

## Mariners Choice Yacht Form (Rev. Jan 1, 2010) - Ocean Marine Insurance Policy Agreement

### INSURING AGREEMENT

**We** provide the insurance described in this policy and any endorsements attached, based on the information declared in the application for insurance (including any other supplemental forms, questionnaires or declarations), for payment of the premium and subject to the terms and conditions set out herein. This policy contains general conditions and warranties which apply at all times. The Insurer has agreed to accept the risk of insuring the watercraft on the condition precedent that the Insured will comply strictly and literally with these warranties and conditions. If the Insured breaches any of these warranties or conditions, the Insurer at its option will not pay any claim arising thereafter, regardless of whether or not such breach is causative or in any way connected to such claim.

**We** agree that **you** may sign standard Hold Harmless Agreements or Waiver of Subrogation Agreements with marinas, yacht clubs, and similar authorities where such agreements are necessary and customary, but only in respect of moorage and storage. This policy, however does not provide any liability insurance for the liability of the marina, yacht club or similar authority. Furthermore, this policy does not provide any liability coverage for any liability you may assume under any such agreement.

### DEFINITIONS

The use of italic text in the policy agreement indicates that the word or phrase in italics is defined as follows:

***We***, ***us*** and ***our*** means the insurer.

***You***, ***your*** and ***Named Insured*** means the person named on the Declarations Page.

***Insured Person*** means the person(s) named as Insured on the Declarations Page and, while living in the same household, his or her spouse, the relatives of either or any person under age 21 in their care, and any other person or organization using the ***Insured Property*** with ***your*** permission and without compensation. No liability coverage is provided for a paid master or paid crew member of ***yours*** or of the Insured Vessel, or for any person, organization or agent operating a repair yard, marina, yacht club, sales or chartering agency or other marine business. However, you are covered for your legal liability arising out of damages caused to others by a non-insured person, organization or agent. Only the person named on the Declarations Page may take legal action against us to recover for damage to the ***Insured Property***.

***Insured Property*** means the Insured Vessel, Trailer, Tender, Auxiliary Motor, and Personal Effects, as described on the Declarations Page and subject to the terms and conditions set out herein.

***Insured Vessel*** means the vessel as described on the Declarations Page under INSURED VESSEL section and subject to the terms and conditions set out herein.

***Constructive Total Loss*** means that the cost to recover and/or repair the ***Insured Vessel*** exceeds the amount of insurance set forth on the Declarations Page or the Actual Cash Value, whichever is the lesser.

***Uninsured Boater*** and ***Uninsured owner or operator*** mean an owner or operator of a boat other than the ***Insured Vessel*** named in this policy who is legally responsible for the accident, and: to whom no liability policy applies; or who cannot be identified; or who does not carry sufficient insurance (underinsured).

***Actual Cash Value*** means the cost of replacement less any depreciation as determined by a Marine Surveyor or Adjuster retained by us. In determining depreciation, the Marine Surveyor or Adjuster can consider the condition immediately before the damage, the resale value, the normal life expectancy and any other information customarily used to determine the market value of the component. To the extent that labor is required to repair property to be adjusted on an ***Actual Cash Value*** basis, the Marine Surveyor shall determine the extent to which such labor increases the life expectancy of the property and shall reduce the repair costs accordingly.

***Personal Effects*** means property acquired primarily for use on the Insured Vessel and which is used primarily on the ***Insured Vessel***.

***Parasailing*** means using ***your*** vessel to tow a person in a device designed for flight.

***Waterskiing*** means using ***your*** vessel to tow a person on water skis and the like, or floatation devices.

***Material Fact*** means that if the true facts had been known to us pursuant to a policy requirement or other requirement, ***we*** in good faith would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

***Occurrence*** means one loss or accident, including continuous or repeated exposure to substantially the same distinct harmful conditions during the policy period, which results in bodily injury or direct physical tangible loss to the insured property.

### LOSS PROVISIONS (Duties After A Loss Occurs)

In the event of any loss, damage or occurrence that is covered by this policy, ***you*** must:

#### 1. Protect From Further Loss

***You*** must take all reasonable and lawful steps to protect the ***Insured Property*** from further loss. Any further loss resulting from ***your*** failure to protect from further loss will not be recoverable under this policy. ***We*** will pay the reasonable costs ***you*** incur in preventing further loss, excluding personal labour and expense.

