

S M S C M O O R I N G R E N T A L A G R E E M E N T
(2020 Edition)

This **Mooring Rental Agreement** is made **BETWEEN:**

ST. MARGARET SAILING CLUB

5 Foxberry Hill Road, Mariner's Anchorage, Croucher's Point, French Village Harbour, Glen Haven, Nova Scotia, Canada B3Z 2W2 [Tel: (902) 823-1089] (**The "CLUB"**)

- and -

The **"RENTER"** as identified on the RENTER's invoice

WHEREAS:

- 1 the CLUB is owner of (or otherwise authorized to rent) the mooring identified on the RENTER's invoice (the "Mooring"), at the CLUB's marine facilities at Glen Haven;
- 2 the RENTER is a Regular Member (Family, Single, or Intermediate) of the CLUB;
- 3 the RENTER has agreed to rent the Mooring from the CLUB, for docking of the boat (the "Boat") identified on the RENTER's invoice, subject to the term and conditions of this Agreement, and subject to such changes or other terms and conditions as the Board of Directors of the CLUB may from time to time effect by resolution of the Board of Directors;
- 4 the RENTER warrants that the RENTER is the owner (or lawful charterer) of the Boat.

NOW THIS AGREEMENT WITNESSES:

- 1 **CONSIDERATION** – In consideration of payment of all rates, fees and charges agreed and observance of the mutual covenants set out below, the CLUB and RENTER agree as follows:
- 2 **LIMITATIONS ON USE** - This Agreement only applies to allow mooring of the described Boat.

- 3 **TERM** - This Boat Mooring Rental Agreement is for the period identified on the RENTER's invoice, after which time, if not sooner terminated.

- 4 **ANNUAL FEES** – The Annual Fee (the “Annual Fee”) for a Mooring is identified on the RENTER'S invoice and must be paid in full to the CLUB within 30 days of the invoice date. The Annual Fee is earned when paid. Dates of Mooring availability will be announced by the CLUB.

- 5 **SERVICES** – The Club's services are limited to the provision of a Mooring with pennants and of in-water berthing of the RENTER's tender on a space-available basis.

- 6 **TERMINATION** – This agreement shall automatically terminate 30 days following non-payment when due of the RENTER's Annual Membership Dues or the Annual Fee. The Agreement may also be terminated unilaterally by the parties as follows:
 - A. Termination by the RENTER – The RENTER shall give the CLUB a minimum 30 day's written notice of intent to terminate this Agreement.

 - B. Termination by the CLUB:
 - (1) For Cause – The CLUB may terminate this Agreement for cause if the RENTER violates any terms or conditions of this Agreement or its incorporated obligations, or those arising from the RENTER's CLUB Membership. If the Renter is deemed by the CLUB to be in violation of any of the terms and conditions of this agreement or the RENTER's CLUB Membership, the CLUB shall have the option of terminating this Agreement upon the lesser of 3 day's actual notice, or 10 day's written notice to the RENTER posted onboard the Boat and/or otherwise given to the RENTER, without waiving any other rights of the CLUB under this Agreement. The RENTER must remove the Boat from the Mooring prior to the end of the notice period.

 - (2) Not for Cause – The CLUB retains the right to terminate this agreement without cause, at any time, upon ten 10 day's written notice to the RENTER. In such cases, any prepaid Annual Fees, charges, or expenses shall be pro-rated, and any surplus returned to the RENTER, and the RENTER shall remove the Boat by the termination date so notified. Nothing in this paragraph shall waive any other right the CLUB has or may have under this Agreement, at law, equity or in admiralty.

C. Removal – If the RENTER fails to remove the Boat and equipment from the rented Mooring and CLUB premises before the termination or expiration of this Agreement and after reasonable notice, the CLUB shall be entitled to:

- (1) Remove the Boat and store, dock or re-moor the Boat at any location in any commercially reasonable manner, all at the expense, risk and to the account of the RENTER, and until all the RENTER's fees and charges are brought current;
- (2) moor the Boat in place until all the RENTER's fees and charges are brought current;
- (3) Charge the RENTER and Boat the then current transient rate per day for so long as the Boat remains in the CLUB's premises and Mooring until all the RENTER's fees and charges are brought current;
- (4) Renew the Mooring rental at the then-current rates for an additional time period as determined at the time of renewal;
- (5) Exercise any other right the Mooring owner shall have at law, admiralty or equity;
- (6) Any combination of any or all remedies set forth herein.

7 **VALUATION AND OTHER ADJUSTMENTS UPON TERMINATION** – Upon termination of this Agreement;

- a) there shall first be paid to the CLUB all outstanding fees, charges and other expenses due to the CLUB under this Agreement;
- b) subject to payment to the CLUB under sub-clause (a), and if the CLUB or RENTER is able to arrange for a successor for use of the Mooring during the balance of the RENTER'S term, the CLUB shall, within 30 days of termination or on the 15th day of January following such termination, whichever shall fall later, refund to the RENTER a pro-rated amount representing the balance of the RENTER's Annual Fee paid by the RENTER for the period during which the Mooring is rented by such successor.

8 **DEFAULT** – If the RENTER fails to make the required payments to the CLUB in a timely way, or is in any other default of this Agreement, the CLUB shall have all remedies set forth above.

