

## Terms and Conditions of Lower Halstow Parish Council: Wharf Licences

### 1. Definitions:

**Berth** means the space on the water or land from time to time allocated at LH Wharf by the Parish Council to the Owner for the use of the Owner and the Vessel during the Licence Period;

**Berthing Licence** means the licence for a Berth for the duration of the Licence Period which for the avoidance of doubt shall not permit any operation at or around the Berth for which a Commercial Licence or a Maintenance Licence would be required in accordance with these Terms & Conditions;

**Brickfields** means the open land to the west of LH Wharf;

**Commercial Licence** means a licence for the Owner to operate the Vessel commercially from the Berth but excluding the maintenance blocks or the maintenance area of LH Wharf as designated by the Parish Council from time to time;

**Competent Authority:** any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

**Interest Rate** means 4% above the base rate of Unity Trust Bank plc;

**Legislation** means:

- (a) United Kingdom legislation and all decisions directives instruments orders regulations and rules deriving from it; and
- (b) all decisions directives instruments orders regulations and rules of navigational and maritime regulatory bodies including the Maritime and Coastguard Agency; and
- (c) all decisions directives instruments orders regulations and rules of the Health and Safety Executive or any other Competent Authority; and
- (d) the regulations for the use and operation of LH Wharf published by the Parish Council from time to time;

**LH Wharf** means the wharf to the western side of Halstow Creek, Lower Halstow, Sittingbourne owned by the Parish Council;

**Licence Fees** means the charges payable to the Parish Council as stated in the Wharf Licence;

**Licence Period** means the length of the licence as stated in the Berthing Licence which shall not exceed 12 months in any circumstances;

**LOA** means the overall length of the space occupied by a Vessel including fore and aft projections whether temporary or permanent including bathing platforms, sterndrives,

outboard motors fenders, rudders, pulpits, pushpits, anchors, davits and/or tenders stored in davits;

**Maintenance Licence** means a licence which authorises work to be carried out on the Vessel, its gear and equipment whilst berthed within a maintenance area at LH Wharf as agreed by the Parish Council (acting reasonably) where such work is carried out by specialist sub-contractors or otherwise by contractors employed by the manufacturer, supplier or insurer of the Vessel;

**Owner** includes any owner, charterer, master, crew, agent or other person for the time being in control of the Vessel;

**Parish Council** means Lower Halstow Parish Council;

**Clerk to the Parish Council** means the Clerk from time to time of the Parish Council;

**Payment Date** means the first day of each calendar month;

**Terms & Conditions** means these terms and conditions of the Parish Council relating to Wharf Licences which are published on the Parish Council's website and which are available in hard copy on request;

**Vessel** includes any form of boat, craft, yacht, dingy, multihull or other marine structure which is subject to a Wharf Licence;

**Wharf Licence(s)** means the contract between the Parish Council and the Owner for (as applicable) a Berthing Licence, a Commercial Licence or a Maintenance Licence in a form required by the Parish Council and which is signed by both the Owner and the Parish Council.

## **2. Interpretation**

- 2.1. Unless expressly provided otherwise a reference to legislation or a legislative provision:
  - 2.1.1. is a reference to it as amended, extended or re-enacted from time to time; and
  - 2.1.2. shall include all subordinate legislation made under that legislation or legislative provision.
- 2.2. Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.3. The words **for whom the Owner is responsible** shall include family, friends, crew, contractors and other invitees of the Owner to the Vessel or to LH Wharf.

## **3. Wharf Licences**

- 3.1. These Terms & Conditions apply to and are incorporated into all Wharf Licences and include such amendments as are notified to the Owner in writing from time to time.