#### 2. Notify ***Us***

***You*** must give immediate notice to ***us*** and/or ***our*** Authorized Representative and/or ***your*** Broker of any occurrence that may result in a claim under this policy. Give notice of all facts relevant to the loss, when, where, how, and the names and addresses of the persons and witnesses involved. Any legal papers or notices received must be immediately forwarded to ***us***.

#### 3. Notify the Authorities

***You*** must give immediate notice to the relevant authorities.

#### 4. Permit Survey

***You*** must permit ***us*** to inspect damages and conduct testing, the extent of which shall be at ***our*** sole discretion, before repairs are made.

#### 5. Preserve ***our*** Rights

***You*** must not assume any obligation, admit no liability or incur any expenses for which we are or may become liable without written permission from ***us*** except those reasonable expenses required to protect the ***Insured Property*** from further loss.

#### 6. Cooperate with ***Us***

***You*** must obtain repair specifications, bids and estimates from alternate sources if requested.

***You*** must permit ***us*** to examine any records ***we*** require to verify the loss or its amount.

***You*** must cooperate in the investigation, defense or settlement of any loss and agree to be examined under oath if ***we*** request.

***You*** must allow examinations by physicians of ***our*** choice, when relevant to the loss. ***You*** must provide written authorization for ***us*** to obtain copies of all prior medical and hospital records. ***You*** must provide ***us*** with copies of other insurance policies or health coverages that may cover the loss.

Submit a notarized detailed written proof of loss signed and sworn by ***you*** and evidence of an insured interest.

If ***you*** fail to comply with any of these provisions, there will be no recovery under this policy.

After ***we*** receive all statements and supporting documents, ***we*** will promptly consider ***your*** claim. Upon agreement of a settlement amount, ***we*** may ask ***you*** to complete a notarized Proof of Loss or Release Form. After submission of the Proof of Loss or Release Form, payment will be issued to ***you*** and any lienholder and/or repair yard.

### LIMITS

The limits of insurance are shown on the Declarations Page of the policy.

## PROPERTY INSURANCE

### Insured Perils

**You** are insured against All Risks of accidental and direct physical tangible loss of or damage to the **Insured Property** from any external cause but subject to the conditions of the policy and excluding the following loss or damage caused by or resulting from:

- A) Wear and tear, gradual deterioration, faulty repair or faulty workmanship, marring, scratching, chipping, denting, corrosion, mold, rot, osmosis, blistering, delamination, electrolysis, galvanic action, or any inherent vice; however **we** will cover consequential property damage resulting from any fire, sinking, submersion, demasting, collision or stranding;
- B) Unexplained disappearance of **Insured Property** from the yacht unless there are visible marks of forcible entry or exit.
- C) **Insured Property** lost overboard unless caused by stranding, burning, sinking or collision of the insured yacht.
- D) Defect in manufacture or construction, nor will **we** pay for the cost of repairing or replacing any part which fails as a result of a defect in manufacture or construction, however, **we** will cover consequential physical damage that results from such failure if not otherwise excluded;
- E) The increased cost resulting from or in consequence of obsolescence; and
- F) Loss or damage caused intentionally by, with the knowledge of, or resulting from criminal wrong-doing by an **Insured Person**.

### Basis of Claims Settlement

In the event of:

#### A. Total or Constructive Total Loss

**In the event of a total or constructive total loss, we** agree to pay **you** the limit for the **Insured Vessel** as shown on the Declarations Page and **we** have the right to the remaining **Insured Property**. There shall be no recovery unless all said property is lost absolutely or unless the expense of recovering and repairing the **Insured Property** shall exceed the amount stated on the Declarations Page. **We** reserve the right to repair or replace the **Insured Property**. In the event of a total loss or constructive total loss, this policy will automatically terminate immediately thereafter. The premium will be fully earned and no refund will be available.

#### B. Repairs for Partial Loss:

**We** will pay the reasonable cost of repairs. **We** have the option to make or reimburse for repairs or replacements or to pay **you** directly based on the lowest repair estimate received from a reputable repair facility. **We** reserve the right to repair or replace the **Insured Property**. Under no circumstances will **our** liability exceed the amount indicated on the Declarations Page. However, **our** liability for the following items shall not exceed their **Actual Cash Value**: 1) sails, canvas, protective covers and fabric older than four years of age; and 2) outboard motors older than six years of age. Age, as used in this section, is calculated by subtracting the model year from the calendar year, and adding one (1) to the result.

