

# THE YARMOUTH (ISLE OF WIGHT) HARBOUR COMMISSIONERS

## TERMS FOR LONG TERM VISITOR (LTV) MOORINGS

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### 1. THE TERMS FOR LTV MOORINGS

- 1.1. The LTV mooring license period are split into two seasons. Summer (1<sup>st</sup> April -30 September) and winter (1<sup>st</sup> October to 31<sup>st</sup> March). A separate application form must be completed for each season or part thereof.
- 1.2. LTV moorings are offered subject to available space within the Harbour. Therefore, the 'Requested Dates' if agreed by us are binding. You/we may give 14 days' notice to cancel the contract at any time.
- 1.3. An LTV mooring confers no right on you for any other form of mooring or right, when the LTV Period ends.
- 1.4. You will pay to us the Mooring Charge throughout the LTV Period in accordance with these Terms.
- 1.5. Moorings are let on a whole calendar month basis and no discount will apply for licences issued part way through a month. Boats may have to be moved at short notice to facilitate works or the return of the allocated mooring holder.
- 1.6. You warrant to us that the following are true and will remain true during the LTV Period:
  - 1.6.1. that you are over 18 and the owner (whether jointly or as sole owner) of the Boat and have possession and control of it;
  - 1.6.2. that the Total Overall Length including protrusions (anchors, engines, bowsprits, davits etc) of the Boat is as stated in the LTV Application Form. If the declaration is subsequently found to be incorrect, the commissioners reserve the right to recover the correct payment.
- 1.7. We reserve the right to charge for the supply of electricity when we consider the costs to be significant.

### 2. YOUR GENERAL OBLIGATIONS

**Use of mooring: You must use the allocated mooring only as expressly permitted by these Licence Terms.**

**2.2 Identification of Boat: Your Boat must be named, and the name clearly displayed on it.**

**2.3 Non-use for living accommodation:** You will not use or allow your Boat to be used for living accommodation whilst it is moored in the Harbour other than for occasional overnight stays. The decision as to whether any use constitutes "living accommodation" or is "occasional" shall be determined by us, acting reasonably. If we tell you that we believe your use is for living accommodation, then such use must stop. A failure to stop will be a breach of the Licence.

As general guidance, you may stay or allow people to stay on the Boat in the Harbour for weekends and public holidays and, in addition, up to a total of 28 days (beyond weekends and public holidays) over the course of the Licence. If you wish to stay for longer periods, then you must ask us and we may, at our discretion, give permission.

You must not:

- (a) allow paying guests to reside on your vessel overnight.
- (b) sublet, license or loan your mooring to another person or vessel.

Breach of this clause 2.3 will result in termination of the licence.

- 2.4 **Seaworthy condition:** You must keep your Boat in a clean, sound, well presented, watertight and seaworthy condition to the reasonable satisfaction of the Harbour Master. If we believe that the Boat is not sound or seaworthy, we reserve the right to require you to remove the Boat from its mooring and from the Harbour until the Harbour Master is satisfied that it is structurally sound and poses no threat to safety, the environment or safe navigation within the Harbour.

If the Boat shall for any reason sink within the Harbour, we shall be entitled to raise and salvage it and recover from you the proper charges, fees and expenses in respect thereof. Private salvage will be permitted provided that you obtain our prior approval to the method and timing of such salvage.

- 2.5 **Maintenance and Repairs:** No work can be done at the mooring if that work will or might cause danger, obstruction, nuisance or annoyance to other Harbour users, or interfere with our activities. Any maintenance, repairs or other work to the Boat carried out at the mooring must be undertaken in compliance with the Harbour Rules. (By way of example only, permits must be obtained from us for any hot work, or if anyone wishes to go into the water to undertake work.)
- 2.6 **Reasonable care:** You will take reasonable precautions at all times to ensure that no person or vessel using the Harbour is placed in jeopardy by any action or failure to act by you, whether through the use of the mooring by you or by any master of your Boat, or any of your crew members, agents, guests and/or invitees. You shall at all times ensure that all persons using or visiting the Boat (whether invited by you or not) are made aware of and comply with all of the Licence Terms and Harbour Rules.
- 2.7 You shall ensure that all halyards and other rigging are secured so as not to cause nuisance or annoyance to us or to other Harbour users.
- 2.8 **Refuelling:** You shall not refuel your Boat in the Harbour other than at the authorised fuelling station or by other means which have been authorised in writing by us. You must comply fully with the terms and conditions of any such authorisation. Throughout refuelling, all naked lights must be extinguished, engines must be stopped, smoking is prohibited and mobile phones and other mobile communication devices must be switched off.
- 2.9 Tenders:
- (a) You will not be entitled to keep a tender in the water or on the tender pontoons.
  - (b) Non walk ashore LTV's may use the taxi free of charge during its operational hours with reasonable fair usage to and from your licenced vessel; this will be at the discretion of the harbour taxi operative.
  - (c) You may, subject to availability, and only in connection for use with your licensed Boat, use one of the tenders provided by us which are kept afloat on the tender pontoons.
- 2.12 **Your obligations:** Without in any way limiting the Licence Terms, you shall at all times:
- (a) comply with all laws, including without limitation local legislation, harbour byelaws and general and special directions relating to the Harbour;
  - (b) observe and perform these Licence Terms and all Harbour Rules from time to time in force; and
  - (c) comply with all lawful requests made by the Harbour Master and any employee, servant or agent of the Harbour or the Commissioners.