- 3.2. The Wharf Licence and these Terms & Condition constitute the entire agreement between the Parish Council and the Owner.
- 3.3. A Wharf Licence must be in place before occupation of a Berth can be taken.
- 3.4. All Wharf Licences:
  - 3.4.1. are personal to the Owner and relate only to the Vessel named therein;
  - 3.4.2. are not assignable and the rights given in them may be exercised only by the named Owner.
- 4. Licence Fees**
- 4.1. Licence Fees are payable monthly in advance on each Payment Date during the Licence Period. The first payment shall be the sum calculated from the date of the Wharf Licence to the day before the first Payment Date and shall be paid on or before the signing of the Wharf Licence.
- 4.2. The Parish Council do not send demands for Licence Fees. It is the responsibility of the Owner to pay the Licence Fees promptly to the Clerk to the Parish Council on each Payment Date. The banking details of the Parish Council will be supplied to the Owner on request.
- 4.3. If any Licence Fees or any other money payable under a Wharf Licence have not been paid by the date they are due, whether they have been formally demanded or not, the Owner shall pay to the Parish Council interest at the Interest Rate on the amount outstanding for the period from the due date to and including the date of payment.
- 4.4. Licence Fees are not subject to VAT.
- 4.5. Licence Fees and any other money payable under a Wharf Licence are to be paid by the Owner without deduction, counterclaim or set-off.
- 4.6. Licence Fees take into account the LOA. The Parish Council reserves the right to require the Vessel to be measured at any time during the Licence Period. If following the Vessel being measured it is found that the LOA as so measured exceeds the LOA entered in the Wharf Licence, the Parish Council may, in its sole discretion, treat the existing Wharf Licence as continuing (notwithstanding paragraph 10.1.3) if the Owner pays the Licence Fees applicable to a vessel of that LOA as published on the Parish Council's website from time to time for the whole of the Licence Period to include making up the shortfall of Licence Fees from the commencement of the Licence Period.
- 4.7. If the Owner sells the Vessel during the Licence Period and immediately replaces it with another vessel, the Parish Council may, in its sole discretion, treat the existing Wharf Licence as continuing (notwithstanding paragraph 10.1.4):
  - 4.7.1. where the LOA of the replacement vessel is in excess of the Vessel and the Owner agrees to pay to the end of the Licence Period additional Licence Fees from the date

of the sale based on the difference between the LOA of the Vessel and the LOA of the replacement vessel;

- 4.7.2. where the LOA of the replacement vessel is less than the Vessel the Owner continues to pay the existing Licences Fees at the date of the sale to the end of the Licence Period.

## **5. Allocation of Berths**

- 5.1. Berths are allocated to Owners at the absolute discretion of the Parish Council.
- 5.2. Owners do not have exclusive use of any particular Berth.
- 5.3. The Parish Council reserves the right to change the initial Berth allocation to a suitable alternative from time to time and at any time during the course of the Licence Period.
- 5.4. Berths are for the use of the Vessel named in the Wharf Licence. In no circumstances shall another vessel be introduced into an allocated Berth by way of rafting or otherwise.
- 5.5. Where a Berth is left vacant for 7 days or more the Parish Council reserves the right to use the Berth pending return of the Vessel. For the avoidance of doubt no refund of Licences Fees shall be made in such circumstances.

## **6. Owner's Use of LH Wharf**

- 6.1. The Owner shall not operate any trade, supply any services or carry out any other commercial activities from LH Wharf unless the Parish Council has granted a Commercial Licence.
- 6.2. No works to the Vessel shall be carried out whilst in the Berth other than minor running repairs or work of a routine nature carried out by the Owner and their regular crew or family unless the Parish Council has granted a Maintenance Licence.
- 6.3. The Owner shall keep the Berth seaworthy, clean, tidy and clear of rubbish.
- 6.4. The Owner shall observe any reasonable rules and regulations which the Parish Council makes and notifies to the Owner from time to time governing the Owner's use of the Berth or the LH Wharf.
- 6.5. The Owner shall not:
- 6.5.1. make any alteration or addition whatsoever to the Berth and the LH Wharf including (where applicable) the maintenance blocks or the maintenance area.
  - 6.5.2. take to or keep fuel or lubricating oil on the Berth except that inside the fuel tank and engine of the Vessel;
  - 6.5.3. do anything that will or might constitute a breach of any Legislation affecting the Berth or LH Wharf;

- 6.5.4. do on or in the Berth anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Parish Council or other users of LH Wharf;
- 6.5.5. cause or permit to be caused any damage to:
  - 6.5.5.1. the Berth any other part of LH Wharf or any neighbouring property; or
  - 6.5.5.2. any property of the other users of LH Wharf.

