

# **HARBOURFRONT CENTRE**

## **Dockage Agreement - Terms and Conditions**

### **1. Definitions**

In this agreement:

(a) “Agreement” means any form or document required by the Marina Operator to be completed by the Tenant to give effect hereto and includes these terms and conditions, which may be amended from time to time by the Marina Operator.

(b) “Boat” means the boat or other vessel owned, licensed or registered, by the Tenant, the particulars of which are set out herein.

(c) “Marina” means, in the case of Marina Quay West, the water lot and surrounding properties and buildings situated within Spadina Quay. The water lot has been licensed to the Marina Operator by The City of Toronto for the purpose of conducting a marina and all therein; and, in the case of Marina Four, means all premises known as the Simcoe Street Slip, together with the water lot appurtenant thereto and surrounding properties and buildings situated within York and John Quays.

(d) “Marina Operator” means Harbourfront Corporation (1990) operating as Harbourfront Centre or any assigned agency acting on behalf of Harbourfront Centre.

(e) “Slip” means space within the Marina specified by the Marina Operator for use of Tenant for the docking of the Boat.

(f) “Tenant” means the owner, operator, crew, guests or any duly authorized agent of the Boat owner.

### **2. Updates to Agreement**

This Agreement shall be in effect for the term herein before set out unless sooner terminated pursuant to this Agreement. The Marina Operator may update the terms and conditions, post rules and regulations throughout the term at Marina Operator’s sole discretion. Updates may be e-mailed, texted to the Tenant or posted on marina bulletin boards. The Marina Operator may have policies and procedures regarding other Marina operations (eg. Parking, pumpout, bridge lifting operations) beyond those described herein.

### **3. Tenant Breach and Agreement Termination**

The Tenant agrees to comply with all terms and conditions of this Agreement and with all policies and procedures of the Marina Operator, as may be amended from time to time at the discretion of the Marina Operator, as well as any and all rules and regulations posted by the Marina Operator at the Marina. In the event that the Tenant breaches any one or more of the terms of this Agreement, violates any of the Marina Operator’s policies or procedures or rules and regulations or for any other reason not listed herein, the Marina Operator may immediately terminate this Agreement. Upon such termination, if the Tenant has not removed the Boat from the Marina by the required departure date determined by Marina Operator in its sole discretion, the Marina Operator may immediately remove the Tenant’s Boat from the Marina at the

sole cost and expense of the Tenant. The Marina Operator shall not be responsible for any damage, loss or injury to the Boat or other property of the Tenant. Notice may be served to the Tenant by leaving such on the Boat, at the Slip, mailing, e-mailing or texting it to the Tenant. The Tenant agrees that the Marina Operator has a maritime and possessory lien and/or a repair and storers lien on the Boat for all fees and other charges outstanding and owing to the Marina Operator under this Agreement.

#### **4. Pleasure Craft Representation**

The Tenant represents and warrants that the Boat is a pleasure craft and agrees that the Boat shall at all times be used for such pleasure craft purposes and be licensed or registered, identified and equipped in accordance with The Canada Shipping Act.

#### **5. Tenant Insurance**

The Tenant agrees to insure the Boat, its operation and its contents during the term of this Agreement against such risks as a prudent individual owning a pleasure craft and being a marina tenant would insure. Such coverage shall include, at a minimum, liability insurance for a minimum amount of \$2,000,000 CDN. In addition, a Tenant who keeps their Boat in the Marina over the winter term must keep and maintain an insurance policy that contains “permission to live aboard” and “layup the vessel afloat” endorsements. The Tenant shall provide the Marina Operator with up-to-date valid copies of Certificate(s) of Insurance in either hard copy or by email. When requested, in the sole discretion of the Marina Operator, a recent survey for the Boat specified may be required at any time throughout the term of the Agreement. If such documents are not submitted by the date and time specified by the Marina Operator, the Marina Operator may terminate this Agreement and/or other services such as car parking (if provided) without notice. The Tenant may not carry passengers, as defined in the Canada Shipping Act.

#### **6. Boat Maintenance**

Boats docked in the Marina must be seaworthy and capable of moving under their own power. If the Boat has two or more engines, each and all engines must be operable. The Tenant shall maintain the Boat structurally and mechanically and keep it clean and presentable both inside and outside to a level satisfactory to the Marina Operator in its sole discretion. If the Boat becomes inoperable, for whatever reason, the Tenant must show the Marina Operator that they are attempting to satisfactorily repair the Boat in what the Marina Operator feels is a timely fashion. In the event of any mechanical failure, malfunction or damage to the Boat which, in the opinion of the Marina Operator, constitutes a threat to safety of the Boat, another boat and/or tenant in/of the Marina or to the Marina itself, then the Tenant agrees to immediately remove the Boat using a professional towing or marine service in a timely fashion. In event that the Tenant fails to do so persons designated by the Marina Operator may board the Tenant’s Boat and move it to another location within or outside of the Marina. In such an event, all costs incurred by the Marina Operator in moving the Boat shall be the responsibility of the Tenant. The Tenant shall reimburse the Marina Operator for all such costs including any environmental clean-up costs. The Marina Operator shall not be liable or responsible for any damage and/or loss to the Boat or incurred by the

Tenant arising from the Marina Operator having to move the Boat in accordance with the terms herein.

## **7. Boat Secured**

Tenant's Boat shall be secured and fendered in its assigned Slip in a manner acceptable to the Marina Operator to protect its docks and equipment for all local seasonal weather, wind and high or low water level conditions. This includes the provision of an adequate number, type, proper thickness and suitable length of lines and the appropriate number and diameter fenders for the length and tonnage of the Boat. If, in the sole opinion of the Marina Operator, the Boat is found not to be secured and fendered in an acceptable manner, the Marina Operator may adequately secure the Boat and assess a service fee via invoice to be paid by the Tenant. If new or additional lines or fenders are required, in the opinion of the Marina Operator, then they may be supplied at the Tenant's expense.

