



## Exclusive Listing Agreement

SELLER INFO	PLEASE WRITE IN BOX BELOW
NAME	
MAILING ADDRESS	
CITY, STATE, ZIP	
EMAIL ADDRESS	
PHONE NUMBER	

VESSEL INFO	PLEASE WRITE IN BOX BELOW
MAKE/MODEL	
SERIAL/HIN	
LENGTH	
YEAR	
BEAM	
ENGINE(S)	
ENGINE SERIAL(S)	
HOURS (ENGINE)	
ENGINE YEAR(S)	
KEY LOCATION	
LISTING END DATE (October 15 if not noted)	
EVAL COMPLETED?	



## Exclusive Listing Agreement

LIEN HOLDER INFO	PLEASE WRITE IN BOX BELOW
Lienholder(s)	
Address	
Acct # + Amount Owed	

VESSEL INFO	PLEASE WRITE IN BOX BELOW	
Length:	Beam:	Draft:
Deadrise:	Weight:	Water Cap:
Holding Cap:	Fuel Cap:	<input type="checkbox"/> Gas <input type="checkbox"/> Diesel
Hull Material:	Color:	# of Owners:
Location:	Name:	Registration:
GPS:	Sounder/Depth:	Autopilot:
VHF:	Stereo:	Radar:
Fridge:	Microwave:	# Batteries:
Charger:	Inverter:	Genset:
Gen Hrs:      KW:	Canvas:	Canvas Cond:
<input type="checkbox"/> V-Hull <input type="checkbox"/> Pontoon	<input type="checkbox"/> Modified V <input type="checkbox"/> Catamaran	<input type="checkbox"/> Semi Displacement <input type="checkbox"/> Full Displacement
Safety Equip:	Head:	Macerator:
Grey Water Tank:	<input type="checkbox"/> Electric. <input type="checkbox"/> Manual Head	Ice Maker:
AIS:	Bow Thruster:	Stern Thruster:
TV:	Sat TV:	Trim Tabs:



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TRAILER INFO	PLEASE WRITE IN BOX BELOW
MAKE/MODEL/YEAR	
SERIAL/VIN	
REGISTRATION/TITLE	<input type="checkbox"/> YES <input type="checkbox"/> NO

SALE DETAILS	PLEASE WRITE IN BOX BELOW
Sale Price Desired (Before Commission)	
Least Amount Considered (Before Commission)	
NADA Value (Avg. Retail) at Listing Date	
COMMISSION RATE (Percentage of sale price of vessel)	Based on Sale Price of Vessel Under \$20,000 - 25% \$20,000 - \$40,000 - 20% \$40,001 - \$60,000 - 15% \$60,001 + - 10%

Additional Equipment Included with Sale: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Known Issues to Disclose: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **Terms & Conditions**

1. **Exclusivity.** Yarmouth Boat Yard is the **Exclusive Broker** for the Owner/Seller's boat (Vessel) as described above. Owner/Seller is not permitted to advertise the Vessel at a sale price of anything less than Yarmouth Boat Yard's price, nor is Owner/Seller allowed to list said Vessel with any other marine brokerage service. During the life of this contract the Owner/Seller agrees not to rent, sell or negotiate terms of the sale except through the Broker, nor give any other broker firm or person authorization to sell or negotiate the sale of the Vessel. Owner/Seller agrees to refer all inquiries to Broker concerning the sale of the Vessel. Sales conducted outside of the Broker will be in breach of contract. Broker will be due full commission and will legally enforce such right should an agreement not be made.

2. **Term.** This Agreement shall be valid from listing date until October 15. Brokerage boats at Yarmouth Boat Yard past the date of October 15 will be charged winter storage and winterization at full price. Any Owner/Seller who wishes to have their boat listed over the winter will need to sign a new Agreement.