### Salvage Charges

In the event of a salvage of the **Insured Property**, charges are limited to those charges incurred prior to the vessel being declared a **Constructive Total Loss** in an amount not to exceed the amount stated on the **Declarations Page** for the **Insured Vessel**.

### Personal Effects

**Personal Effects** while kept in the **Insured Vessel** are covered for any damage covered by this policy, up to the amount stated on the Declarations Page. This does not cover accounts, bills, currency, money, notes, securities, letters of credit, tickets, passports and documents, sporting equipment where the loss or damage results from its use, firearms, works of art, jewellery, contact lenses, artificial teeth or limbs, portable or cellular phones, prescription and non-prescription eye glasses, computer hardware and software, and we do not cover breakage of fragile **Personal Effects**, such as, but not limited to, chinaware, porcelain, and glassware. **Personal Effects** claims will be settled on an **Actual Cash Value** basis applying full deduction for depreciation.

### Trailer

**We** will pay for physical damage to the trailer only when it is a trailer used exclusively for the transportation of a vessel.

**We** will not pay for liability defense or damages for property or bodily injury for which the **Insured Person** becomes liable through the ownership, maintenance or use of the trailer.

In the event of loss or damage to the vessel trailer, we will pay the lowest of the following amounts:

- i) the limit shown on the Declarations Page;
- ii) the **Actual Cash Value** at the time of loss; or
- iii) the cost to repair.

### Pair and Sets Clause

In the case of loss or damage to any item, which is part of a set, the measure of loss of or damage to such item shall be a reasonable and fair proportion of the total value of the set, but in no event shall such a loss or damage be construed to mean a total loss of set.

### Deductible Clause

**We** are liable only for the amount by which the loss or damage caused by any of the perils insured under this policy exceeds the deductible amount stated on the Declarations Page. Where any number of items with different deductibles are damaged, the highest of those deductibles will apply, only one deductible shall be applied. The deductible applies to each **occurrence**. In the event of total loss of the insured vessel the deductible will not be applied.

## LIABILITY INSURANCE - PROTECTION AND INDEMNITY

**We** agree to indemnify the **Insured Person** against the liability imposed by law upon the **Insured Person** for loss or damage arising from the ownership, maintenance, use or operation of the **Insured Property** resulting from bodily injury to or death of any person or damage to their property. **We** agree to pay for an attorney **we** select to defend **you** against any claim or suit which asks for these damages. **Our** duty to settle and defend ends when the limit of liability indicated on the Declarations Page is exhausted. Regardless of the number of claims or the number of **Insured Persons** involved, the most, **we** will pay for any one **Occurrence** is the limits set forth in the Declarations page. However, **we** do not provide coverage for:

- 1) liability which has been assumed by an **Insured Person** under any contract or agreement, or any breach of contract;
- 2) damage or injury arising out of the transportation of the Insured Vessel on land;
- 3) bodily injury or property damage arising out of an insured or passenger involved in **parasailing**;
- 4) injuries for which the **Insured Person** is obligated to provide benefits under any state or federal workers' compensation law or act. However, this exclusion does not apply to claims made by the crew of the **Insured Vessel** under the Jones Act, The Death on the High Seas Act or general maritime law;
- 5) cost of the containment, clean-up and resulting property damage and assessments related to the discharge, leakage or spillage of petroleum products, chemicals or other substances on any kind or nature; or,
- 6) liability caused by or resulting from an intentional act or fines or penalties or costs of defense arising out of a violation of law.

### Removal of Wreck

**We** agree to pay for the removal or disposal of the wreck of the **Insured Property** if **you** are legally obligated to do so even if such attempts to remove the wreck fail, for an amount up the limit on the Declaration Page for the **Insured Vessel**, in addition to any claim paid under the Property Insurance section of this policy.

## SPILL LIABILITY

**We** agree to pay up to the amount indicated on the Declarations Page for Spill Liability, for the containment, clean-up, property damage and assessments related to any sudden and accidental spillage or leakage of petroleum products, chemicals or other substances of any kind, from the **Insured Property** for which the **Insured Person** becomes legally liable through the ownership, maintenance or use of the **Insured Vessel**. **We** will settle or defend any claim or suit

which asks for these covered expenses or damages. However, this cover is void if an insured fails or refuses to provide all reasonable cooperation and assistance requested by an official in connection with the containment and clean-up activities. **Our** duty to settle and defend ends when the limit indicated on the Declarations Page is exhausted. This cover does not apply to the following:

- 1) liability resulting from the transportation of the **Insured Vessel** on land;
- 2) liability caused by or resulting from an intentional act;
- 3) liability for fines or penalties or any claim for punitive damages or costs of defense arising out of a violation of law;
- 4) liability resulting from the discharge, emission, spillage or leakage of any radioactive material or substance of any kind;
- 5) liability for bodily injury.