## **8. Outside Contractors**

No outside contractors, service organizations, corporations or individuals will be permitted to undertake any work on Tenant's Boat in the Marina area without first having obtained approval in writing from the Marina Operator. All such persons must sign-in at the applicable Marina Office. All such persons must comply with the Boating Ontario Clean Marine Boat Maintenance Policy or similar program including the possession of valid suitable insurance which contains environmental coverage as well as appropriate Worker's Compensation. Tenants must ensure all contractors meet the requirements of the Occupational Health & Safety and all applicable regulations. Additionally, all outside contractors must comply with Harbourfront Centre safety program or their own safety program, whichever is more stringent. The Marina Operator may request the Contractor's safety program at any time.

Specifically, if permission is granted, the Tenant shall ensure that under no circumstances will any hazardous material such as oil, antifreeze, batteries etc. be left or spilled in the Marina. Failure by the Tenant to ensure that no hazardous material is left or spilled in the Marina shall constitute a breach of this Agreement by the Tenant. It is mandatory that all outside contractors have proof of WHMIS 2015 training prior to handling any hazardous materials.

Harbourfront Centre values the diversity of its workforce, its patrons and visitors and the community in which we operate and is committed to providing an environment where individuals are treated with dignity and respect. The Tenant acknowledges and agrees that all outside contractors shall be required to abide by Harbourfront Centre's Workplace Discrimination, Harassment and Violence Prevention Policy. Failure by any contractor to comply with the provisions of this Agreement may result in immediate removal from the premises by the Marina Operator. A copy of applicable policies and procedures are posted in the Marina or may be requested at any time.

## **9. Pumps and Sewage**

Discharge of heads, Boat toilets, holding tanks, contaminated bilge water or the like, into the Marina is a violation of environmental laws and constitutes a material breach of the terms and conditions of this Agreement. Nearby pump out facilities for black water are available for the Marina at the posted rates. Emptying of portable toilets in restrooms or anywhere in and around the Marina, is strictly prohibited. The restrooms at the Marina shall be used only for the purposes for which they are designed. Waste oil and battery disposal are not available at the Marina or pump out facility. Under no circumstances shall oil, fuel or hazardous waste material be emptied using the pump out facility. Anyone for whom the Tenant is responsible that is caught leaving hazardous waste material at the Marina or using the pumpout machine to extract such will result in the immediate termination in this Agreement and the Tenant shall be responsible for all costs incurred by the Marina Operator for any repair to equipment and any disposal expenses. The Marina Operator reserves the right to report such activity to the Ministry of the Environment and any other governing authority, as appropriate.

Upon recognition of a spill of any kind the Tenant shall advise the Marina Operator, Security Department and contact the Provincial Spills Action Centre to report such a spill. Upon report of a Tenant “dumping” or the discovery of an environmental risk, the Marina Operator must advise the Ministry of Environment, Transport Canada, Environment Canada and the Ports Toronto. Any fines issued for a Tenant’s spill shall be the sole responsibility of Tenant. The Tenant acknowledges the utmost importance of preventing any spill. In event of a spill from the Tenant’s Boat(s), or from any items left by the Tenant or its representatives in the Marina area including on the docks or within nearby garbage compounds or containers, the Tenant will be held responsible. The Tenant will be charged for all costs related to the clean-up of a spill including labour and replacement of all materials and supplies used to mitigate the spill to the satisfaction of the Marina Operator, the Ports Toronto, City of Toronto, the Ministry of the Environment, Environment Canada and Transport Canada.

## **10. Refuse and Garbage**

Tenant shall not throw or allow to be thrown or discharge any refuse or garbage into the Marina or leave any refuse or garbage in or about the Marina area. Supplied waste and recycling bins (if provided) shall be used by the Tenant. The Tenant shall not discharge into the Marina or leave about the Marina area including in the garbage areas or recycling areas any fuel, oil, flammable liquids, oily bilge water or other pollutants or hazardous waste. All hazardous waste materials such as batteries, waste oils, antifreeze, coolants, paints and the like shall be immediately disposed of upon departure from the Boat in a proper environmental, legal and ethical fashion by the Tenant or authorized representative. The Tenant will endeavor to use environmental products and services whenever possible. The Tenant acknowledges the Marina Operator is involved in various industry environmental programs such as Boating Ontario’s Clean Marine, as outlined

on its website, and the Tenant shall participate in a responsible fashion. Failing to do so may be cause for immediate termination of this Agreement.

### **11. Barbecues and Open Flame Cooking**

Propane barbecues of any type, charcoal fires of any kind or open flame cooking appliances are forbidden to be used on the docks, ramps, breakwater or piers at any time. The Marina Operator retains the right to demand the immediate removal of any barbecue or any other cooking appliance, if deemed by the Marina Operator, in its sole discretion, to be unattractive, inappropriate or unsafe. This includes cooking devices used on the Boat. If the Tenant fails to remove the item immediately, the Marina Operator will do so at the Tenant's expense. The use of proper approved marine designed propane barbecues are permitted in the Marina but must only be used aboard the Boat and must be properly and safely affixed to the Boat. No barbecue or propane tank of any type or size shall be stored on the dock at any time.

### **12. Portable Gas and Fuel Containers**

The Tenant shall not use any form of portable gas or fuel container to transfer fuel in the Marina from a container into the Boat's built in fuel tank(s). The Tenant acknowledges and agrees that such restriction is in place in recognition of this being an unsuitable, unsafe and potentially environmentally damaging act. Fuel cans or containers shall not be stored in the Marina premises at any time, including the storage of such containers, even when empty, on the dock, in a dock box or under any type of cover. The Marina Operator will remove any fuel container found on the dock even if empty, at the Tenant's expense.

