

## Port Whitby Marina Services Agreement - Terms and Conditions

1. The Marina agrees to supply and the Owner/Applicant agrees to pay for the services listed on the Port Whitby Marina rental agreement.
2. The Owner/Applicant represents and warrants that the Owner/Applicant's vessel is a pleasure craft, registered, identified and equipped in accordance with Canadian Shipping Law, and that it will be operated under its own power in accordance with safe boating principles within the Whitby Harbour Limits.
3. The Owner/Applicant understands that Port Whitby Marina is a participant in Boating Ontario's Clean Marine Audit Program, and agrees to make every effort to comply with practices as outlined under the Clean Marine program as posted. The Owner/Applicant agrees to assist the marina at all times in protecting our natural environment.
4. It is understood and agreed that all vessels shall be secured in their berths in a manner acceptable to the Marina, and if not acceptable Marina Staff may board the vessel to adequately secure the vessel to the dock. If new mooring lines are required, they shall be supplied at the Owner/Applicant's expense including a staff labour charge for installation. Marine grade lines with minimum thickness of 7 mm (1/4") must be used for boats up to 20 feet, 13 mm (1/2") for boats 21 to 30 feet, and 20 mm (3/4") for boats over 30 feet.
5. It is understood and agreed that the Owner/Applicant's vessel may be subject to a safety inspection by Marina Staff. Marina Staff will make all reasonable attempts to contact the owner/applicant prior to boarding the vessel for inspection with the exception of emergency situations which could result in harm to persons, damage to property, or could result in a spill of hazardous materials. Examples of emergency situations would include risk of sinking, fire, fuel/oil spill, and impacts from unsecured sails, rigging, or equipment.
6. The Owner/Applicant understands and agrees that no outside waste or refuse is to be placed in the Marina waste receptacles. The Owner/Applicant further understands and agrees that disposal of any fuels, oils, antifreeze, paints, thinners, or other chemicals or hazardous material within the Marina property will be considered dumping on Town of Whitby property, and subject to fines (Town of Whitby Bylaw 3163-92) except where these waste products are disposed of in recycling receptacles specifically marked for these items.
7. Under no conditions are gasoline or diesel fuels to be transported by use of portable cans to the Owner/Applicant's vessel within the Marina/Town of Whitby property or Whitby Harbour. Vessels can only be filled at the designated fuel dock in accordance with the Fuel Handling Act and Marina procedures.
8. The Owner/Applicant agrees that charcoal or gas barbecues will not be permitted on the docks or Marina/Town of Whitby premises except in areas designated for such use. Barbecues on board vessels are not to be used within the Marina/Town of Whitby premises unless pre-approved in writing by the Marina Supervisor. Open fires are not permitted anywhere within the Marina/Town of Whitby Property.
9. It is understood and agreed that painting, scraping, sanding, or repairing of vessels or gear will not be permitted on the docks or piers. Light maintenance may be permitted at the Marina service dock with written permission of the Marina. The Owner/Applicant is responsible to contain and

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properly dispose of any sanded or scraped paint or other products resulting from work completed by the Owner/Applicant or designate anywhere within the Marina/Town of Whitby property. It is further understood that no blasting (sand or other product) or paint spraying is permitted anywhere within the Marina/Town of Whitby property including in the Marina storage yards.

10. It is understood and agreed that young children must be accompanied by adults at all times and that they must wear an approved personal flotation device when in small vessels or near the water.

11. The Owner/Applicant agrees not to store supplies, accessories, debris, or other materials on the docks nor to construct thereon any locker, chest or other structure or attach any object or material to the docks without the written permission of the Marina Supervisor.

12. The Owner/Applicant agrees to notify the Marina when the vessel is leaving for a period of time in excess of twenty-four hours. The Marina reserves the right to rent the mooring facility or use for reciprocal dockage when vacant. Dinghies or other items left in the mooring facility that would hinder visitor use will be removed by marina staff.

13. In order to hold a slip from one year to the next, a deposit of \$100 for piers 2,3,4,5,and 6, and a deposit of \$200 for piers 1,7,8 and 9 is required to be paid prior to December 31<sup>st</sup> of the prior year. In the event that a slip is held by deposit and no contract is made for seasonal dockage by the March 15 deadline, the deposit will be forfeited to the marina.

