

## YARMOUTH HARBOUR COMMISSIONERS

### Terms and conditions for Long Term Visitor Moorings (LTV)

Your use of a mooring and/or payment of your invoice amounts to acceptance of these terms and conditions.

The LTV mooring license period are split into two seasons. Summer (1st April -30 September) and winter (1st October to 31st March). A separate application form must be completed for each season or part thereof. 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. DEFINITIONS

Authorised Use	Your personal leisure use only, unless commercial use has been specifically authorised by us
Mooring	As a Long term visitor you have no permanent berth allocation in the harbour, may only use the berth as instructed by us and you may be moved subject to the business requirements.
Harbour	The area of the Inner Harbour and the Outer Harbour over which we exercise our jurisdiction as defined by the Yarmouth (Isle of Wight) Harbour Revision Orders 1971-2011, and as may be amended by subsequent enactments from time to time.
Harbour Master	Any person appointed as such by us, and their deputies and assistants, and any other person or employee we authorise for the time being to act, either generally or for a specific purpose, in the capacity of Harbour Master.
Harbour Dues	The harbour dues levied by us, which forms part of the Mooring Charge.
Harbour Rules	All General Directions, Special Directions, Byelaws, terms and conditions and other rules and regulations of the Harbour as are in force from time to time.
Licence Information	The information you declare to us in the LTV application form.
Mooring Charge	The Mooring charge set by us as published on our website from time to time, part of which will be comprised of Harbour Dues.
Services	Mooring or berthing services
us, we, our	Yarmouth Harbour Commissioners as constituted from time to time (and its employees, servants and / or agents as the context requires).
you	The person to whom the Mooring Licence is issued, including, where applicable, both Joint Family Licensees or all partners in the case of a partnership, on a joint and several basis.
Vessel	The vessel in respect of which the Mooring Licence is issued.
Visitor Rates	The visitor rates set by Us as published on our website from time to time.
Walk-Ashore Mooring	A mooring from which those using the mooring can walk to a quay or the shore, and "Non-Walk-Ashore Mooring" shall be construed accordingly.

#### 2. USE OF THE MOORING

- 2.1 **Suitability of the Mooring:** By accepting the LTV mooring, you confirm that you are satisfied that the Allocated Mooring is suitable for the Vessel. No representation, warranty or assurance is given by us as to the suitability of the Allocated Mooring for the Vessel nor as to the adequacy or sufficiency of the depth of water at, or at the approaches to, the Allocated Mooring.
- 2.2 **Use of the Mooring:** Subject to these terms and conditions and payment of the Mooring Charge (which is payable monthly for the whole of the Period whether or not you use the Mooring), you are permitted to moor the Vessel at the Mooring allocated by us in connection with the Authorised Use of the Vessel for the agreement Period, in common with us and all others authorised by us, including those authorised to share the Allocated Mooring (for example, by rafting) (so far as is not inconsistent with your rights to use the Allocated Mooring for the Authorised Use). We retain control, possession and management of the Mooring and you have no right to exclude us from the Mooring.
- 2.3 **Other moorings:** The Licence does not entitle you to the exclusive use of any mooring. If you use a mooring other than the Mooring we have instructed you to use, you will be liable to pay our Visitor Rates together with any VAT that may be chargeable for use of the other mooring.
- 2.4 **Electric hook up:** If you are on the walk ashore You may make reasonable use of electricity using the facilities provided to trickle charge the batteries powering the Vessel's operating systems If, in our sole opinion, use of electricity exceeds reasonable use, we reserve the right to charge you for electricity. You may not use the facilities to charge other batteries (for example, electric scooters / vehicles).
- 2.5 **No sub-letting:** You must not transfer or sub-let the Allocated Mooring or permit the use of the Allocated Mooring by any other person or vessel. If you do so:
- 2.5.1 you will be deemed to have terminated the LTV agreement from the date you transferred or sub-let the Allocated Mooring or permitted its use by another vessel; and
- 2.5.2 you will be liable to pay to us a sum equal to mooring charges at our Visitor Rates for the duration of the period of sub-letting or use by another person or vessel.
- 2.6 **Vessel relocation:** We may at any time relocate, move, re-berth and/or re-moor the Vessel at short notice to facilitate works or the return of the allocated mooring holder. We may at any time require you to relocate, move, re-berth and/or re-moor the Vessel . Where the Vessel is moved or we require the Vessel to be moved in the case of an emergency, for reasons of safety or security, to prevent or abate a nuisance or for or in connection with any works which may include, for example, maintenance or improvement works or dredging operations, we are not obliged to provide a "like for like" mooring and the temporary mooring need not be comparable to the Allocated Mooring. In such circumstances no refund is payable.
- 2.7 **Absence:** You are not entitled to a refund of the Mooring Charge or part thereof for any period for which the Allocated Mooring is unoccupied. We reserve the right to make use of the Allocated Mooring during any period of absence by you without payment or discount.

