



Customer: \_\_\_\_\_

Boat: \_\_\_\_\_

## Update to Terms and Conditions of Storage

### Storage Agreement & Fine Print:

**1. Premises and Use:** Portland Shipyard / Portland Yacht Services (“PYS”) hereby agrees to store Vessel on Property that is owned or controlled and occupied by PYS, for the purpose of servicing and storing boats and ships. The Parties expressly agree that this is a service contract and not a lease. This agreement shall not create a property interest in any land, building, residence, or any other form of real estate. PYS reserves the right to transport the vessel between our multiple service locations as needed.

**2. Term:** This agreement is for the current seasons only. Summer season commences on May 15, 2023, and ends on October 15, 2023, and Winter season commences on October 15, 2023, and ends on May 15, 2024. Space availability for the current seasons does not guarantee availability for successive seasons. In the event the Vessel(s) is not removed from the facility by the last day of the current season, the next season’s fees will be applied. Multihull vessels must leave the premises no later than May 20, 2024. Failure to leave by that date will result in lay days being charged.

**3. Fees and Payment:** Owner shall pay to PYS, at the rate described above for services performed by PYS or third-party contractor (“Service Fee”). A separate fee may apply for any additional Services that are necessary and performed in good faith by PYS or third-party contractor on Owner’s behalf. In addition to the agreed upon Fees, payment for any labor, materials, consultation, or any other fees (collectively “Fees”) are due upon receipt of an invoice unless other terms are expressly provided in writing. Any balance not paid within 30 days or within the terms of the invoice will be assessed a late fee of 1.5% per month, compounding monthly. The owner expressly grants PYS the right to refuse to launch or otherwise release the Vessel to the Owner or any other third party until all fees are paid in full, including fees generated pursuant to Paragraph 4 below. Any launch or release of the Vessel without payment in full of all fees shall not be deemed a waiver of any right of PYS to collect fees under this agreement or any other state or federal law.

**4. Time and Materials:** To the extent and estimate is provided, such estimates are based information gathered through visual and non-destructive testing. The owner acknowledges that once demolition or disassembly commences, Portland Yacht Services (“PYS”) may discover further information that could affect the closing price. **The final invoice can be +/- 15% of the estimated price.** In the event the closing price is expected to exceed 15% of the estimated price, PYS shall make best efforts to communicate with Owner the circumstances that will alter the scope and/or price of the work. Unless specifically agreed to in writing, all work will be performed on a time and materials basis and the rates and markup indicated herein.

**5. Facility Rules:** Additional rules concerning the use of the facility and other PYS-owned Property by Owner, and guests may be established and posted by PYS (“Facility Rules”). The Facility Rules also include the PYS Environmental Agreement. The owner hereby agrees to abide by the Facility Rules. The Facility Rules may be amended from time to time at the sole discretion of PYS. The owner further agrees to make best efforts to ensure employees, invitees, family members and guests adhere to the Facility Rules. Owner agrees to be held responsible in the event Owner’s agents, family members, or guests breach the Facility Rules. Owner acknowledges that violation of any terms of this agreement or of the Facility Rules on the part of Owner, or Owner’s agents, guests, or family, could result in Termination of this Agreement and the expulsion of the Vessel(s) from the facility with or without a prorated refund at the sole discretion of PYS. PYS will verify measurements of vessels as needed.

- a. **Vessels on site are required to notify the office of what type of batteries are on their vessels.** All Vessels stored indoors will have a battery monitoring sensor placed on the vessel. This battery monitoring sensor will result in a charge on the account of \$35.00.

**6. Change Orders:** Owner may amend, update, and adjust the scope of work or details of the project at any time upon timely written notice to PYS. PYS may respond with an amended Estimate/Work Order that will be signed by the Owner. No change order shall take effect until the amended Estimate / Work Order is signed by Owner and received by PYS.