You acknowledge that this Licence does not in any way prejudice or limit the powers given to us by the Harbour Revision Order(s), General Directions or Byelaws or other applicable Harbour rules or regulations from time to time in force or by law.

- 2.13 **Payments:** You will pay to us promptly all sums due from you under the Licence Terms. All payments must be made within 30 days of the date on which they are demanded, or by such later date as we tell you. VAT will, where applicable, be charged by us at the relevant rate and this will be payable by you.

If you are late in making any payments, we may charge you interest at 4% above the base rate of National Westminster Bank plc from time to time, with interest accruing on a daily basis from the date on which payment was due to the date on which payment is received by us.

- 2.15 **Noise, nuisance and annoyance:** You shall not:

- (a) use any engines, generators, radios, music players or other apparatus or machinery within the Harbour that cause noise, light or fumes; or
- (b) without limiting 2.14(a) above, run the engines or any noisy generators or pumping gear of the Boat overnight between the hours of 2200 and 0700 while moored in the Harbour (except only running engines for the purposes of mooring or departing from a mooring or assisting others to moor or depart from a mooring); or
- (c) generally behave in such a manner that does, or would reasonably be likely to, cause any danger, obstruction, nuisance or annoyance to the Commissioners or to any other users of the Harbour or to any other person residing in the vicinity of the Harbour.

- 2.16 **Boat Keys:** If you leave any Boat keys at the Harbour Office you do so at your own risk. We bear no responsibility or liability for any Boat keys left at the Harbour Office.

2.8.1

- 2.9 You acknowledge that this LTV mooring does not in any way prejudice or limit the powers given to us by the Harbour Revision Order(s), General Directions or Byelaws or other applicable Harbour rules or regulations from time to time in force or by law.

### 3. MOORING CHARGES

- 3.1. Mooring Charges are payable monthly in advance.
- 3.2. At the beginning of the LTV Period, we will calculate the Mooring Charges due for the number of days from the date that the LTV Period begins until the end of that calendar month, calculated on a pro rata basis for the days in that month. Subsequent Mooring Charges, up to and including the month of departure, will be for whole calendar months. For the avoidance of doubt, **pro rata charges do not apply in the month of departure.** The first invoice to you will be for the pro rata charge for the relevant portion of the first calendar month and the subsequent full calendar month. In all other circumstances, the Mooring Charges will be invoiced for each calendar month in advance of the relevant month to which they apply.
- 3.3. All payments must be made within 7 days of the date on which they are demanded, or by such later date as we tell you. VAT will, where applicable, be charged by us at the relevant rate and this will be payable by you.
- 3.4. We may charge you for our administration costs and any costs we incur where we are required to raise with you any breach of these Terms (including but not limited to late payment). Details of our charges are set out on our website.

#### **4. CALCULATION OF DUES AND CHARGES**

4.1. Mooring Charges applicable to Long term visitors will be calculated as follows:

- 4.1.1. a per metre rate per month Mooring Charge will be established for each type of Mooring;
- 4.1.2. a minimum length basis of Mooring Charge may be fixed for any type of Mooring other than a pile Mooring;
- 4.1.3. the per metre rates of Mooring Charge will be applied to the overall length (expressed in metres) of the Boat (including bowsprits, davits and other extensions) or, if applicable (finger berths) and if longer, the minimum length basis fixed for the type of Mooring concerned;

#### **5. RECALCULATIONS OF MOORING CHARGES**

5.1.1. If we terminate the LTV mooring by notice given under paragraph 10.2 below, the Mooring Charges paid by you in advance shall be recalculated on a pro rata basis for the days that the LTV Period has continued. Any money paid by you in advance in excess of that recalculated amount shall be refunded by us to you.

