 Monthly agreement extension: If the Licensee has elected to have a monthly agreement, or if a monthly agreement has resulted under clause 7.3, and the Licensee wishes to extend the monthly agreement, the Licensee shall give the Marina notice at least one week in advance of the expiry of the Agreement. The Marina may either arrange such extension on such terms as to daily or monthly rates for the extension as it deems proper or may, in its discretion, refuse such an extension.

## **8. GENERAL PROVISIONS**

8.1 Relationship of Parties: This is an Agreement for the provision of a storage facility and the provision of this Agreement do not constitute nor shall they be construed to constitute an employment relationship, in agency relationship, or a partnership or joint venture between the parties.

8.2 No bailment: The Agreement is not an agreement of bailment, the Licensee is not the bailor of the Boat nor is the Marina the bailee of the Boat. At all material times as between the Licensee and the Marina, the Boat shall be and shall be deemed to be in the possession of the Licensee notwithstanding that the Marina may, as provided in this Agreement, move or otherwise handle the Boat and any such moving or handling shall be deemed not to take the Boat out and any such moving or handling shall be deemed not to take the Boat out of the possession of the Licensee.

8.3 Lien: The Marina may place a lien against any Boat for amounts due in respect of the use of the Storage Area, the cost of repairs for any damage caused to the Marina property by the Licensee, or any partner, director, officer, employee, agent, lessee, contractor, passenger, crew, and guest of the Licensee, and for any other debt of the Licensee due to the Marina under the terms of this Agreement. The Marina may give notice of the lien to the Licensee, subject to the Repairs and Storage Liens Act, R.S.O. 1990, c.R.25, as amended.

8.4 Notices: Any notice, request, consent or approval under this Agreement shall be given in writing to the contact details set out on the front page of this Agreement.

8.5 Force Majeure: Neither party shall be liable to the other party for any failure to comply with or any delay in the performance of terms of this Agreement where such failure or delay, directly or indirectly or in whole or in part arises from an event beyond its reasonable control such as (but not limited to) natural disasters, acts of war, insurrection, terrorism, or action taken by governmental authority in hindering or defending against such occurrences, strikes, slowdowns, lockouts, or other labour or employee interruptions or disturbances, whether involving employees of the Marina or of any other person over which the Marina has no reasonable control. A party seeking to rely on the provisions of this section may do so only if notice in writing identifying the event relied on and the date of occurrence is given to the other party within five (5) days of the occurrence of the event.

8.6 Waiver: No failure by either party to exercise any right under this Agreement or to insist upon full compliance by the other party with its obligations under this Agreement will constitute a waiver of any provision of this Agreement.

8.7 Survival: Clauses 3.4, 3.5, 3.6, 4.3, 6.1, 6.2, 7.2, 7.6, 7.8, and section 8 shall survive the expiry or termination of this Agreement.

8.8 Entire agreement/amendments: This Agreement constitutes the entire agreement between the Marina and the Licensee with respect to the storage of the Boat at the Storage Facility and supersedes all other prior agreements, communications and understandings, both written and oral. This Agreement may not be amended or modified unless in writing and signed by both parties.

8.9 Governing law: This Agreement and all disputes or other matters arising out of it shall be governed by and construed in accordance with laws of the Province of Ontario and the applicable federal laws of Canada. Both parties shall attorn to the jurisdiction of the courts of the Province of Ontario.