14. The Summer dockage period runs from May 1<sup>st</sup> to October 31<sup>st</sup> each year. Summer dockage fees are due as of March 31<sup>st</sup> each year. The winter storage period runs from November 1<sup>st</sup> to April 30<sup>th</sup> each year. Winter storage fees are due September 30<sup>th</sup> each year. Any fees unpaid as of the applicable due dates will be billed by the Town of Whitby Treasury Department and will be subject to a 1.5 % monthly interest charge. Payment terms for treasury department issued invoices will be limited to cash or cheque only. Failure to complete contracts by the above dates may result in forfeiture of deposit and loss of slip or storage space. Discounts for 12 month boaters on haulout or launch will only be provided on contracts paid prior to the above due dates. Dockage and storage contracts are binding for the duration of the contract and not subject to refund.

15. The Owner/Applicant agrees to pay for all services contracted for herein in accordance with the rates as herein set forth or in accordance with the rates, terms and conditions as set forth in the Marina's Rate Sheet. The Marina may, when the Owner/Applicant is in default of payment of any storage or dockage charges or other services and upon 15 days written notice to the Owner/Applicant sent to the address stated in this agreement, sell, remove or otherwise dispose of the Owner/Applicant's vessel and contents. In addition to the lien provided for, the Marina shall have a lien under the Repair and Storage Liens Act (Ontario) or such other replacement or successor statutes. In the event of sale, the surplus, if any, after payment of any outstanding charges, legal fees, and expenses incidental to the sale or disposal of the vessel and contents sent to the address stated on the rental agreement. Personal property removed from the Owner/Applicant's vessel will be held at the Marina for a period of 30 days for pickup by the Owner/Applicant, with notice sent to the address stated on the rental agreement.

16. The Owner/Applicant agrees to pay the costs of all damage to the Marina/Town of Whitby's property and to the property of other vessels resulting either directly or indirectly from the

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Owner/Applicant's negligence in respect of any act of omission of the Owner/Applicant or any licensee, invitee, servant, agent, contractor, employee, guest, crew member or family member of the Owner/Applicant. The Owner/Applicant further covenants to indemnify and save harmless the Marina and the Corporation of the Town of Whitby against any loss, costs, suit or claim arising out of the use of the Marina facilities or equipment or the handling or mooring of any vessel, vehicle, or trailer anywhere on the Marina property by the Owner/Applicant or any licensee, invitee, servant, agent, contractor, employee, guest, crew member or family member. Without in any way limiting the generality of the foregoing, the Owner/Applicant covenants to indemnify and save harmless the Marina and the Corporation of the Town of Whitby against any loss, cost, suits, claims (including penalties and fines) arising out of or in connection with the discharge or release of any fuel, chemicals, waste or other pollutants by the Owner/Applicant or any licensee, invitee, servant, agent, contractor, employee, guest, crew member or family member of the Owner/Applicant.

17. The Owner/Applicant will not assign this Agreement or sublet the space rented herein without the written consent of the Marina.
18. In the event that the Owner/Applicant sells or otherwise transfers ownership of the vessel:
  - (a) Any dockage or storage contract with the Owner/Applicant for the vessel will be terminated upon transfer of ownership of the vessel;
  - (b) The Owner/Applicant must ensure that the vessel is removed from the Marina prior to transfer of ownership, unless the purchaser/new owner has been pre-approved for and has executed a contract for dockage or storage of the vessel;
  - (c) Notwithstanding that the Owner/Applicant's dockage or storage contract has been terminated in accordance with subsection (a), if the Owner/Applicant fails to remove the vessel in accordance with subsection (b), then **the Owner/Applicant will continue to be responsible and liable for payment of dockage and storage fees for the vessel** at the same rates as set out in the previous dockage or storage contract for the vessel.
19. The Owner/Applicant agrees that he will not do or permit to be done any act or thing which may make void or voidable any insurance upon the building or any property or any part thereof upon the Marina premises or which may cause any additional premium to be paid for any such insurance.
20. The Owner/Applicant agrees that he will not make or permit any unlawful, improper, noisy or otherwise offensive use of the Marina property and the Owner/Applicant further agrees to observe, obey and be bound by all the rules and regulations made by the Marina from time to time and posted in or about the Marina premises, receipt of a copy of which is hereby acknowledged by the Owner/Applicant.
21. The Owner/Applicant agrees that Marina security gates on the piers, clubhouse, or entrances are not to be tampered with, held open, or altered in any way. The Owner/Applicant further agrees that he/she will be responsible for any theft, vandalism, or damage to marina property or vessels as a result of any gate or door being tampered with, held open, or altered in any way by the Owner/Applicant or any licensee, invitee, servant, agent, contractor, employee, guest, crew member or family member of the Owner/Applicant.
22. The Marina shall not be liable for any claims, howsoever founded, arising out of any cause whatsoever, (whether founded in tort or in contract or otherwise) and including claims for

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consequential damages, arising out of, occasioned by or attributable to the nature, construction, design, condition or state of repair of the Marina or of the space and premises herein leased, nor arising out of, occasioned by, or attributable to the presence on, rental, occupancy or use of the Marina or of the space and premises herein leased by the Owner/Applicant or by any person visiting same or being thereon.