5.1.2. If the type of mooring is changed, we will recalculate the Mooring Charges due from you and notify you accordingly. We will refund or set off any credit against future Mooring Charges. If money is owed by you to us, you agree to pay promptly such additional sums due.

5.2. Other than refunds made under paragraph 3.4 above, no refunds or reduction in charges, and no extensions of time for payment or of the LTV Period, will be given if your Boat is away from the mooring for a period of time.

5.3. If you wish temporarily to moor in a different location (e.g. on a Finger or Walk Ashore berth instead of Non Walk Ashore), you must pay the overnight visitor rate for that location in addition to your Long Term Visitor Mooring Charges.

5.4. If you are late in making any payments, we may charge you interest at 4% above the base rate of NatWest Bank plc from time to time, with interest accruing on a daily basis from the date on which payment was due to the date on which payment is received by us.

#### **6. THIRD PARTY INSURANCE**

6.1. You must maintain at all times a suitable policy of insurance, including in respect of public liability and third party liability cover, for claims for damage to persons or property. This should cover you, your Boat and the master, crew members, agents, guests and/or other invitees of you or others. Such insurance shall be for not less than £2,000,000, or such other minimum sum as we may require from time to time. Where appropriate, you must also hold employers liability insurance cover to at least the statutory minimum. You will provide satisfactory evidence to us of such insurance within 7 days of being requested to do so.

#### **7. ALLOCATION OF AND RIGHTS TO A MOORING**

7.1. We will tell you which mooring you may use for your Boat from time to time.

7.1.1. We may offer moorings in our discretion and change the mooring offered to you to another mooring at any time.

7.1.2. Where we change your mooring, we will try to move you to a mooring of similar type, but you acknowledge that this will not always be possible.

7.1.3. You are not entitled to the exclusive use of the mooring. Depending upon the location

and type of mooring, the mooring may be required to be shared, for example by rafting, with other users (including visitors and annual mooring licence holders).

7.1.4. For operational reasons, for example periods when special events such as the Taittinger Regatta, Gaffers Regatta, Dredging operations are underway, we may require you to relocate your vessel to other parts of the harbour or in exceptional circumstances temporarily remove your vessel from the harbour.

7.2. An LTV Mooring does not confer upon you any ownership, right or interest whatsoever over or in connection with the mooring or any other property belonging to us other than the right to moor your Boat at the mooring subject to these Terms and to have such access (if any) to the mooring as may be available from time to time.

7.3. We will have the right to use the mooring at any time when it is left vacant by you. You must expect the mooring to be used by us if your Boat is away from the mooring for more than 24 hours. We ask you to let us know when you are expecting to return, so that we may try to ensure that the mooring is available to you on your return. If you have not told us, or the Mooring is not readily available when you return, we will find you a temporary mooring until your mooring is available.

7.4. We reserve the right to board, moor or re-moor your Boat or take any action in respect of your Boat or move your Boat or any gear, equipment or other goods in accordance with these LTV Terms, or at any time for reasons of safety, security, emergency, to prevent or stop a nuisance or otherwise for good management of the Harbour and our premises.

7.5. Other than moving your boat for our own operational reasons, if we take action under paragraph 7.4 or if we have asked you to take action in respect of your Boat, gear, equipment or other goods and you do not and we take such action, then in either case we may charge you for taking that action on your behalf in accordance with our usual charges. By way of example, this would include moving a Boat or other equipment left in the Harbour, or emptying a Boat of water.

7.6. If for any reason (including navigational, emergency or safety reasons) we direct you to move your Boat, you shall immediately do so. You shall return the Boat to the (or our nominated alternative) mooring only when we direct you to do so. If you do not move your Boat as directed by us under this paragraph 7.6, then without prejudice to any other rights that we may have, we may move or cause your Boat to be moved at your sole risk and expense. We shall be entitled to charge you for our services or those of third parties in doing so.

## **8. ASSIGNMENT AND TRANSFER**

8.1. This LTV Mooring is personal to you and relates only to your Boat described in the application information.

8.2. The LTV Mooring may not be transferred or assigned to another person. You may not permit anyone else to use the mooring, even a new owner of the Boat. You may not use the mooring for a different vessel (either temporarily or permanently) without our express prior consent.

## **9. CHANGES OF PERSONAL INFORMATION AND CHANGES TO YOUR BOAT**

9.1. You must tell us as soon as possible if any of the information on the LTV Application Form changes or you believe that it may change. We may require you to notify us of changes by completing an additional LTV Application Form.