**7. Notice of Lien:** Owner acknowledges that pursuant to 10 M.R.S.A. § 1381 *et seq.* the Vessel, along with any motor, trailer, tackle, apparel, and furniture are subject to a lien to secure payment for any and all amounts due PYS under this Agreement or any other request by the Owner for services provided to the Vessel. Owner further acknowledges that services provided under this Agreement are necessary for either preservation of the Vessel or for its safe and effective operations. If Owner fails to pay full amount due within 30 days of the due date, PYS shall have the right to resort to any and all remedies under applicable law. Owner agrees that in the event PYS must pursue enforcement of the lien, PYS shall add reasonable attorney’s fees to the invoice, and such fees are a “reasonable expense of the sale” under 10 M.R.S.A. § 1385. Owner agrees to reimburse PYS for any other costs and attorney’s fees not otherwise awarded to PYS under the statute incurred in the collection of payment under this agreement or for any action to enforce this agreement including any action under U.S. Admiralty Law. In the event the Vessel remains on the property six months after the end of the term identified by this agreement, PYS may, at its discretion, dispose of the Vessel by any commercially reasonable method including cutting up and scraping the Vessel. In the event



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PYS scraps the Vessel, in addition to any storage fees already accrued, Owner will pay a disposal fee consisting of either (1) the time and materials expended, at PYS shop rates, to cut up and load the Vessel and any fees charged by a waste hauler.

**8. Bailment and Risk of Loss:** Owner acknowledges that PYS is not responsible for any loss of or damage to the Vessel including, but not limited to, vandalism, theft, fire, flood, explosion, hurricane, lightning, windstorm, earthquake, subsistence of soil, failure or destruction of supporting property or materials, discontinuance of power, freezing, regardless of whether such damages or loss were caused by the negligence of PYS personnel. The risk of loss of the Vessel shall at all times remain with the Owner. The owner agrees to have his/her Vessel properly registered, equipped, maintained, and insured, including hull and liability insurance in an amount satisfactory to PYS. The owner shall provide PYS with written proof of insurance upon request in a form satisfactory to PYS. The owner's insurance shall cover any operation of the Vessel by PYS personnel for testing purposes and for any pick up or delivery serviced performed by PYS employees or subcontractors. Owner agrees to waive any rights of subrogation by his insurer against PYS for all damages caused by the negligence of Owner or Owner's agents, or PYS personnel, including any damages incurred in the operation of the Vessel during testing, pickup or delivery. Owner acknowledges that nothing in this Agreement or in any dealings between the parties to this Agreement constitutes or establishes a bailment and that at all times Owner shall be responsible for any and all damage Owner or the Owner's guest may cause in whole, or in part to other boats at the facility. To the extent Owner has requested PYS pick up or deliver the Vessel, Owner consents to the operation of the Vessel and agrees to disclose any condition of the Vessel that could reasonably affect the safe operation of the Vessel during said pick up or delivery.

**9. Removal of Vessel Before Term:** If Owner requires Vessel to be removed from the Facility prior to the end of the term defined in Paragraph 2, Owner agrees to pay all expenses related to moving boats and any other obstructions blocking the Vessel.

**10. Compliance:** Owner agrees to comply at all times with all federal, state, and local codes, ordinances, regulations, and laws relating to or regulating the use of the Facility. Owner further agrees that Owner shall not create any unsafe condition in the Facility, and shall not bring into, or store or use in the Vessel or the Facility, any hazardous materials.

**11. Third Party Contractors:** In general, PYS is a closed facility. Owners planning to work on the Vessel themselves or with third-party contractors must obtain the prior written consent of PYS. Such a request must detail the scope and method of the planned work and such consent, if granted, will be limited to the stated scope of work. PYS's consent on any given project should not be considered consent on any other project. Owner agrees to abide by all applicable local, state, and federal laws and regulations with respect to any work performed by Owner or the Owner's agents or contractors. Owner agrees, to the maximum extent permitted by law, to indemnify, hold harmless, and defend PYS from and against any and all damages, fines, costs, or expenses of whatever kind, including attorneys' fees, suffered or incurred by PYS or its employees, that result from, Owner's or Owner's agents and contractors failure to abide by applicable local, state and federal laws and regulations or Owner's, failure to obtain any necessary permits or certificates, or otherwise abide by this Agreement. Third party contractors are required to complete a subcontractor agreement with PYS. Subcontractors must have liability insurance of at least \$1,000,000. Furthermore, both the third-party contractor as well as the vessel must have Worker's Compensation coverage.

**12. Assignment:** This Agreement is specific to Owner only and is not assignable or transferrable by Owner to any person or entity at any time. PYS may assign this Agreement at any time and for any reason.