### **13. Umbrellas and Shade Devices**

Umbrellas, tents, popup's or other shade devices are not permitted without the prior advanced written approval of the Marina Operator, such approval to be in the sole discretion of the Marina Operator. If approval is granted, the use of such umbrella, tent or other shade device shall be subject to the conditions set out in this Agreement or as otherwise determined by the Marina Operator, all as may be amended from time to time in the Marina Operator's sole discretion. The Marina Operator has the right to limit the number of such devices on each dock. If approved, such devices shall not be secured to any water, power pedestal, ladder or other marina fixture. The Tenant shall pay for any damage should a shade device damage any Marina or other personal property. Such devices must not be branded in any manner (not even with local restaurants or suppliers), contain logos or any text. Such devices must be solid black in colour with no other features or markings. They must be double vented and must measure no more than six feet in diameter. Umbrellas shall be left folded down at all times and shall be wrapped in a secure fashion unless in use. They shall only be used in suitable wind and weather conditions. The Marina Operator reserves the right to amend the terms of this section at any time and to remove any device that is not in compliance with the terms of this Agreement without any liability and at the sole cost of Tenant.

## **14. Inclement Weather**

The Tenant shall be responsible for properly securing the Boat in the event of inclement weather so that no damage occurs to the Tenant's Boat, other boats in the Marina or to the Marina itself. If, in the sole opinion of the Marina Operator, the Tenant has not taken necessary and appropriate precautions, Marina personnel may, but shall not be obligated to, appropriately secure the Boat or prepare the Boat for foul weather at the cost and expense of the Tenant. The Tenant shall be responsible for all damage incurred to its Boat, other boats and to the Marina arising from the Tenant's failure to properly secure their Boat. The Tenant shall monitor the weather including winds, wind direction and water levels and shall attend to the boat as conditions warrant. The Tenant should use caution when on the docks and boat for their personal safety during periods of inclement weather. The Tenant should not proceed into the lake when conditions are poor and at times when weather agencies issue warnings.

## **15. Noise**

The Tenant must comply with all City of Toronto By-Laws including the 2019 updated Noise Bylaw found at: <https://www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/noise/>.

Any breach can be reported to Security 24/7 or Toronto 311. Noise must be kept to a minimum at all times including noise from pets. The operation of any engine, generator, tool, sound system or other audio or video device shall only be used in such a manner so that it does not result in a nuisance or interfere with any Marina Operator programmes or events. Quiet enjoyment must be maintained at ALL times. The use of loud amplified speakers is not permitted in the Marina at any time. All forms of music and use of audio devices are not permitted after 10:00 P.M. nightly or before 8:00 A.M. daily. Any noise violation by the Tenant, or anyone for whom the Tenant is responsible, may result in immediate termination of this Agreement, and the Tenant will be requested to immediately remove their Boat from the Marina at the sole cost and expense of the Tenant. The Tenant is responsible for the actions and behavior of any guests to the Boat even in the Tenant's absence.

## **16. Discrimination, Harassment and/or Violence**

Harbourfront Centre values the diversity of its workforce, its patrons and visitors and the community in which we operate and is committed to providing an environment where individuals are treated with dignity and respect. The Tenant and/or any guest, family, visitor or invitee of the Tenant must comply at all times with Harbourfront Centre's Workplace Discrimination, Harassment and Violence Prevention Policy Failure by the Tenant, or any guest, family, visitor or invitee of the Tenant, to comply with the provisions of this Agreement may result in immediate removal from the premises by the Marina Operator. A copy of this policy is posted in the Marina and may be requested at any time.

The Tenant acknowledges and agrees that prohibited behavior includes, but is not necessarily limited to: public intoxication, profanity, abusive language, racial and/or sexist comments and harassment of any kind. Any Tenant, visitor, guest, family or other invitee of the Tenant who engages in any prohibited behavior or causes harm or

threatens to cause harm to a person or property of anyone else will be subject to immediate removal from the Marina and immediate termination of this Agreement in the Marina Operator's sole discretion. The Tenant is responsible for any actions and behavior of any guest, visitor, family and/or invitee of the Tenant, even in the Tenant's absence.

### **17. No Advertising or Soliciting**

No advertising or soliciting of any kind shall be permitted in the Marina unless authorized in writing by the Marina Operator. Bulletin board postings must be approved in writing and initialed by Marina staff prior to being posted. They shall be removed after two months. No signs including use of banners, dock boxes or sail covers are to be used for promotion. The Marina or Marina Operator's name, address, phone number, photos of the Marina or facilities, maps of the Marina area and e-mail addresses may not be used for business purposes unless authorized in writing by the Marina Operator. The Marina premises are not to be used to promote business or chartering of any kind unless authorized in writing by the Marina Operator. On board activity may not conflict with the interests of the Marina Operator or the occupants therein. Should the Marina Operator learn of any unapproved activity the Tenant will be advised to immediately discontinue such and, if not, will be cause for immediate termination of this Agreement.

### **18. Commercial Boats and Yacht Sales**

Tenant shall not allow or permit yacht brokers, agents or sales persons to establish a business location at the Marina. Small "For Sale" signs are permitted and may be posted on the Boat at the discretion of the Marina Operator. No commercial sales operations of any kind are permitted in the Marina space unless approved in writing by the Marina Operator.

### **19. No Commercial Activity Permitted**

The Marina Operator does not approve or permit the Tenant's Boat to be used as a passenger vessel for reward, remuneration or profit or permit it to be used for any form of commercial activity, business, charter or passenger boat operation unless approved in writing by the Marina Operator. The Tenant, or any representative(s) of the Tenant, shall not offer the Boat to the public for the purposes of overnight accommodation, tours, excursions, water sports, cruises of any type, transport or water taxi or other form of commercial activity unless agreed and approved in writing as outlined in a required separate commercial marine agreement. Overnight accommodation refers to any Bed and Breakfast, Air BnB or other such business. Transport Canada Marine Safety, Ports Toronto and Toronto Police Services Marine Unit will be advised upon discovery of any passenger related commercial activity on the Tenant's Boat. No third party shall make the Tenant's Boat available to the public or promote it in any fashion for any commercial purpose. Charterers and their guests as passengers, as defined in the Canada Shipping Act, are not permitted on the Marina docks and may not board or depart the Tenant's Boat from any of the Marina Operator's managed properties from York Street to Bathurst Street including John Quay. Should the Marina Operator learn of any such activity it will advise the Tenant and/ or its representative(s) to immediately discontinue such activity and/or will be cause for immediate termination of this

Agreement in the Marina Operator's sole discretion. The dockage of any such identified vessel on the Tenants properties will be denied.