## LONGSHOREMEN'S AND HARBOUR WORKERS' COMPENSATION

**We** agree to pay damages up to the liability limit/protection & indemnity limit indicated on the Declarations Page for any liability and costs of defending such liability which **you** incur under the Federal Longshoremen's and Harbour Workers' Compensation Act.

## MEDICAL PAYMENTS

**We** agree to pay up to the amount indicated on the Declarations Page for the necessary medical and funeral expenses resulting from a bodily injury to **you** or others occurring while in, upon, boarding, or leaving the **Insured Vessel**, and injury to an insured or guest water skiing behind the **Insured Vessel**. This cover only applies to costs incurred within one year from the date of the accident. If there are any other available medical benefits to the injured person, this coverage will be excess over such other insurance. However, the cover does not apply for the following:

- 1) responsibility assumed by an insured under any contract or agreement;
- 2) anyone who is injured while the **Insured Vessel** is being transported by land;
- 3) injury to a trespasser on the **Insured Vessel**;
- 4) anyone involved in **parasailing** from the **Insured Vessel**;
- 5) an insured's employees;
- 4) injuries for which benefits are required to be provided or are available under any state or federal compensation law or act.

## ACCIDENTAL DEATH BENEFITS

If, as a direct result of the **Insured Property** stranding, sinking, burning or being in a collision, the person(s) named as Insured on the Declarations Page, spouse, or the relatives of either or any person under age 21 in their care, die within 12 months of the occurrence, we shall pay in the event of such occurrence:

\$10,000 for the death of the named Insured;

\$5,000 for the death of the spouse;

\$1,000 for the death of the relatives of either, or any person, under age 21 in their care.

Any payment under this section to any claimant does not constitute an admission of liability or fault for any entitlement to recover against the **Insured Person** or invoke coverage under the Liability Insurance – Protection and Indemnity section.

## UNINSURED BOATER

If an amount is indicated on the Declarations Page for "**Uninsured Boater** Coverage", **we** will pay up to that amount for damages, which, because of bodily injury received aboard **your Insured Vessel**, **you** are legally entitled to recover from the **Uninsured Boater**.

We do not provide **Uninsured Boater** coverage:

- 1) for claims settled without **our** written consent;
- 2) for the **Uninsured Boater** is owned or operated by a governmental body or agency or employee or any contractor/subcontractor of any governmental body or agency or employee of such contractor/subcontractor;
- 3) for boats owned by or furnished for regular use by any one falling under the definition of **Insured Person** for the purposes of this policy; or,
- 4) for anyone using the **Insured Property** without the permission of the **Insured Person**.

This coverage will not apply directly or indirectly to the benefit of any insurer under any state or federal compensation law or act.

Payment under this coverage shall be reduced by:

- 1) all sums paid by or on behalf of those legally responsible;
- 2) all sums paid by any state or federal compensation law or act; or,
- 3) all sums paid under the Liability or Medical Payments coverages of this policy.

The amount on the Declarations Page is the maximum **we** will pay, regardless of the number of **Insured Persons**, claims made, or boats involved in any one accident, or series of accidents arising out of the same event.

## EXTENSIONS OF COVERAGE

### 1) Emergency Navigational Extension

Should **you** exceed the Navigational Limits shown on the policy for any reason beyond **your** control then **your** policy will remain in force. However **you** must notify **us** as soon as possible and pay any additional premium required.

### 2) Emergency Towing

If Emergency Towing cover is indicated on the Declarations Page then **we** will pay up to the amount indicated on the Declarations Page per occurrence toward the cost of towing the Insured Vessel to a repair facility, irrespective of the cause of breakdown. Subject to presentation of receipted bills and acceptable evidence of loss.

## GENERAL EXCLUSIONS

This section contains conditions that apply to all coverages of this policy.

### Limitations of Use

**We** will not be liable for any loss or damage caused while the **Insured Property** is:

- 1) used for carrying passengers or goods for compensation, either in cash or kind;
- 2) rented or leased to another person;
- 3) used in any illegal or criminal act(s);
- 4) operated in any race or speed test; however, this does not apply to sailboats or predicted log cruises.