- 9 **SUBLEASE** – The RENTER agrees not to transfer, sublet, assign, or permit the use of the Mooring by any other person or boat than described above in the Recitals to this Agreement, above, except as may be otherwise first agreed in writing by the CLUB.
- 10 **ALTERNATIVE USE OF THE Mooring** – During periods when the RENTER does not or cannot use the Mooring, the CLUB shall have the right to assign use of the Mooring to others upon such terms as it shall decide, subject to the RENTER's right to re-use the Mooring on not less than 3 day's written notice of such intention given to the CLUB. The RENTER shall establish communication procedures in writing with the CLUB to operate to the best advantage of the CLUB and the RENTER in this regard.
- 11 **REASSIGNMENT OF THE MOORING** – For operational reasons, the CLUB may at its sole discretion require the RENTER to occupy an alternate mooring or marina slip, either temporarily or for the balance of the term of the agreement.
- 12 **CLUB LIEN AND REMOVAL OF BOAT** – The RENTER shall not have the right to remove his boat from the rented Mooring or the location to which the CLUB has relocated the Boat under this Agreement, until all costs and fees described in and owing to the CLUB under this Agreement have been paid in full. The RENTER acknowledges that the CLUB has and shall have a lien on the Boat for all costs and fees outstanding and unpaid and agrees that the CLUB may look to the credit of the Boat for any outstanding and unpaid rent, fees, mooring and other services provided to the Boat, and the CLUB may exercise any appropriate rights against the RENTER, the Boat and its appurtenances and equipment to secure payment, including, but without limiting the generality of the foregoing, the right of arrest and sale of the Boat under the provisions of the *Federal Courts Act* and *Federal Courts Rules*.
- 13 **RULES, LAWS AND REGULATIONS** – The RENTER agrees to be bound by the current Rules of the CLUB, and any applicable municipal, provincial or Canadian laws and regulations.
- 14 **FOUL WEATHER, ETC.** – The RENTER agrees that it is not relying in any way upon the skill or intervention of the CLUB or its members or employees to protect the Boat should foul or dangerous weather threaten to damage the Boat. The RENTER agrees to follow CLUB Rules and Regulations regarding the proper filing of a Named Storm Plan Form and agrees to abide by the Rules and Regulations as set forth regarding Named Storms or other severe wind or seas events. The RENTER agrees to hold the CLUB, its contractor and the Mooring owner harmless, indemnify and defend them from any claims of any other owners of property or vessels at the CLUB's facility arising out of contact with the RENTER's Boat, and further

agrees to be responsible to the CLUB for damage to the CLUB's facilities or property arising out of contact with the RENTER's Boat or any fuel or appurtenance there from, including, without limitation, dock damage, environmental fines, and all other liabilities.

15 **WAIVER OF LIABILITY AND INDEMNITY** – The use of the Mooring and associated CLUB facilities is at the sole risk and responsibility of the RENTER. Neither the CLUB nor any of its officers, board of directors, other members, managers, representatives, employees or agents shall be liable to the Member or to others for loss of or damage to the Boat or any boat using the Mooring or for other loss or expense or for personal injury or death resulting from or arising out of the use or condition of the Mooring. The RENTER hereby waives, releases and forever discharges CLUB, its officers, board of directors, other members, managers, insurers, other representatives, employees or agents from time to time (collectively, the "Releasees") from and with respect to any and all claims, demands, actions or causes of action which the RENTER, his or her heirs, executors, administrators, successors, assigns, mortgagees, lien holders or insurers (collectively, the "Releasers") now have or which they or any of them can, shall or may have against the Releasees or any of them in connection with or arising out of or in connection with the Mooring or the use of the Mooring at the CLUB. The RENTER, on his or her own behalf and on behalf of the Releasers, hereby agrees to hold harmless and indemnify the Releasees and each of them for and in respect of any and all claims, demands, actions, causes of action and all associated costs and expenses (including associated legal costs and disbursements on a solicitor-client basis) made or taken against the Releasees or any of them arising out of or in connection with the Mooring or the use of the Mooring at the CLUB or otherwise in connection with the Mooring, whether made or taken by or on behalf of third parties or others, relating to any alleged loss, damage, violation of rights, fines, personal injury or death and whether due or attributable in whole or in part to the fault, default, negligence or contributory negligence of the CLUB or the Releasees or any of them or of any other party.

16 **RENTER'S INSURING PROVISIONS** – The RENTER undertakes and agrees that it will request and use the RENTER's best efforts to obtain permission of any insurer under any applicable insurance policy of the RENTER or with respect to the Boat, for the RENTER to execute this Agreement. The RENTER agrees to maintain insurance coverage on and with respect to the Boat and any potential liabilities contemplated above. The RENTER shall promptly provide the CLUB with particulars of such insurance upon request by the CLUB.

17 **PROVISOS** – This Agreement contains terms and conditions and references to fees and amounts that are subject to change by resolution of a meeting of the Board of Directors of the CLUB and is subject to the RENTER remaining a paid-up Member of the CLUB.

18 **CHOICE OF LAW AND FORUM** – Any dispute arising under or in relation to this Agreement shall be governed by the laws of the Province of Nova Scotia and Canadian maritime law, and any action to enforce this Agreement must be brought exclusively in the courts of Nova Scotia or the Federal Court (of Canada).

19 **SEVERABILITY** – In the event that any provision of this Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

20 **BINDING NATURE** – This Agreement is binding upon and shall inure to the benefit of all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date that the RENTER has paid the Annual Fee and after such payment is accepted by the CLUB.

[Rev: May 2020]