## **20. Storage and Dock Boxes**

Tenant shall not store or allow to be stored any gear, bikes, scooters, canoes, kayaks, dinghies, pwc's, chairs, fuel cans, paints, oil, hazardous waste, tables, refrigerators, cooking equipment, supplies, materials, hardware, accessories, wood, doors or debris or the like on the docks, water's edge promenade or breakwater. The Tenant shall not construct thereon any lockers, decks, gardens or other structures. Where required and safe for neighbouring tenants, boarding stairs are permitted with approval in writing from the Marina Operator. Exceptions are given to approved winter term live aboards neatly and safely leaving inflatables, canoes and dinghies on the dock over winter for the purposes of emergency escape.

Marina grade and designed white fiberglass dock boxes are permitted only upon prior written permission and conditions set by the Marina Operator in its sole discretion. Deck or home patio boxes not designed or intended for marina environment use are not permitted under any condition. The Tenant is limited to one (1) marine dock box per assigned Slip. Dock boxes must be white fiberglass, attractive and, appropriate in size and no larger than 72" Width x 24" Height x 23" Depth. Dock boxes must not block pedestrians or access to other boats. Dock boxes must be kept clean and in good state of repair at the sole discretion of the Marina Operator and shall be moved when requested by the Marina Operator. Any dock boxes not kept in good state of repair, including having a missing lid, will be removed with contents by the Marina Operator at the cost of the Tenant. All items including dock boxes must be removed at the end of the Agreement term. Relocation of a dock box must be done immediately should the Tenant's assigned slip be changed within the term or for seasonal purposes including winter accommodation. The Marina Operator makes no representation or guarantee that there will be suitable space for a dock box at the Tenant's slip. In event that a cleat, safety ladder, power or water post or other fixed item including another tenant's dock box prevents the location of a dock box at the Tenant's Slip, efforts may be made, with no guarantee, to accommodate a box at another nearby location. All dock boxes must be affixed to the dock in a manner approved by the Marina Operator to prevent high winds from blowing a dock box or its contents around the Marina and/or into the water. The Tenant must clearly place the Tenant's Boat name on the box or the Tenants last name in the lower left hand corner of the dox box lid so the Marina Operator may identify the ownership of the Dock box at any time.

## **21. Common Area**

All common areas, including, without limitation, buildings, drives, recreational areas and facilities, grounds walkways, parking areas, and all docks, breakwater and piers shall be kept free and clear of obstructions, and no materials or personal property of any kind shall be stored or left on docks outside or beside of dock boxes. No part of the common areas, docks, and finger piers shall be decorated or furnished by Tenant in any manner. All personal property must be kept on Tenant's Boat or within its personal dock box.

## **22. Boat Repairs**

Routine maintenance such as cleaning, and minor repairs necessary for the preservation and seaworthiness of the Boat at individual Slips are restricted to activities that can be performed without materials entering the water, creating loud noise or causing any damage to common areas, docks, or piers. Tenant shall not repair, sand, paint, or scrape any part of the Boat or gear when docked in the Marina or on the docks, the finger piers, or any common area of the Marina.

## **23. Laundry**

Tenant shall not hang laundry on the Boat or anywhere in or around the Marina.

## **24. Swimming, Fishing and Miscellaneous Activities**

Due to boat traffic and other harbour hazards such as potentially high bacteria levels or stray electrical current, swimming, diving, kayak rolling, canoe swamping, paddle boarding and fishing are strictly prohibited within the Marina. The following activities, although not a complete list, are also prohibited in the Marina and on docks, breakwater or piers: fish cleaning, fireworks, firing of marine flares, flying of kites, and use of remote controlled drones from either on the docks or onboard the Tenant's Boat.

## **25. No Assignment or Transfer of Agreement**

The Tenant agrees that it shall not assign or sublet this Agreement. The Tenant agrees that it shall not use, cause, permit or allow its Slip, or permitted dock areas to be used for the docking or storage of any other boat, dock box, or vessel other than the Boat as indicated herein. Slips are not, under any condition, to be offered to potential purchasers. Slips are not to be sold with the Boat or to be a part of any sale, rental or lease agreement. Upon the sale of the Boat it is to be removed from the Marina immediately. This Agreement does not transfer with the sale of the Boat and is not transferrable to any purchaser of the Boat. If a sold boat remains in the marina following transfer of ownership any new owner will be required to complete a new marina application and agreement and pay applicable visitor fees, however, the Marina Operator does not guarantee the availability of any Slip to a new owner of the Boat arising from sale of the Boat by the Tenant. During the winter term the Tenant, as applicant, must be the one living aboard the Boat for the full winter term and is not permitted to sublease the Boat to others for Liveaboard purposes. Children and minors are not permitted to live alone on the Boat and must have adult supervision living aboard with them at all times.

## **26. Boat Sinking**

The Tenant shall endeavor to prevent the Boat from sinking. In the event that the Tenant's Boat should sink in the Marina, the Tenant agrees at its sole expense to remove the Boat forthwith and cover any environmental and other related expenses. If the Tenant should fail to remove the Boat forthwith, then the Marina Operator may remove the Tenant's Boat at the Tenant's sole expense. In the event that the Boat sinks, the Tenant shall be responsible for any and all damage caused to the Boat arising from the sinking and/or the Boat's removal therefrom.

