

## **Baddeck Wharf Terms and Conditions – June 20, 2022**

### **1. Definitions**

1.1 "Agreement" means the Berthing License Agreement these Standard Terms and Conditions ("STC"), shall constitute the whole agreement between the Parties and no representation or statement not expressly contained herein shall be binding upon either Party.

1.2 "Berth" means the community wharf and all floating docks, or other docks owned by the Village of Baddeck or Develop Nova Scotia or under the management of the Village of Baddeck.

1.3 "Crew" means the crew of the Vessel and any person on board the Vessel or at or about the Berth whether at the invitation, express or implied, of the Owner or otherwise.

1.4 "Owner" means the person named in Section 5 of the Agreement, its servants, agents, successors, or assigns. For the purpose of this Agreement, the term "Owner" shall be deemed to include a person who is a lessee or operator of a Vessel pursuant to a Lease or similar Agreement. If any person other than the named Owner accepts these conditions, that person shall be deemed to have the authority of the Owner to do so, and in any event, such person shall indemnify the Village of Baddeck from any claims made by the Owner against the Village of Baddeck arising out of the berthing of the Vessel.

1.5 "Vessel" means the Vessel named in Section 1 of the Agreement whether such Vessel is actually owned by the Owner or is leased or rented by the Owner from a third party.

1.6 "Village of Baddeck" includes the Commissioners of the Village and The Freight Shed Waterside Bistro & Market, Ltd. and their representatives

### **2. No Representations or Warranties**

The Village of Baddeck makes no representations, undertakings, or warranties whatsoever as to the fitness of the Berth, depth of water, or any other matter which might relate to the safe berthing of the Vessel. All such matters shall be solely for the consideration and decision of the Owner, and acceptance of these conditions by the Owner shall be conclusively deemed to mean that the Owner has satisfied himself with respect thereto.

### **3. Owner Responsibilities**

3.1 The Owner undertakes to berth the vessel in a safe and secure manner and to provide and tend all lines or other fastenings. In no event shall the Village of Baddeck have any responsibility for the safety or sufficiency of shore-side fastenings, or for berthing the Vessel or tending lines. The Village of Baddeck has the right at its sole discretion but has no obligation, to direct the Owner with respect to the manner of berthing.

3.2 The Owner shall be responsible for all damage arising out of or attributable to the presence of the Vessel at the Berth, to the Berth or to any other berthed vessel or other property, and for any harm whatsoever which may befall any crew member, (see definition), and any other person onboard the Vessel or at or about the Berth whether at the invitation, express or implied, of the Owner or otherwise including bodily injury and death and undertakes to indemnify and hold harmless the Village of Baddeck with respect to any claim by any person whomsoever arising therefrom. The Owner shall use appropriate shock absorbing fenders as necessary to prevent any damage during inclement weather. The Village of Baddeck in its sole discretion reserves the right to order the vessel to vacate the berth if the Village of Baddeck is concerned the vessel may damage property due to inclement weather. If the Owner fails to remove the vessel, the Village of Baddeck shall be entitled to, at the Owner's risk and cost, remove the vessel from the wharf and thereupon secure it elsewhere and charge the Owner all costs arising out of this removal without any notification.

3.3 The Owner acknowledges that the Berth is open to the public and that no watchmen's services are provided by the Village of Baddeck. In no event shall the Village of Baddeck have any responsibility for pilferage from or damage to the Vessel attributable to any cause whatsoever, including without limitation, any negligence on the part of the Village of Baddeck.

3.4 The Owner, Crew or designated personnel must be aboard the vessel overnight unless they receive express written permission from the Dock Master or Village of Baddeck.

3.5 No swimming is allowed from the Vessel tied to the wharf or from the wharf itself or from floating docks.

### **4. Garbage/Clean-Up**

The Owner undertakes that no garbage, effluent or other contaminant or pollutant whatsoever shall be discharged or permitted to escape from the Vessel, and shall remove all its property from the Berth and shall leave the Berth clean of all garbage and debris and in the same condition as at the commencement of this Agreement. The boater must place garbage in the containers provided for berthed vessels.