**13. Insurance:** Owner shall insure Owner and Vessel with vessel liability (Protection & Indemnity and Pollution) coverage, on an occurrence basis and in such amounts and with such Maine admitted companies and against such risks as PYS shall reasonably require and approve. Owner promptly shall deliver to PYS complete copies of Owner's insurance policies upon request from PYS. Owners shall list PYS as additionally insured with a waiver of subrogation. Vessels with a value up to \$100,000 will require a minimum of \$300,000 liability coverage. Vessels with a value up to \$500,000 will require a minimum of \$1,000,000 liability coverage. Vessels with a value up to \$2,000,000 will require a minimum of \$2,000,000 liability coverage. Vessels with a value over \$2,000,000 will require a minimum of \$5,000,000 liability coverage.

**14. Emergencies:** Severe weather may require PYS to move or temporarily relocate the Vessel(s). Should PYS determine that it is necessary to move or relocate the Vessel(s), Owner authorizes PYS to do so at Owner's sole expense. Owner further authorizes PYS to take any and all actions necessary to secure the Vessel or any part of the Vessel in the event the Vessel becomes a hazard to itself or to other persons or property; however, nothing in this agreement shall establish PYS's obligation to do so and Owner acknowledges that while the Vessel is stored in the building or elsewhere on PYS property, Owner is at all times responsible for securing the Vessel and all parts of the Vessel including during times of severe weather.

**15. Governing Law / Interpretation:** This Agreement shall be governed in all respects by the laws of the State of Maine and any applicable federal law. Both Parties consent to jurisdiction under the state and federal courts within the State of Maine. All actions arising directly or indirectly as a result or in consequence of this Agreement shall be instituted and litigated only in the applicable Maine court.

**16. Disclaimer of All Warranties:** PURSUANT TO 11 M.R.S.A. § 2-719 AND ANY OTHER FEDERAL AND STATE LAW, OWNER ACKNOWLEDGES THAT PYS MAKES NO WARRANTY WHATSOEVER EITHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF



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PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO ANY PRODUCT OR SERVICES ENCOMPASSED WITHIN THIS AGREEMENT.

**Environmental Agreement:**

This agreement is in alignment with the Maine Clean Boatyards and Marinas program. We ask that as a valued customer you respect and abide by this agreement.

**Storm water Runoff, Erosion and Sedimentation Controls**

- All work will be performed in a designated area approved by PYS.
- No Debris, waste chemicals, fuels, paints, or sewage will be dumped on the ground.
- Any and all spills will be reported to PYS immediately.

**Boat Maintenance & Repair**

- Any hull, deck or bottom sanding that takes place outdoors will be done with either a vacuum sander or over a tarp or other containment system. Ground protection is required.
- All debris from such activities will be properly disposed of immediately. Debris will be removed at the end of each workday.
- Whenever possible, phosphate-free biodegradable detergents/cleaning compounds will be used.
- Tarps will be used to collect any paint or chemical drips during application.
- Non-toxic antifreeze will be used whenever possible and recovered for proper disposal.
- Overboard discharge of sewage holding tanks either into the water or on to land is strictly prohibited.

- All used motor oils, lubricants, oil, and filters will be collected for appropriate disposal. You must notify a PYS employee whenever you have these items for disposal.
- In-water bottom and boat washing are prohibited.

**Fueling Activities/Petroleum Control**

- Proper fueling procedures will be observed at all times.
- Spill catching devices should be used during refueling.
- In the event of a spill, immediate action should be taken to stop the spill, contain it and immediately notify appropriate PYS personnel and authorities.
- No detergents or emulsifiers will be used on the spill.

**Waste Recycling, Disposal & Storage**

- All solid waste, including pet waste, will be disposed of in an appropriate waste container.
- Pet waste must be picked up and immediately disposed of properly.
- Waste oil, diesel fuel and filters will be collected for proper disposal. You must contact PSY personnel before dropping off any of these items. Drop off will be in a designated area only.

**Boat pump outs and Sewage**

**These environmental practices, most of which are State and Federal Law, are some of the conditions referenced in our contracts and upon which access to our facility is granted. Everyone on site must agree to abide by them or be dismissed from the premises. Failure to adhere to good environmental practices may result in legal ramifications including civil penalties and recoverable costs resulting from remediation. All of the costs are the responsibility of the vessel and its owners. I have read and understand these environmental practices and agree to abide by them. I understand that my failure to do so may result in additional charges to include PYS cleanup costs at a minimum of 4 hours labor at \$109 per hour, third party disposal fees and reimbursement of any fines administered to PYS as a result of negligence.**

**Revision Date: August 2, 2023**