## **27. Liens**

The Tenant agrees that the Marina Operator may claim a lien against a Tenant's Boat and contents for unpaid docking fees or charges for all other services rendered or performed or for any damages to the Marina caused by the Tenant or for any costs incurred by the Marina Operator in exercising any of its rights under this Agreement.

## **28. Extended Vacancy**

The Tenant agrees that it shall notify the Marina Operator of the Tenant's Boat leaving the Marina for any period of time in excess of twenty-four (24) hours. During such period, or other time of vacancy, the Marina Operator may permit other boats to use or occupy the Tenant's Slip on a visiting basis. The Tenant further agrees that the Tenant shall not be entitled to the fees or any portion thereof received by the Marina Operator for the use or occupation of the Slip during the Tenant's vacancy. The Tenant is not permitted to allow other persons use of the Slip for any other boat than the Boat to which this Agreement applies. The Tenant must advise the Marina Operator of any vacancy period through the submission of a sail plan for both Tenants safety and vacancy information purposes. The Tenant shall not be entitled to any form of refund or prorated fee adjustment as a result of not occupying the slip unless agreed in writing by the Marina Operator.

## **29. Children and Personal Flotation Devices (PFDs)**

Children and minors must be supervised and accompanied by an adult at all times. Children must wear an approved and weight appropriate life jacket, pfd or an approved inflatable at all times within or near the Marina area. They are not under any condition permitted to swim in the marina.

## **30. Pets**

Pets must be leashed on the docks and within the Marina area at all times. In event that pets cause a nuisance or, at the discretion of the Marina Operator, a threat or nuisance to others, the Tenant shall immediately remove the pet from the Marina area. Pets are not permitted in the office, washroom, shower and laundry areas at any time. Tenant's must clean up after pets and must abide by all City By-Laws particularly the Animals Bylaw:

<https://www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/>

In event of a pet causing disruption, Tenants should contact Security and/or call Toronto 311 for City of Toronto By-Law Officer support.

## **31. Personal Property**

It is understood and agreed that all of Tenant's personal property must be removed from the Marina area upon the termination of this Agreement. This includes, but is not limited to, dock boxes and contents. Should such personal property not be removed within seven (7) days following the Marina Operator's request to do so, the property will be removed and disposed of by the Marina Operator at the cost of the Tenant. The Marina Operator shall not be responsible for any damage or loss incurred by the Tenant with respect to Tenant's personal property, no matter the cause.

### **32. Entry and Exit to/from Marina (No Wake Speed)**

All boats operating in the Marina must enter and exit the Marina at a no wake speed so as to cause no discomfort, damage or injury to person or property. Tenants are liable for any and all damage or injury caused to any property or person by the Boat's wake. The Tenant's Boat shall not be towed into the Marina unless due to mechanical failure while underway. The Tenant acknowledges that upon any mechanical failure Tenant will notify and keep the Marina Operator updated, have the Boat repaired swiftly, moved or towed out particularly if the Boat is not in its assigned Slip. The Tenant must maintain the engine(s) and drive train(s) systems so they are fully operable throughout the term so the Boat can move at any time under its own power.

### **33. Marina Operator Not Responsible for Channel Markers**

The Marina Operator shall in no way be responsible or held liable for any damage or loss arising from the improper placement or shifting of channel markers, buoys or other navigational aids in the approach channels or in the Marina area. The Tenant must keep abreast and watch for any submerged areas as a result of high water levels.

### **34. Tenant's Sole Risk and Indemnity**

Use of the Marina or its facilities by Tenant shall be at the sole risk of the Tenant. The Tenant agrees that the Marina Operator and, in the case of Marina Quay West, the Marina Operator and the City of Toronto, shall not be liable or responsible for any damage, loss, injury or death arising from or out of any occurrence, in, upon, at, or relating to the Marina, or injury or damage to property of the Tenant, from any cause whatsoever, whether or not such death, injury, loss or damage results from the negligence of the Marina Operator or its respective employees, servants or agents or other persons for whom it may in law be responsible. The Tenant agrees to indemnify and hold harmless the Marina Operator and, in the case of Marina Quay West, the Marina Operator and the City of Toronto, and save them harmless from and against any and all loss, claims, damages, liability, causes of action and expenses in connection with the loss of life, personal injury, loss or damage to property arising from or out of any occurrence in, upon or at the Marina occasioned wholly or in part by any act or omission of the Tenant and that such indemnification shall survive the termination of this Agreement.

### **35. Agreement Cancellation**

The Tenant shall have the right to cancel this Agreement at any time prior to the Agreement start date for both summer and winter terms with a full refund less a cancellation fee, which shall be the amount of the paid non-refundable deposit. In event of the Tenant's self-termination of the Agreement after the Agreement start date, the Tenant shall pay for the Slip based on published seasonal or monthly fees from the Agreement start date to the date the Boat departs the Marina. The Tenant may be held responsible for the payment of the fees for the full term of the Agreement. Should the Tenant wish to cancel the Agreement at any time following the Agreement start date, the Marina Operator requires confirmed receipt written notice of the reasons why the Tenant desires to cancel the Agreement and must specify the Boat departure date.

Verbal notices will not be accepted. The Marina Operator maintains the right, at its sole discretion, to approve or decline any Tenant requested refund.

### **36. Early Arrivals and Late Departures**

Unless otherwise agreed in writing in advance with the Marina Operator, in event that the Tenant arrives prior to the start of the Agreement term or fails to remove its Boat from the Marina upon completion of the Agreement term, the Tenant shall pay to the Marina Operator a visitor fee based on the valid rate for each day upon which the Boat is in the Marina. The Tenant acknowledges that following the closing date of the Agreement term the Marina Operator must prepare the Marina for winter in-water dockage or the new summer season. The Tenant further acknowledges that the Tenant's assigned Slip is not guaranteed and the Tenant may have to occupy a different Slip or move its Boat between one or more Slips outside of the Term. Power and freshwater services may be shut off without notice at the end of the summer dockage term. The Marina Operator has no obligation to accommodate early arrivals or late departures outside of the Term of the Agreement.