9.2. In the event of the death of a LTV Licensee, the LTV mooring will end automatically with his/her death.

## 10. TERMINATION OF THE LTV MOORING

10.1. Without prejudice to any right or remedy available to us, we will be entitled to end this agreement immediately by notice to you if:

- (a) you fail to pay in full any money owed to us by you, whether arising in connection with the LTV Period or otherwise, in any such case within 7 days of the date on which payment was due; or
- (b) if you commit any breach of this agreement and that breach:
  - (i) is a breach of paragraph 6 of these Terms;
  - (ii) is a breach that cannot be put right; or
  - (iii) is a breach that can be put right but after we have notified you of the breach and what you must do to put it right, you have not done so within the time we have set in our discretion (but not less than 7 days) for you to do so.
- (c) we have agreed (in our discretion) to issue this LTV mooring to you subject to a specific condition (whether because of a non-compliance during a previous LTV Period or otherwise) and given you a period of time to satisfy that specific condition, and you have failed satisfactorily to do so within the agreed timescale; or
- (d) any information or warranty given by you to us in connection with this LTV mooring was false or inaccurate in any respect when given, or has by reason of a change in circumstances, ceased to be accurate; or
- (e) any of the following events have occurred:
  - (i) you have failed to provide evidence satisfactory to us of your insurance, having been asked so to do;
  - (ii) you no longer own the Boat;
  - (iii) we have begun a prosecution of you under the Harbour Rules for breach(es) of those Rules; or
  - (iv) you have committed a serious breach or persistent breaches (whether individually serious or not) of the Harbour Rules and we have given you warning that a prosecution will be considered by us if there are further breaches of such Rules by you; or
- (f) if you are unable to pay your debts or become insolvent or bankrupt, or make or propose to make an arrangement or composition with your creditors.

10.2 Either you or we will be entitled to end this agreement at any time by giving not less than 14 days notice in writing, save that such a notice given by you must not expire before the end of the Minimum Term.

## 11. REMOVAL OF THE BOAT AND LIEN

11.1. Subject to paragraph 11.2 below, when the LTV Period ends for whatever reason, you shall immediately remove your Boat from the mooring.

11.2. Paragraph 11.1 above does not apply if a renewal of the LTV mooring is granted by us to you in respect of your Boat to take effect immediately on conclusion of the previous LTV Period. If the new LTV Period requires you to move your Boat to a new location, you shall move your Boat to that new location by the date that we specify.

- 11.3. If you fail to remove your Boat at the end of this LTV Period, we shall be entitled to charge you at our overnight visitor's rate for a Boat of equivalent length on a similar type of mooring (meaning walk ashore or non-walk ashore) for each day between the end of this LTV Period and the actual date on which your Boat is removed from the Harbour. We may remove your Boat from the Harbour and secure it elsewhere at your risk (excluding only for loss or damage caused by our negligence or breach of duty during that removal). We may charge you for all costs reasonably arising out of that removal and/or storage, whether those are our costs or charged to us by third parties.
- 11.4. If we have told you that a new mooring has been offered to you for your Boat and you do not move it within the time that we have specified for such move then, without prejudice and in addition to any other rights that we may have, we may at any time thereafter cause your Boat to be moved to the new mooring at your sole risk and expense (excluding only for loss or damage caused by our negligence or breach of duty during such removal) and shall be entitled to charge you for our services or those of third parties in doing so.
- 11.5. We reserve a general right ("a general lien") to detain and hold onto your Boat or other property pending payment by you of any sums due to us. If the LTV Period is terminated or expires whilst we are exercising this right of detention we shall be entitled to charge you at our overnight visitor's rate for a Boat of equivalent length on a similar type of mooring for each day between termination or expiry of the LTV Period and the actual date of payment (or provision of security) by you and removal of the Boat from the Harbour. You shall at any time be entitled to remove the Boat or other property upon providing proper security, for example a letter of guarantee from a bank or a cash deposit, sufficient to cover the debt with interest and where the debt is contested, a reasonable provision for our prospective legal costs.