### Qualified Operator Requirement

**We** will not be liable for any loss or damage to the **Insured Property** or any liability resulting from any injury, death, or third party property damage, if all operators of the **Insured Property** are not in compliance with all government regulations and licensing requirements.

### War, Seizure, Nuclear Exclusion

**We** will not pay for any loss or damage resulting from:

- a) radioactive contamination or nuclear reaction;
- b) war (declared or undeclared), civil war, insurrection, rebellion, revolution, or any consequence of these; or
- c) capture, seizure, arrest or detention of the boat by any governmental power or authority, whether lawful or unlawful. In the absence of unlawful activities, however, we will pay for any physical damages to the insured property caused by United States governmental authorities.

## GENERAL CONDITIONS

This section contains conditions that apply to all coverages of this policy.

### Policy Period

This policy applies only to losses which occur during the policy period stated on the Declarations Page.

### Continuation

Should **your** vessel, at expiration date (not by cancellation), be at sea or in distress, **we** shall continue to hold covered until landed and after twenty four (24) hours in a safe berth.

### No Benefit to Bailee

No person or organization having custody of the **Insured Property** and being compensated for services shall benefit from this insurance.

### Navigational Limits

This policy applies only to losses which occur within the navigational limits as stated on the Declarations Page.

### Lay-Up Requirement

The Insured Property must be laid-up ashore during the dates indicated on the Declarations Page.

### Changes

This policy and the application (including any supplemental, questionnaire or declaration form) submitted for insurance contains all the agreements between **you** and **us**. No changes may be effected unless they are in writing and signed by **us**.

### Misrepresentation and Concealment

If any **material fact** or circumstance is misrepresented, omitted, concealed or incorrectly stated intentionally or otherwise by **you**, or on **your** behalf, all insurance provided by this policy shall be void from inception and premium refunded.

### Transfer of Interest

If **you** sell, transfer, mortgage or pledge any interest in the **Insured Property** or this policy, all coverages herein will cease without further notice to **you** unless such change is accepted by **us** in writing. If the **Insured Property** is legally removed from **your** custody or, in the event of an **Insured Person's** insolvency or bankruptcy, all coverages herein will cease without further notice to **you** unless such change is accepted by **us** in writing.

### Insurance Under More Than One Policy

If there is any other insurance which would apply in the absence of this policy, the insurance under this policy shall apply only as excess over any other collectible insurance.

### Right to Recovery

If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** shall be subrogated to that right. That person shall do whatever is necessary to enable **us** to exercise **our** rights and do nothing to prejudice them.

### Non-Waiver Provision

No action on **our** part, after a loss to recover or save the property from further loss, nor any action which **we** may take in connection with the investigation of any loss, shall be considered as a waiver of any of **our** rights under this policy.

### Land Transit Extension

This extension applies only to losses which occur while the **Insured Property** is being transported upon land within a 750 mile radius of the Named Insured's postal address as shown on the Declarations Page.

### Legal Action Against Us

No legal action may be brought against us unless:

- a) there has been full compliance with all provisions of this policy, and;
- b) the action is started within one year after the accident.

### Severability Clause

If any clause, word, phrase, provision or portion of this Policy shall be found to be unenforceable or invalid for any reason whatsoever, by any court of competent jurisdiction or by any arbitration panel, such determination shall not affect any other clauses, word, phrase, provision or portion of this Policy, and each shall remain in full force and effect.

## CANCELLATION PROVISIONS

### Cancellation by Insured

**You** may cancel this policy at any time by providing us with advance written notification of the cancellation date. The return premium will be calculated on a pro-rata less ten (10) percent basis unless otherwise indicated on the Declarations Page.

### Cancellation by Us

**We** may cancel this policy by giving you fifteen (15) days notice of termination by registered mail or five (5) days written notice of termination personally delivered. The return premium will be calculated on a pro-rata basis.

### Renewal of Coverage

Coverage ceases at the expiry date shown on the Declarations Page unless you have received a Declarations Page from **us** indicating a renewed policy period and the premium has been paid by you.

### Cancellation in Event of Total Loss

In the event of a total loss or constructive total loss, this policy will automatically terminate immediately thereafter. The premium will be fully earned and no refund will be available.

## INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE - CL 370

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
- 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

## INSTITUTE CYBER ATTACK EXCLUSION CLAUSE (10/11/03) – CL 380

- 1.1 Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- 1.2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.