#### 3. CHARGES AND PAYMENT

##### 3.1 Charges:

- 3.2 Mooring Charges are payable monthly in advance. 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. Mooring charges are published on the application form and are based on the LOA (length overall) of the Vessel including any overhangs from (but not limited to) dinghies in davits, bowsprits, pulpits, bathing platforms, anchors, engines and auto steering. You are responsible for accurately declaring the LOA of your vessel. If your declaration is subsequently found to be incorrect, you will pay the revised fee based on the correct LOA for the duration of the LTV agreement.
- 3.3 **Payment:**
- 3.3.1 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 **Default:** Without prejudice to our entitlement to terminate the Licence for non-payment, if any payment remains outstanding 7 days after we give notice to you reminding you that payment is due, we may:
- 3.4.1 prevent the Vessel from leaving the Harbour, and we shall be entitled to retain possession and control of the Vessel until such time as all sums payable to us by you are paid in full.
- 3.4.2 at your risk, move the Vessel from any part of the Harbour and secure it elsewhere, whether on a different mooring, ashore or to a place outside of the Harbour and Harbour premises, and charge and recover from you as a debt any costs arising out of such removal and storage (including but not limited to third party costs and alternative mooring fees at our Visitor Rates).
- 3.4.3 charge an administration fee for our time in raising issues of non-payment with you or any other breach of the terms of the Licence, and you will be liable to pay any expenses incurred by us (including legal costs) in recovering any sums due to us.
- 4. YOUR OBLIGATIONS**
- 4.1 You must always ensure that the Vessel:
- 4.1.1 and its/their equipment is well maintained and kept in a safe, sound, well presented, seaworthy, watertight and clean condition and that the Vessel's electrical systems and equipment (including the shore power cable) are of proper manufacture, professionally inspected and compliant with current industry standards. The Harbour Master' may, at his sole discretion, determine that that a vessel / tender or their equipment does not comply with this paragraph and his decision shall be final and binding.
- 4.1.2 is/are in a suitable condition to be handled, moved or otherwise dealt with by us and our subcontractors and our or their equipment.
- 4.1.3 and its/their equipment is kept in such condition that it/they or no part of them is/are (or likely to become): dangerous or in disrepair; rotten, infested, verminous or subject to fungal attack; neglected or abandoned; a risk to the safety of persons; a risk or hazard to property, goods, other vessels or to the environment or to navigation within the Harbour; injurious to the amenity of the Harbour or to the reasonable enjoyment of the Harbour by other Harbour users.
- 4.1.4 is clearly marked with its name.
- 4.1.5 is insured with a reputable insurer, that you are a named insured and that the insurance covers the Vessel for recovery and removal from the Harbour in the event of sinking or damage by fire and carries a minimum of £3,000,000 in respect of public liability and third party cover.
- 4.1.6 has and uses mooring equipment which is suitable for the Vessel and maintained and in good condition (including fendering and mooring lines).
- 4.2 You must:
- 4.2.1 comply with all relevant national and local legislation, general and special directions, the Harbour Rules, and lawful requests made by us.
- 4.2.2 promptly notify us of any changes to your contact details.
- 4.2.3 provide within 7 days of our request, any documents we may reasonably require from time to time in connection with the contract, evidence of compliance with the Eligibility Criteria, the Vessel and insurance.
- 4.2.4 ensure that all equipment, halyards, and other rigging are secured so as not to cause danger, obstruction, nuisance or annoyance to us or to other Harbour users.
- 4.2.5 take reasonable precautions to ensure that no person or vessel using the Harbour suffers loss or damage or 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 the Vessel, or any of your crew members, agents, guests and/or invitees.
- 4.2.6 ensure that all persons using or visiting the Vessel comply with these terms and the Harbour Rules.
- 4.2.7 inform the Harbour office in writing (including email) if you have authorised another person to use the Vessel.
- 4.2.8 inform the Harbour office if the Mooring is to be unoccupied for more than 24 hours and of the expected date of return and we will endeavour to make the Allocated Mooring available from midday on the expected date of return.
- 4.2.9 protect any exposed propeller on any outboard engines (whether on the Vessel or any tender).
- 4.2.10 carry out any maintenance, repairs or other work to the Vessel in compliance with the Harbour Rules and any other relevant laws and regulations.