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3. **Marketing.** Yarmouth Boat Yard will (a) display your boat on land with Yarmouth Boat Yard Pre-Enjoyed Boats; (b) promote your boat on Yarmouth Boat Yard master inventory list, Yarmouth Boat Yard's website, at boat shows we attend and other online channels and social media; (c) maintain a record of the current season *Boat and Systems Evaluation* document for presentation to potential buyers; (d) show and sell your boat by trained sales professionals; (e) help potential buyers obtain financing; and (f) help potential buyers obtain extended warranties for your boat to further enhance its value. **All boats eligible for extended service contracts will be marked as having the possibility of such contract. Cost of extended service contracts will be the sole responsibility of the buyer of the boat.**

4. **Boat Readiness.** All boats must have a current *Boat and Systems Evaluation* document completed by Yarmouth Boat Yard and on file. **No exceptions.** The Owner/Seller is responsible for the cost of the *Boat and Systems Evaluation*. Should the Owner/Seller decide to terminate this Agreement, the *Boat and Systems Evaluation* is theirs to keep, and they may use it to assist in selling the Vessel themselves. **The cost of the evaluation is based on our hourly labor rate. Quotes available.** All brokerage boats **must be in ready to sell condition**, cleaned, waxed, and all personal gear removed. **Vessels not in this condition will be given an estimate to make ready for sale. Otherwise, they WILL NOT be sold and marketed by Yarmouth Boat Yard.** All work necessary to maintain "ready to sell" condition is the Owner/Seller's responsibility and Yarmouth Boat Yard can complete the services for a fee. By signing this Agreement, Owner/Seller approves replacement of batteries should they not be able to be charged upon Sea Trial. Owner/Seller understands that the Vessel must be on Yarmouth Boat Yard property to be listed to sell. If the Vessel is removed from the property, all charges must be settled before and the vessel will be unlisted within 30 days.

5. **Sea Trials.** Sea Trials are an implicit part of this Agreement and advance approval for trials is not required. Only Yarmouth Boat Yard personnel will conduct the sea trails. No prospective Buyers will be allowed on a brokerage boat underway without a member of Yarmouth Boat Yard staff present. Owner/Sellers are responsible for having their Vessel in operating and seaworthy condition at all times. **Costs may be incurred to bring the Vessel to seaworthy condition. Owner/Seller(s) will be made aware of the costs before work is done except for the replacement of batteries, which will be done at Yarmouth Boat Yard's discretion.**

6. **Summer Storage (April 1 to November 31).** Boats on brokerage will remain on Yarmouth Boat Yard premises free of charge until October 15. After October 15, Yarmouth Boat Yard will not be liable for freeze damage to any vessels. It is the Owner/Seller's responsibility to arrange winterization, storage and another listing Agreement, should they decide to keep the Vessel on the market for the winter months. If a brokerage boat Owner/Seller wants to keep their vessel in valet (high & dry) or in a slip, the costs for those services are the Owner/Seller's responsibility. Vessels on brokerage will, **without exception**, have any shrinkwrap removed by Yarmouth Boat Yard by May 1. It is the Owner/Seller's responsibility to have the boat re-wrapped in the fall. The Vessel will also be commissioned and prepped for sale and the cost will be billed to the Owner/Seller of the Vessel. (See boat readiness above). **During the summer season, all brokerage boats must be commissioned and ready for sea trials at all times. Any vessel on brokerage must be on Yarmouth Boat Yard property to sell.** Any brokerage boat not commissioned or scheduled for commissioning after May 1<sup>st</sup> will be removed from Yarmouth Boat Yard brokerage listings and **storage will be charged at our current Summer Storage rate.**

7. **Winter Storage (October 15 to April 30).** As of November 1<sup>st</sup>, all boats on brokerage will be charged for (a) **winter storage at the current storage rate.** Boats/engines on brokerage during the winter must be winterized and shrinkwrapped with clear shrinkwrap and include an access door to facilitate showings. Winterization of brokerage boats/engines is not part of this Brokerage Agreement. All costs for boat and engine winterization and shrinkwrapping are the responsibility of the Owner/Seller.

8. **Boat Removal.** This Agreement expires October 15. Cancellations before the end date shall be done with 30 days' notice via email or in person. **Any charges incurred by the Owner/Seller during the term of the Agreement must be paid in full before the boat is removed from Yarmouth Boat Yard premises.**

9. **Boat Possession.** Owner/Seller agrees that once sale is complete, Owner/Seller is to turn possession of the Vessel over at that time. Failure to do so will result in a penalty of \$100 per day and could compromise sale.