### **37. Dock Attendant Staff**

Dock attendant staff are generally available in accordance with the posted hours at each Marina office. Staff may be contacted at the Marina office, at posted phone numbers or on VHF Ch. 68 as Harbourfront Centre Dock Master or the Marina name, during such hours for assistance. If the Tenant requires Amsterdam Bridge lift service, the Tenant must provide ample notice and recognize the Marina Operator may be servicing other tenants. The Tenant shall not exit its Slip or enter the Marina until the lift bridge portion is fully lifted and an all clear signal is given by the Dock Attendant. If arrival or dockage assistance is required, the Tenant must not attempt to exit the Slip or enter the marina until staff is confirmed and present. The Tenant must follow bridge lift procedure as posted.

### **38. Boat Operator Competency**

The operator(s) of the Tenant's Boat shall hold both a valid Ports Toronto Power Boat Operators License and shall comply with Federal Government requirements concerning operator competency. If the Marina Operator feels the Tenant exhibits weak or poor operator competency the Marina Operator has the right to move the Tenant to an alternate slip or remove them from the Marina, at Marina Operator's sole discretion.

### **39. Visiting Tenants**

Any Tenant who is a visiting Tenant acknowledges that check out time is at 1100 hours daily. In event that the visiting Tenant fails to depart the Marina by such time, the visiting Tenant agrees to pay to the Marina Operator a docking fee for the period that the Boat remains in the Marina.

### **40. Slip Location**

Slip locations are not guaranteed. The Marina Operator reserves the right to alter, from time to time, the assigned Slip location to be used for dockage of the Tenant's Boat. Assigned slip locations may be changed by the Marina Operator for business purposes,

to eliminate or reduce conflict between Tenants or to create efficient use of the docks and Marina space. In event of a high water levels which results in the Tenant's Boat no longer fitting in the assigned Slip due to length, beam or height, the Marina Operator retains the right, in its sole discretion, to move the Boat to an alternate slip until such time that the water levels subside and there is no longer an issue with the Tenant's Boat fitting into the assigned Slip. Upon decrease of the water level to a suitable level the Tenant shall immediately move its boat back to the assigned Slip. The temporary occupancy of a Slip during one term does not give the Tenant any rights to that Slip in subsequent terms. The Marina Operator does not guarantee the accommodation of a Tenant's Boat during periods of high or low water. If a proper slip cannot be provided under either condition for the Tenant's Boat the Tenant shall be offered a prorated refund and will be required to vacate the Boat from the Marina. The Marina Operator shall not be responsible for moving the Tenant's Boat at any time. However, the Tenant authorizes the Marina Operator to move the Tenant's Boat (at the Tenant's sole expense) as may be required in the event of an emergency or to avoid loss or damage to Marina property, as determined in the sole discretion of the Marina Operator.

#### **41. Restricted Purpose**

The Tenant agrees to its use of the Marina and the Marina facilities for their intended purpose only – the dockage of a pleasure craft to be used as such on a regular basis. The Tenant shall not use the Marina for the purposes of using the Boat as a permanent and only residential location during the summer term. The Tenant acknowledges and agrees that the Marina is not being operated primarily as a residential location for the Tenant. The Landlord and Tenant Act does not apply to Slip occupancy. The Marina Operator reserves the right to limit the number of seasonal live aboards during the summer term as it sees fit. The Tenant acknowledges that the Tenant will take the Boat in and out of the Marina for use as a pleasure craft and it will not remain stationary in its Slip for the term (excluding winter).

#### **42. Acceptance Deadline**

This Agreement must be accepted by the Tenant within the Swell Advantage Marina Management Software application either on line or, if presented, a hard copy document and returned by the required seasonal deadline. The application for each term must be accompanied with the required non-refundable deposit to hold a Slip for the Tenant to May 1st for a summer term or November 4<sup>th</sup> for a winter term. The Tenant acknowledges that the Tenant will forfeit the previously assigned Slip if they do not comply with all terms and conditions including submission of a Swell Advantage application other required documents, including valid insurance and deposit payment, prior to May 1st for the summer season and November 4<sup>th</sup> for winter. The Tenant acknowledges that upon receipt of an Application Approved e-mail message from Swell Advantage that they will accept the electronic contract and make required payments as outlined in provided invoice(s).

#### **43. Fee Payments**

The Tenant agrees to pay to the Marina Operator the dockage fees herein stipulated upon online acceptance of and/or execution of this Agreement and to pay any

additional fees upon demand. The Tenant further agrees to pay for all other services performed or rendered by the Marina Operator in accordance with any invoice generated by the Marina Operator. Payment of fees shall be completed through a Swell Advantage electronic contract invoice link by approved credit card through the credit card payment processor Square Inc. or a provided money order or certified cheque.

#### **44. Pro-rated Fees**

Pro-rated summer seasonal fees are offered only as of June 15th for summer if any slips remain available. Slips will not be held before June 15th for any tenant seeking pro-rated fees. Pro-rated fees only apply on summer agreements dated to terminate October 15th. Full season long fees apply where the Marina Operator holds or the Tenant occupies a seasonal Slip before June 15th. Refunds on seasonal fees on a prorated basis will only be offered under certain specific conditions in the Marina Operator's discretion and as approved by senior staff as per the Marina Operator's refund policy. Payment is due for the full term upon execution of this Agreement. Installment plans offered via Swell advantage are subject to administration fees. Full payment must be made by August 2<sup>nd</sup> for a summer term and by February 1<sup>st</sup> for a winter term.