## **12. COMMISSIONERS' GENERAL OBLIGATIONS/NO OTHER LIABILITY OF COMMISSIONERS**

- 12.1. Subject to paragraph 12.2 below, by granting a LTV mooring we agree to take all reasonable steps to maintain the pontoons or piles at which the mooring is situated in a reasonably good state of repair and usable condition.
- 12.2. Neither we, nor any individual Commissioner or any of our authorised officers or other employees, will be liable for any claim whatsoever arising out of or in connection with a grant or refusal to grant any LTV mooring or the implementation or enforcement of the provisions of the LTV Terms.
- 12.3. We shall not be deemed by these terms and conditions to have given to you any warranty or condition as to the maintenance by us of a sufficient (or any) depth of water at or at the approaches to the mooring.
- 12.4. We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as severe weather conditions, the actions of third parties not employed by us or any defect in a customer's or third party's property); this extends to loss or damage to Boats, gear, equipment or other property left with it for work or storage, and harm to persons entering the Harbour and/or using any facilities or equipment.

## **13. GENERAL PROVISIONS**

- 13.1. Wherever a time is specified in these LTV Terms by which certain matters are required to be implemented, we may in our absolute discretion agree to an extension of that time in any particular case.
- 13.2. These LTV Terms are under constant review by us and may be changed at any time. We will notify you of any changes on our website and by posting a notice at the Harbour Office. We may also send you details by post or email, but shall not be obliged to do so.

### 13.3. Notices:

- (a) All documents and other written communications to be sent to you may be sent at our option by email (where we have an email address for you as part of the LTV Application Form) or by ordinary post to your address shown on the LTV Application Form, unless you have given us notice under clause 7.1 of a change of address.
- (b) All documents and other written communications to be sent to us or required to be delivered to the Harbour Office should be sent by email to [LTV@yarmouth-harbour.co.uk](mailto:LTV@yarmouth-harbour.co.uk) or by ordinary post or delivered by hand to the Harbour Office marked for the attention of the Administration Department.
- (c) Documents sent by email will only be treated as having been served if the email is acknowledged or replied to or if the sender has a "read receipt". An automated response to an email that the intended recipient is "out of office" is to be treated as proof that the email was not received.
- (d) A notice or document received by email before 1700 on a normal office working day is to be treated as received on that day. If it is received after 1700 or not on a normal office working day it is to be treated as received on the next working day.

13.4. In the event of any conflict between the terms of this agreement and the Harbour Rules, this agreement shall prevail, but if a rule expands the terms of this agreement or vice versa, both shall apply.

13.5. A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

13.6. This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

13.7. None of your rights or obligations under the LTV Terms may be assigned, transferred, sub-contracted or otherwise disposed of in whole or part without our prior written consent. We may assign, transfer, sub-contract or otherwise dispose of all or any of our rights or obligations under this agreement by giving notice to you, provided that such a disposal of rights or obligations does not affect any of your rights or remedies under the LTV Mooring.

## 14. INTERPRETATION

14.1. In this agreement, the expressions below have the respective meanings given to them (unless the context otherwise requires):

**"Boat"** means the Boat specified in the LTV Application Form.

**"Harbour"** means the Inner Harbour and the Outer Harbour as defined in the General Directions.

**"Harbour Dues"** means the harbour dues levied by the Commissioners as part of the payment required for the issue of an LTV mooring.

**"Harbour Master"** means any person appointed as such by the Commissioners, and his deputies and assistants, and any other person or employee of the Commissioners for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of Harbour Master.

**"Harbour Rules"** means all General Directions, Special Directions, Byelaws and other rules and



regulations of the Harbour as are in force from time to time.

**“Period”** means the period from the date on which the LTV mooring begins until the date on which it is ended in accordance with these LTV Terms.

**“LTV”** means Long Term Visitor.

**“Minimum Term”** means the period from the date agreed between us that we will make a berth available for you to use and up to the end of the following calendar month.

**“Mooring Charge”** means the Harbour Dues and other mooring charges levied by the Commissioners for a LTV mooring.

**“Total Overall Length”** and **“LOA”** means the overall length of the space occupied by the Boat, including any fore and aft projections, whether temporary or permanent.

**“Vessel”** has the meaning given in the General Directions.

**“Walk-ashore mooring”** means a mooring from which those using the mooring can walk to a quay or the shore.

**“We”** means the Yarmouth (Isle of Wight) Harbour Commissioners and includes any person authorised on behalf of the Commissioners.

**“You”** means the person to whom an LTV Mooring is issued.

14.2. In these Terms, unless the context otherwise requires:

a reference to the General or Special Directions, a Byelaw or a statute or a Harbour Revision Order or other statutory instrument, or any provision of any of these, is to be construed as a reference to any amendment, re-enactment or replacement of the same as may have been made or may from time to time be in force;

a reference to a **person** means an individual only and, as appropriate, that person’s respective successors or assigns; and

words importing the plural shall include the singular and masculine shall include the feminine, and vice versa.

14.3. Headings are used only for convenience and will not affect interpretation.

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