10. **Offers.** Broker will submit all offers to Owner/Seller. Owner/Seller shall sell the Vessel to a customer of Broker, or of a sub-listed broker, who is ready, willing, and able to purchase at the Gross Asking Price, or at any other price, to which the Owner/Seller agrees. **Five (5) business day turnaround time is required on all brokerage funds**



## **Exclusive Listing Agreement**

**before an Owner/Seller is released a check or wire.**

11. **Authorization.** Broker is authorized on behalf of Owner/Seller to accept the offer of a purchaser which shall be in accordance with said terms, and to execute a contract of Sale/Purchase Agreement. Broker is authorized to negotiate the sale of Vessel for a lesser sum or upon different terms (including the acceptance of a trade) if the Owner/Seller shall set forth such changes in writing/email.

12. **Cooperation.** Owner/Seller shall (a) supply such data on the Vessel as reasonably requested by the Broker, (b) inform Broker about changes in location, price, or specifications, (c) remove all personal belongings prior to closing, (d) execute Vessel Purchase Agreement if Broker finds a Buyer on terms acceptable to Owner/Seller.

13. **Disclosures.** Owner/Seller represents and warrants: (a) It will disclose all known defects and/or deficiencies in the Vessel which would materially impact a Buyer's decision to purchase the Vessel. (b) It will transfer Vessel to buyer free of all debts, claims, liens, taxes, license fees and encumbrances of any kind. (c) It shall provide Broker copies of ownership and registration records.

14. **Commission.** Commission will be paid to Broker/Agent at time of sale and will be deducted from proceeds of the sale before balance is transferred to Owner/Seller. All deposits are subject to clearance. Broker may pay itself the Commission from any deposit. Owner/Seller hereby irrevocably assigns to Broker the right to payment of the Commission from the deposit, no matter who is holding such deposit. Any sub-listed broker involved in the sale shall receive its fee from Broker. No deduction shall be made in commission should the Owner/Seller decide to take a trade in consideration for the sale of the vessel, nor should any deduction in commission be made unless specified in writing by the Broker.

15. **Custody, etc.** Broker does not assume and is not delegated care, custody, or control of the Vessel. Broker's procuring of docking and mooring space for the Vessel to make it available for inspection by potential purchasers is not to be deemed as an assumption of the custody, care, or control. Possession, custody, and control of the Vessel remains at all times with Owner/Seller and as Owner/Seller designates for the safety, security, and protection of the Vessel at whatever location the Vessel is moored or stored for the purpose of being available for inspection by potential purchasers. Broker shall not be deemed to be responsible for the security, safety, or protection of the Vessel during this period of time and shall not be responsible for any damage or loss to the Vessel.

16. **Showing and Insurance.** Broker, its sales team and sub-brokers may board and show the Vessel. The Owner/Seller shall keep the Vessel fully insured (including personal liability, theft, fire, physical damage, pilferage, windstorm, water damage, hail, and vandalism) for inspection, sea trial, and marine survey purposes. Owner/Seller must release Broker from any and all liability during the term of this contract. Owner/Seller shall advise Broker prior to any cancellation or change in coverage and **must provide a copy of current insurance policy at the time of listing.**

17. **Term.** The term of this Agreement shall remain in effect for a **minimum of \_\_\_\_\_ days** from the Agreement date. This term will automatically renew ("Renewal Term") for successive periods on the same terms and conditions. During any Renewal Term, either party may terminate this Agreement upon 60 days written notice. Upon execution of a Purchase Agreement to sell the Vessel, this Agreement will automatically extend until the Vessel is sold or that Agreement is canceled in accordance with its terms.

18. **Buyer's Default.** If Owner/Seller enters into a contract to sell the Vessel and pursuant to that contract Owner/Seller retains liquidated damages, such will be applied first to pay all expenses incurred in Broker's attempt to sell the Vessel (including, but not by way of limitation, surveys, haul outs, etc.). The remainder will be divided equally between Owner/Seller and Broker, except that Broker's share will not exceed the Commission amount.