#### **45. Supplementary Watercraft**

The Tenant acknowledges that additional fees may be due for the in-water storage of supplementary boats such as personal water craft (pwc's), inflatables, dinghies or the like. Such craft shall occupy the same Slip as the Tenant's Boat. Fees for such craft docked at their own Slip in the Marina are payable at current posted rates.

#### **46. Vehicles, Loading and Unloading**

The Tenant agrees that no vehicle parking or vehicular access to its Boat is included with the Agreement. Loading and unloading supplies onto the Tenant's Boat is permitted provided it is done so within the 15 minute allowed time using four way flashers in a lawful manner using designated nearby roads or identified loading zones. Under no circumstances are vehicles to be driven on promenades and sidewalks within the Marina area. The Tenant acknowledges that all vehicles found otherwise shall be tagged and towed at the expense of the Tenant.

#### **47. Dock Carts**

The Marina Operator provides dock cart(s) for use by the Tenant to transfer groceries, luggage and other clean light weight items to and from the Boat. The Tenant agrees to return such cart(s) to the proper place in a clean and good state of repair. Such carts shall not be used for the transfer of heavy items that may cause damage to the cart or transport greasy, oily or dirty items that may stain or dirty the cart. The Tenant must lock up the cart after use. The Tenant shall be responsible for any damage or loss caused to or by the cart while under the use of the Tenant.

#### **48. Satellite and Antennas**

Tenant shall not install any signal reception hardware such as satellite dishes, internet / Wi-Fi antennas or the like in the Marina area without written consent of the Marina

Operator in Marina Operator's sole discretion. Such equipment shall be removed upon termination or expiry of this Agreement or if otherwise requested by the Marina Operator. Equipment must be removed immediately upon request at the sole expense of the Tenant.

#### **49. Adjacent Slips**

Should the Tenant request use of an adjacent vacant Slip, or the Marina Operator is unable to physically locate another boat beside the Tenant due to the beam (width) of the Tenants Boat, the Tenant agrees to pay an additional fee, if levied by the Marina Operator, for such Slip (summer term only).

#### **50. Slip Assignments**

The Tenant acknowledges that certain Boat length and beam limits apply to the Slips within the Marina. All Slip assignments shall be at the sole discretion of the Marina Operator using Swell Advantage Marina Management Software. The Tenant shall not relocate its Boat or occupy an alternate location or slip without written advanced approval from the Marina Operator. Boats may only occupy the specific Slip that is assigned to the Tenant in this Agreement. Boats found in unassigned slips may be moved at the Tenant's expense and may be subject to additional fees at the Marina posted per day visitor rate. If the Tenant purchases a new boat, the Tenant must seek advanced approval and slip assignment prior to the arrival of the newly acquired boat. The Marina Operator does not guarantee a slip for any newly acquired boat.

#### **51. Winter Dockage**

If this Agreement has been accepted for winter dockage, the Tenant acknowledges that additional terms and conditions in form of an addendum specific to winter dockage may accompany this Agreement. If the Tenant accepts the terms and conditions of this Agreement they also agree to the terms and conditions contained within any such addendum.

#### **52. Animal Deterrence**

The Tenant agrees that the Marina Operator is not responsible for any damage, loss or mess that may be caused by nuisance animals such as raccoons, ferrets or the like. The Tenant shall keep its Boat tightly closed, clean and tidy to deter such animals from entering the Tenant's Boat or Marina. The Marina Operator is not obligated to trap, catch or remove any such nuisance animals from the Marina.

#### **53. Nuisance Odours**

The Tenant shall ensure that any odour emanating from the Boat or its contents is not offensive, a nuisance, bothersome or unhealthy to those in the Marina at the sole discretion of the Marina Operator. Upon notification of such the Tenant shall take immediate action to eliminate such odour to the satisfaction of the Marina Operator at Tenant's sole expense.

## **54. Ice Agitation Devices**

For the winter term the Tenant must use proper approved ice agitation device(s) of a suitable size and quantity for the described Boat at the sole discretion of the Marina Operator. The Tenant shall keep such in working condition, properly positioned and turned on throughout the winter term (as required in below freezing temperatures) to keep the Boat's hull area clear of ice. The Tenant shall pay additional electrical fees based on published rates for any use of such devices including the use of such devices in summer to keep debris away from the Boat.

## **55. CSA-Approved Electrical Devices**

The Tenant shall use only Canadian Standards Association (CSA) approved marine grade electrical devices including cords, plugs, adapters and other equipment. The Tenant acknowledges that the Marina works closely with the Electrical Safety Authority (ESA) and the ESA does conduct inspections. If any electrical devices do not meet CSA, ESA or the Marina Operator's approval the Tenant will be immediately advised and must follow instruction to remove or replace such devices immediately. If such devices are found to be unsafe or not kept in neat order the ESA and/or the Marina Operator has the right to disconnect and remove such devices or turn off all power to the Boat or the dock immediately without notice and at the Tenant's expense. The Marina Operator will not compensate the Tenant for any loss of consumables as a result of such a power shut down. Upon notification that a particular electrical configuration, device or cord is not suitable or safe the Tenant must take immediate correction action or electrical shut down will result.

## **56. Power Consumption**

Summer Power Consumption. The Tenant acknowledges that the cost of any consumption of power for access to one 30-amp service for a summer term is included in dockage fees. Discounts on dockage rates are not offered if power is not required or not available. The Tenant shall pay the published rate, as invoiced, for the use of any additional electrical outlet(s), if available, and approved by the Marina Operator in writing. The Tenant shall not move its Boat into another tenant's assigned slip or any visitor slip or other location to obtain power unless agreed in writing by the Marina Operator. The Marina Operator is not obligated to provide power under any circumstance and shall not be liable or responsible in any circumstance for any loss or damages, including loss of food or drink, incurred by the Tenant resulting directly or indirectly from the stoppage of electricity from an electrical power failure or shutdown however caused and no matter how long the stoppage of electricity lasts. This includes the flooding or water damage to electrical components caused by high lake water levels. In event of an electrical failure the Tenant must immediately call the Harbourfront Centre Security Department to report the issue.