23. The Owner/Applicant agrees to move his/her vessel in accordance with the Marina's instructions and when unattended authorizes the Marina to move the vessel in its discretion at the Owner/Applicant's expense and risk.
24. This Agreement shall remain in full force and effect for the entire term set out in the rental agreement, unless sooner terminated in accordance with the following conditions, to wit:
- (a) The destruction of the mooring facilities by fire, storm or other calamity.
  - (b) Any breach of this Agreement, including the rules and regulations of the Marina as provided herein which form a part of this Agreement.
  - (c) By mutual agreement between both parties and upon removal of the owner's vessel and full payment of all fees.
25. A waiver of any one or more of the terms or conditions herein shall not be deemed to be a continuing waiver.
26. Pets shall be leashed within the confines of the Marina and Owner/Applicant's are responsible for their pets, and the pets of any guests, and to pick up and dispose of any pet waste.
27. The Owner/Applicant agrees that no contractor shall work on his/her boat on the Marina premises or on Town of Whitby Property except in accordance with the following provisions:
- (a) The contractor shall comply with all requirements of the By-laws of the Town of Whitby.
  - (b) The contractor shall at all times have in force and effect, and shall produce evidence of same upon demand by the Marina insurance in the amount of \$2,000,000.00 for general liability and \$2,000,000.00 for vehicles.
  - (c) The contractor shall provide proof of Workplace Safety and Insurance Board coverage for all employees.
  - (d) The contractor shall comply with all Marina rules, terms, and conditions.
28. The Owner/Applicant agrees that the terms of this Agreement shall remain in full force and effect as long as he/she remains an Owner/Applicant at the Marina, and shall apply to the vessel, or any additional, or substitute vessels. No Owner/Applicant will be allowed to remove his/her vessel or its equipment until all accounts have been paid in full.
29. This Agreement shall be binding on each of the parties hereto, their respective heirs, executors, administrators, personal representatives, successors and assigns and, all references to the Owner/Applicant, shall bind the actual Owner/Applicant or Owner/Applicants of the vessel and their respective heirs, executors, administrators, personal representatives, successors and assigns. The Owner/Applicant shall be responsible for all of his licensees, invitees, servants, agents,

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employees, guests, crew members and family members and ensure that they abide by all the Marina rules and regulations and the terms and conditions of this Agreement.

30. In the event of any breach by the Owner/Applicant of any of his obligations hereunder, the Marina shall have the right to terminate the rental Agreement and expel the Owner/Applicant or any licensee, invitee, servant, agent, contractor, employee, guest, crew member or family member of the Owner/Applicant and to remove the Owner/Applicant's vessel and any equipment of the Owner/Applicant from the Marina premises. In such event, the Owner/Applicant shall be deemed to forfeit any and all monies paid for services hereunder as part compensation for or at the sole option of the Marina, in full satisfaction for, all rights, claims and demands of the Marina in respect of the breach by the Owner/Applicant.

31. In addition to the rules and regulations as outlined herein, the Owner/Applicant understands and agrees to adhere to Town of Whitby BYLAW 5914-07: A By-law to Regulate Land Owned or Under the Control of the Town of Whitby at Port Whitby Marina and Whitby Harbour.

32. The Owner/Applicant agrees to carry and provide proof of fire, theft, and liability insurance on his/her vessel.

33. If possible, the marina will reserve the same slip for seasonal boaters in good standing from one year to the next. The marina reserves the right however to assign slips as needed and may change slip assignments as required. The marina supervisor shall make the final decision on any slip assignment within Port Whitby Marina. Should a boat owner refuse to move his/her vessel to a slip assigned by the marina, the marina reserves the right to move such vessel as required.

34. A monthly pre-authorized payment plan is available as an option for contract payment. This payment plan requires a down payment of 25% and is subject to a \$40 administration fee. Payments will be withdrawn each month from the bank account specified by the owner/applicant. Any occurrence of non sufficient funds will be subject to a \$40 administration fee. After a total of 3 occurrences of non sufficient funds over a single or multiple contract periods, the owner/applicant will no longer be permitted to utilize the monthly payment plan.

35. For contracts that include winter storage, the owner/applicant agrees to haul out or schedule his/her haul out with the marina prior to November 1<sup>st</sup>. Vessels remaining in the water after November 1<sup>st</sup> may not be entitled to a haulout discount and may be subject to additional charges for marina labour, vessel towing, absentee haulout, and winterization.