## **5. Termination**

5.1 The Village of Baddeck retains the right to terminate this Agreement on 24 hours prior written notice to the Owner if in the sole and absolute discretion of the Village of Baddeck the use of the Site by the Owner may adversely interfere with that of any other permitted Licensee, potential Licensee, or order the removal of the Vessel from the Berth at any time at its discretion, and the Owner undertakes to comply promptly with such order. The Owner agrees that if he should fail to obey such order, the Village of Baddeck has the right to remove the Vessel to any place whatsoever, and to store or dispose of the Vessel, at the Owner's expense. The Village of Baddeck retains the right to terminate this Agreement without notice in the event the Owner breaches this Agreement or any terms or conditions hereof.

5.2 In the event the Village of Baddeck removes, transports, stores, or in any way disposes of the Vessel, the Village of Baddeck shall not in any way be liable to the Owner or to any third party for damages to the Vessel or for loss of the Vessel whether or not these damages are the result of the Village of Baddeck's negligence or the negligence of a contractor or agent employed by the Village of Baddeck for such purposes.

## **6. Insurance**

6.1 Unless otherwise indicated, The Owner shall throughout the Term obtain and maintain commercial general liability insurance satisfactory to the Village of Baddeck covering bodily injury, sickness or disease, or death of any person, property damage, personal injury, and legal liability arising from the use and occupancy of the Site and shall provide a certificate of liability to the Village of Baddeck upon request, The minimum limits of coverage shall be not less than \$1,000,000 in respect of each occurrence or accident.

6.2 If applicable, the Owner covenants that the Owner has, as of the date of signing this Agreement, insurance to cover the compulsory removal and/or disposal of any Vessel berthed at or adjacent to the Property, for any reason whatsoever, including an order or any other directive issued pursuant to the Navigable Waters Protection Act. The Owner further covenants that it will, throughout the term of the License Agreement, maintain and place such insurance coverage.

## **7. Payments**

If requested, Payment shall be made in advance at the time of Berthing to the Property.

## **8. Indemnity**

The Owner hereby releases the Village of Baddeck from any and all actions, damages, loss or injury or death to persons or property which heretofore or hereafter may be sustained arising out of mooring of the Vessel at the said wharf; and the Owner hereby agrees to indemnify and save harmless the Village of Baddeck from and against all claims, demands, losses, costs, debts, damages, actions, suits, or other proceedings by whomsoever made, arising out of or attributing in any way to the mooring of the Vessel at the said wharf.

## **9. Parking**

The Owner acknowledges that no vehicle parking privileges whatsoever are included in this Agreement. Vehicles are not permitted on the Wharf.

## **10. Utilities and Services**

Utilities and services may be available at the site. The Owner must contact the Village of Baddeck or the Baddeck Dock Master prior to contracting outside services, including fuel delivery. The Owner shall, immediately upon receipt of a statement from The Village of Baddeck reimburse The Village of Baddeck for reasonable expenses incurred with respect to the Owner's use of the Site, including expenses relating to the provision of Electricity, Water, Security Services, Repairs, Fuel, Waste Management, Maintenance. (Does all this make sense for our customers?)

## **11. General Provisions**

11.1 In this Agreement, words importing the singular shall include the plural, and vice versa; words importing the gender shall include all genders.

11.2 Time shall be of the essence of this License Agreement.

11.3 This License Agreement may only be amended in writing signed by the Village of Baddeck and the Owner.

11.4 The headings used in this Agreement are inserted for reference purposes only and shall not affect the meaning or construction of any provision.

11.5 If any term or provision of this Agreement is found to be unenforceable or illegal, the rest of the Agreement remains in full force and effect, except that the offending term or provision is deemed to be removed from the Agreement.

11.6 In the event of a dispute between the Owner and any other user of the Property, the decision is at the sole and absolute discretion of the Dock Master or the Village of Baddeck whose decision shall be final and binding.

11.7 The Owner agrees that any sum due by the Owner to The Village of Baddeck pursuant to this Agreement, including any sum which the Village of Baddeck may reasonably require by way of security for the indemnities provided for herein, shall constitute a lien on the property of the Owner, including any Vessel of the Owner.

11.8 This License Agreement shall be governed by the laws of the Province of Nova Scotia and shall ensure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.

11.9 The Owner acknowledges that he/she has carefully read and accepts, without qualifications, the foregoing conditions.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
First and Last Name

\_\_\_\_\_  
Date