## **7. Owner's Obligations**

During the Licence Period the Owner shall:

- 7.1. Provide suitable and sufficient warps and fenders and shall ensure that halyards and other rigging are properly secured.
- 7.2. Notify the Parish Council if the Berth is expected to be left unoccupied for more than 7 days.
- 7.3. Not bring any dog to LH Wharf other than one which is well-behaved, is strictly controlled by the Owner and does not cause a nuisance or concern to other users of LH Wharf.
- 7.4. Not engage in aggressive or anti-social behaviour or permit those for whom they are responsible to do so whereby annoyance or offence is caused to other users of the LH Wharf. In particular, no noise pollution arising from the use of radios and the like, engines or other apparatus or equipment or light pollution emanating from the Vessel shall be caused or permitted by the Owner.
- 7.5. As soon as practicable, where any damage is caused to the Berth or LH Wharf by reason of the Owner's acts or omissions make good the damage so caused to the reasonable satisfaction of the Parish Council and shall pay reasonable compensation in lieu where the damage cannot be remedied.
- 7.6. Indemnify and keep indemnified the Parish Council against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from the granting of the Wharf Licences and any breach of the Owner's obligations under them.
- 7.7. Insure and keep insured the Vessel for its full replacement value together with salvage and wreck removal, third party liability insurance of not less than £5,000,000, (where applicable) employer's liability insurance for no less than the statutory minimum and shall supply the Parish Council with a copy of the current policy when reasonably requested to do so.
- 7.8. Pay the costs and expenses (assessed on a full indemnity basis) of the Parish Council together with VAT and including any solicitors' or other professionals' costs and expenses whether incurred during or after the end of the Licence Period in connection with or in contemplation of the enforcement of the Owner's obligations and covenants set out in the Wharf Licence.

- 7.9. Not sell any Vessel whilst occupying a Berth or display a sign advertising that a Vessel is for sale unless the Owner has obtained the prior written consent of the Parish Council. Where the Parish Council has granted its consent to the Owner the Vessel can only be viewed at LH Wharf in the presence of the Owner.
- 7.10. At the end of the Licence Period the Owner shall leave the Berth in a clean and tidy condition and shall remove the Vessel and any other property from the Berth. If the Vessel or any other property is not removed within 14 days, or as soon as practicably possible, of the end of the Licence Period, the Parish Council may dispose of it in any manner that the Parish Council deems fit without incurring any liability whatsoever to the Owner.

## **8. Health Safety and the Environment**

- 8.1. The Parish Council will not tolerate any behaviour which puts at risk the property or health and wellbeing of other users of the LH Wharf and the Brickfields. The Owner must at all times ensure that they, and those for whom they are responsible, have regard to the risks inherent in moving vessels in close proximity to others and act with such care and caution as is appropriate in such circumstances.
- 8.2. No material or liquids of any description shall be discharged from the toilets or bilges of any Vessel whilst berthed at LH Wharf. In the event that any such discharge is made then, without prejudice to any other remedies available to the Parish Council under the Wharf Licence, the Owner shall pay on demand to the Parish Council all costs incurred to clean-up LH Wharf as a result of the Owner's breach of this provision and the Owner shall indemnify the Parish Council for any damages or claims arising out of the Owner's failure to prevent such discharge from occurring.
- 8.3. The Owner shall not, and shall ensure that, those for whom they are responsible do not dispose of any refuse or any other detritus overboard the Vessel or otherwise deposits anything on LH Wharf or the Brickfields.
- 8.4. The Owner shall, and shall ensure that, those for whom they are responsible, comply with all Legislation when in and moving or manoeuvring around LH Wharf. In particular, the Owner shall observe all speed restrictions and shall have proper regard at all times to the safety of the Vessel and those on board and the safety of other vessels and people using the LH Wharf.
- 8.5. Where any incidents occur at LH Wharf involving property damage or personal injury, the Owner shall report such matters as soon as practicable to the Clerk to the Parish Council so that appropriate action can be taken.