Winter Power Consumption. The Tenant acknowledges that the cost of power consumption for a winter term is NOT included in dockage fees. The Tenant agrees to pay the Marina Operator the applicable fee for access to a pre-selected and approved 30, 50, 60 or 90 amps at designated and assigned outlet location(s). The Tenant shall not add or use additional power without first submitting an additional power order form

with payment and receiving approval from the Marina Operator. The Tenant is required to provide alternate power supplies should there be a stoppage of electricity from a shorter term electrical power failure however caused. The Marina Operator shall not be liable for any damages resulting directly or indirectly from the stoppage of electricity or an electrical power failure or shutdown however caused and no matter how long the stoppage in electricity lasts. Refunds for winter power consumption will not be offered. The Marina Operator shall endeavor but will not guarantee to provide an emergency generator for the affected pier or the Marina should a major prolonged local power outage occur. The Tenant must comply with industry generator safety guidelines should a portable personal gas generator be used.

### **57. Blocking Access**

The Tenant shall not tie any Boat or item onto or block access to any of the Marina safety ladders, safety equipment, power pedestals, water supply posts or fire extinguishers and shall only tie the Boat to provided cleats or bollards.

### **58. Fastening and Securing Brackets**

The Tenant shall not fasten or secure any brackets, dock whips, supports or structures to the docks for the purposes of securing the Boat or personal watercraft docking system without the written consent of the Marina Operator. The Marina Operator must install such devices so they are secured correctly as to not cause damage to the dock. The Tenant shall pay a fee to the Marina Operator for any such installation including all time and materials.

### **59. Marina Operator Acceptance Rights**

The Marina Operator reserves the right to accept or decline any hard copy document or on-line submission as application for dockage without cause.

### **60. Tenant's Risk Assumption**

The Tenant, as a responsible prudent boat owner, acknowledges and assumes all of the risks of keeping their Boat in the Marina within Toronto Harbour and understands the risks of exposure of the Boat to waves, wind, precipitation, temperature, high or low water levels, ice and any potential weather event throughout Slip occupancy and the full term of this Agreement. The Marina Operator assumes no responsibility for these or other risks.

### **61. Theft, Damage and Vandalism**

The Marina Operator will not be responsible for any damage to the Tenant's Boat and belongings however caused. The Marina Operator will not be responsible for any theft, damage or vandalism caused as a result of unknown persons entering the docks or the Tenant's Boat.

### **62. Security**

The Tenant acknowledges they have chosen to keep their Boat in a public marina accessible by both land and water. The Marina Operator endeavors to provide certain security for land access only, including the provision of dock key locked security gates,

limited security camera coverage, gate and office door signage, a locked private washroom/ laundry area, and 24/7 on call Security (416-973-4885). The Tenant is solely responsible for keeping the Boat locked and closed up, to lock valuables below or not leave them onboard and to make sure all persons visiting the Boat close dock gates behind them whether entering or exiting the dock. Tenants should report any breach of security within the Marina or onboard the Tenant's Boat immediately to Marina Operator's Security personnel and/or the Police. The Tenant also acknowledges that the Toronto Police Marine Unit is nearby and the Tenant agrees to report any witnessed criminal act including vessel hit and run collision damage to Police immediately.

### **63. Water Consumption**

The Marina Operator has the right to charge Tenant an additional fee for high consumption of City water from any hose bib on the dock or on or within the Marina building. Water shall be consumed for purposes of filling potable water tanks and performing necessary wash downs. Water shall be conserved and not left running unnecessarily. Dock water may be turned off without notice to conduct repairs or prevent freezing.

### **64. Pedestrian Bridge and Assumption of Risk**

Should the Tenant's Boat be docked under the Amsterdam pedestrian bridge, the Tenant is hereby advised that the Marina Operator shall not be responsible for any damage, loss or injury to the Boat or other property of the Tenant as a result of water, rust, cigarette butts, pop cans or any other debris being thrown on or falling on to the Tenant's Boat. If conditions do not meet the Tenant's satisfaction, the Tenant shall move its Boat to an alternate suitable mutually agreed location within either of the Marina Operators two Marinas or, if suitable space is not available at these locations, to an alternate Marina and a prorated refund based on conditions may be offered.

### **65. Governing Law**

This Agreement shall be interpreted in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The parties attorn to the courts of Ontario.

### **66. Agreement Headings**

Any headings used in this Agreement are inserted for reference only and in no way define or limit any of the provisions hereof.

### **67. Severability**

A declaration by a court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable shall in no way affect the validity or enforceability of any other provisions of this Agreement.

### **68. Events of Force Majeure and Water Levels**

The Marine Operator shall not be liable or responsible for losses, injuries or damages of any kind incurred by the Tenant where same are caused by reason of force majeure, being an event beyond the Marina Operator's reasonable control. Force majeure events

shall include but not be limited to an accident, fire, action of elements and natural disasters including, among other things, rising water levels, or civil commotion, medical epidemic, act of God, or acts of prohibition of any government authority and acts of war, insurrection and terrorism. If an event of force majeure prevents the Marina Operator from carrying out its obligations under the Agreement, such event shall excuse such non-performance by the Marina Operator until such time that the force majeure event ceases.

The Marine Operator will not be held responsible for any damage caused to the Boat or other equipment as a result of flooding, high or low water levels or the lack of shore side fender surface, any high water re-position, removal of a fender or any wake or wave impacting the vessel or its fenders. The Tenant agrees to assume full responsibility for leaving a Boat alongside any berth during periods of extreme water levels. The Tenant shall abide by any advisories or notices issued by the Marine Operator, Ports Toronto or the Police regarding vessel speed and wake to avoid vessel damage and shoreline erosion during periods of high water.