19. **Non-Disruption.** Owner/Seller (and its agents) shall minimize disruption of Broker's business if desiring access to Vessel during the term and shall be responsible for any physical damage caused by Owner/Seller or its agents. Owner/Seller shall not remove Vessel unless all payments due Broker hereunder for repairs, maintenance or otherwise are paid in full.

20. **Maintenance and Transportation.** If Owner/Seller makes arrangements with any member of Broker's staff for the Vessel's "Maintenance" (meaning repairing minor damage, washing and waxing the exterior of the Vessel, and cleaning the interior of the Vessel), or to move the Vessel, such arrangements shall not be deemed to be with Broker. Broker shall not be liable for and is hereby released from any damages resulting from any such Maintenance or



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Transportation, including, without limitation, damages to the Vessel and personal injury.

**21. Dockage and Other Costs.** Dockage shall be pursuant to a separate agreement. Owner/Seller is solely responsible for all costs of fuel, provisions, inspection, insurance, and other costs related to the Vessel.

**22. HURRICANE NOTICE.** If Owner/Seller fails to remove the Vessel from the marina promptly, and at least twenty-four (24) hours after issuance of a tropical storm or hurricane watch, under governing state law, Broker, its employees or agents are authorized to remove it, if reasonable, from its slip or take any and all other reasonable actions in order to better secure the Vessel and to protect marina property, private property, and the environment. Owner/Seller may be charged a reasonable fee. Broker shall not be obligated to remove the Vessel from its slip, lift, or place of storage. Owner/Seller hereby releases, discharges, and holds harmless Broker and its employees and agents for any and all loss, injury, damage, or destruction which may occur to the Vessel as a result of any hurricane or other inclement weather or any other act of God.

**23. Agency.** Broker may act as an agent for both Owner/Seller and the Buyer. Owner/Seller consents to such and any related additional compensation payable to Broker from the other party. Broker shall not, without the Owner/Seller's express permission, disclose that Owner/Seller is willing to sell Vessel for a price less than the asking price nor without the Buyer's permission, disclose that the buyer is willing to pay a price greater than the offered price. Except for the above, Broker, as a dual agent, must disclose to both parties facts known to Broker materially affecting the value or desirability of a Vessel, unless such facts are known to or are reasonably discoverable by a prudent buyer. Broker may have or obtain listings for other Vessels. Potential buyers may consider, make offers on, or purchase through Broker, Vessels the same, or similar to, the Vessel. Owner/Seller consents to Broker's representation of sellers and buyers of such other vessels before, during, and after this Agreement.

**24. Responsibility.** Other than with respect to Broker's gross negligence or intentional wrongful acts, Owner/Seller releases, indemnifies and holds Broker, its salespersons, employees, and agents harmless from and against any loss, damage, liability, legal action or claim of whatever nature arising out of this Agreement, including without limitation any such arising out of Owner/Seller's use of Broker's facilities or the presence of Owner/Seller's Vessel on Broker's premises. This provision survives the termination of this Agreement for any reason.

**25. Limitations.** Broker shall have no liability under this Agreement or otherwise to Owner/Seller or any other person for any reason, including, without limitation, any loss, damage, or theft to or of the Vessel, from any cause whatsoever, or any consequential damages, unless resulting from Broker's gross negligence or intentionally wrongful acts. Notwithstanding anything to the contrary, the limitation of Broker's liability to Owner/Seller with respect to any claim or loss, other than such as result from gross negligence or intentional wrongful acts, shall not exceed the Commission amount.

**26. Waiver.** Neither any failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given and, (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

**27. Disputes.** In the event of any dispute, claim, questions, or disagreement arising out of or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle such disputes, claims, questions, or disagreement. To this effect, they shall consult and negotiate with each other, in good faith, attempt to reach a just and equitable solution satisfactory to both parties. If /\*-they do not reach such solution within 60 days, then upon notice by either party to the other, disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules and the laws of the State of Maine. A single arbitrator shall be appointed by the American Arbitration Association. The site of arbitration shall be held in the city and state of the Broker's office.