## **9. Parking**

- 9.1. There are no parking facilities available to Owners at LH Wharf or anywhere on the Brickfields. Vehicular access is restricted to loading and unloading only.
- 9.2. Codes to the access gates will be given upon a counter signed contract.
- 9.3. Public footpath ZR33 crosses LH Wharf and in accordance with the Highways Act 1980, section 137, the footpath must remain free of obstruction at all times.

## **10. Termination of the Wharf Licence**

- 10.1. A Wharf Licence will come to an end on the earliest of the following:
  - 10.1.1. the end of the Licence Period;
  - 10.1.2. the Parish Council giving notice to the Owner to terminate with immediate effect if the Owner breaches any of the obligations contained in the Wharf Licence and does not remedy such breach or breaches after being given reasonable time in which to do so by the Parish Council;
  - 10.1.3. where it is discovered following the Vessel being measured in accordance with paragraph 4.6 that the LOA was incorrectly stated in the Wharf Licence;
  - 10.1.4. where the Vessel which is the subject matter of the Wharf Licence is sold and paragraph 4.7 does not apply;
  - 10.1.5. expiry of not less than 14 days' notice to terminate given by the Owner to the Parish Council.
- 10.2. Termination is without prejudice to the rights of either party in connection with any existing breach of any obligation subsisting under the Wharf Licence at the date of termination.
- 10.3. Save where termination occurs as set out in paragraph 10.1.1, the Owner shall be liable to pay the balance of the Licence Fees to the end of the Licence Period which shall be payable within 5 days of the date of termination.

## **11. Limitation of Parish Council's Liability**

- 11.1. The Parish Council is not liable for:
  - 11.1.1. the death of, or injury to, the Owner or its invitees;
  - 11.1.2. any theft, damage, destruction or loss of the Vessel or its contents;
  - 11.1.3. any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Owner or its invitees in the exercise of the rights granted by the Wharf Licence;
- 11.2. Nothing in paragraph 11.1 shall limit or exclude the Parish Council's liability for:
  - 11.2.1. death or personal injury or damage to property caused by negligence on the part of the Parish Council; or

- 11.2.2. any matter in respect of which it would be unlawful for the Parish Council to exclude of restrict liability.

## **12. Notices**

- 12.1. Any notice given under this licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- 12.1.1. to the Parish Council at: Amberley, 5 The Street, Sporle, King's Lynn, Norfolk PE32 2EA marked for the attention of the Clerk to the Parish Council; and

- 12.1.2. to the Owner using the name and address contained in the Wharf Licence.

or as otherwise specified by the relevant party by notice in writing to each other party.

- 12.2. Any notice given in accordance with paragraph 12.1 will be deemed to have been received:

- 12.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

- 12.2.2. if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting.

- 12.3. A notice given under a Wharf Licence shall not be validly given if sent by fax or e-mail.

## **13. Data Protection**

Lower Halstow Parish Council is a data controller for the purposes of the EU General Data Protection Regulation (GDPR) and the UK Data Protection act 2018. A copy of Lower Halstow Parish Council Privacy Policy can be found on the Lower Halstow Parish Council website

## **14. No warranty of condition**

- 14.1. Before the date of the Wharf Licence the Parish Council shall have given the Owner permission and the opportunity, which the Owner agrees were sufficient for its purposes, to inspect, survey and investigate the condition of the Berth and LH Wharf. The Owner is therefore treated as having formed its own view of the condition of the Berth and LH Wharf and its suitability for the Owner's purposes

- 14.2. The Owner is deemed to acknowledge that they do not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Parish Council before the date of the Wharf Licence.