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28. **Contract Interpretation.** Neither party shall be responsible for delays or failures in performance resulting from a force majeure event. For purposes hereof, a “force majeure” event includes, without limitation, acts of God, acts of terrorism, strikes, lockouts, riots, acts of war, fire, communication line failures, computer viruses, power failures, hurricanes, earthquakes, or other natural disasters. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from, and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

29. **Miscellaneous.** This Agreement may be signed in any number of identical counterparts, each of which will be an original (including signatures delivered via facsimile or email) with the same effect as if the signatures thereto and hereto were upon the same instrument. The parties may deliver this Agreement and the other documents required to consummate the transaction contemplated herein by facsimile or electronic mail and each party shall be permitted to rely upon the signatures so transmitted to the same extent and effect as if they were original signatures. This Agreement will become effective when each party hereto will have received a counterpart hereof signed by each other party hereto. All notices to Broker shall be sent to the brokerage location above and the Broker’s headquarters below. All notices to Owner/Seller shall go to Owner/Seller’s address above, except that service of process may also be affected upon Owner/Seller as provided above. Notices must be in writing and delivered by Certified Mail, Return Receipt Requested, or by nationally recognized overnight courier service, or by hand, in each case with proof of delivery retained. Notices shall be effective upon delivery. The headings herein are for convenience of reference only and will not be deemed to be part of the substance of this Agreement. The parties have participated jointly in the negotiating and drafting of this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

30. **Waiver of Right to Trial by Jury.** HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, THE PARTIES IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM ARISING UNDER OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE VESSEL, AGAINST THE PARTIES, THEIR OWNER/SELLER(S), DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS.

31. **Conclusion.** This Agreement will end upon expiration, or prior thereto, for due cause if either party fails to meet its obligations hereunder and the other party delivers to such defaulting party written notice of the alleged breach and a reasonable opportunity to cure. Such termination will not affect the remedies available to the non-breaching party. Either party may exercise its right to terminate this Agreement upon the other’s material breach hereof. At the conclusion of this Agreement, the parties shall account to each other for any sums due and unpaid prior to the effective date of termination.

32. **Entire Agreement.** This Agreement sets forth the entire Agreement between the parties and constitutes a complete and exclusive statement of the terms of the Agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous discussions, understandings, or agreements, whether written or oral, between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified, unless duly executed by or on behalf of each party to this Agreement (in the case of Broker, by an officer of Broker). Neither this Agreement nor any right, interest or obligation under this Agreement may be assigned by Owner/Seller by operation of law or otherwise without the prior written consent of Broker and any attempt to do so will be void. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties to this Agreement and their respective successors and assigns. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person. Should any term or condition of this Agreement be held void or unenforceable, then that term shall be severed from this Agreement and the enforceability of the remainder shall not be affected and will remain in full force and effect.



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### **Agreed and accepted by**

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#### **Owner/Seller(s) or Authorized Representative**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

#### **Broker or Authorized Representative**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Exclusive Listing Agreement

### **Brokerage Checklist – Vessel will not be listed until complete**

(SP – Salesperson, SA – Sales Assistant)

ITEM	Who	Completed
Brokerage Agreement completed, signed & initialed by both parties	SP	
Registration for boat/Title for boat/MSO for boat and engines	Seller	
Registration for trailer/Title for trailer if over \$3K (dual axle)/MSO for trailer	Seller	
Vessel evaluation work order to service for scheduling	SP	
Evaluation completed and inserted in file	SA	
Owner's manuals collected if available	Seller	
Warranty history run through OEM	SA	
Pictures of Vessel taken (9 to 12 images)	SA	
Vessel listed on website(s)	SA	
Listing sheet attached to Vessel	SA	
Drain plug removed & batteries shut off on drop off. LOCATION: _____	SP	
Condition of boat at drop off (See Condition Drop-off note below)	SP/Seller	

**Notes about vessel condition at drop off** (Walk around by Owner/Seller and Broker): \_\_\_\_\_

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*Thank you for listing your Vessel with Yarmouth Boat Yard*