- 4.3 You must not:
- 4.3.1 permit the use of the Mooring by any other person or Vessel.
  - 4.3.2 use any mooring or berth other than the Mooring we have instructed you to use.
  - 4.3.3 refuel the Vessel 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.
  - 4.3.4 cause any noise, nuisance, or annoyance to other Harbour users, whether as a result of noise, light or fumes from engines or generators, music or other equipment or machinery or otherwise.
  - 4.3.5 run the engines or any noisy generators or pumping gear of the Vessel between the hours of 2200 and 0700 while moored in the Harbour (except for running engines for the purpose of mooring or departing from a mooring or assisting others to moor or depart from a mooring, or in the case of fishing Vessels, the use of pumping gear in connection with holding tanks on board the Vessel for the purposes of keeping wet fish or shellfish fresh or alive).
  - 4.3.6 carry out any maintenance or repair work at the Mooring if that work will or might cause danger, obstruction, nuisance, or annoyance to other Harbour users, or interfere with our activities.
  - 4.3.7 behave in such a manner or act in such a way that causes, or is reasonably likely to cause any danger, obstruction, nuisance or annoyance to us, to any other users of the Harbour or to any other person residing in the vicinity of the Harbour.
  - 4.3.8 permit persons to stay overnight on the Vessel in exchange for payment or other consideration.
  - 4.3.9 use the Vessel for any residential purpose. The Vessel is deemed to be used for residential purpose if you (or anyone else using the Vessel) stays on board the Vessel for a total of more than 28 days (excluding weekends and public holidays) in a calendar year (which need not be consecutive days), or uses the Harbour Office as a mailing address Unless we request otherwise, you may stay overnight on the Vessel prior to a proposed early morning departure from the Harbour or in the event of a late arrival and may stay or authorise persons to stay overnight on the Vessel whilst carrying out maintenance or repairs to the Vessel.

## 5. TENDERS and HARBOUR TAXI

5.1 **Harbour taxi:** If your licence is in respect of a non-walk ashore mooring, for the purpose of access to and from your Vessel, you may have reasonable use of the harbour taxi free of charge during its operating hours, subject to availability and at the discretion of the harbour taxi operative.

### 5.2 Tenders:

LTV's are not entitled to keep a tender in the harbour, You may use subject to availability one of the harbour tenders.

## 6. LOADING AND UNLOADING

6.1 This paragraph applies to the use of the Commercial Quays by Commercial Licence Holders and others who may wish to use these facilities from time to time.

6.2 You must obtain prior approval before using the Commercial Quays, by using VHF Channel 68.

6.3 Commercial licence holders: Subject to paragraph 10.2, you may use such places along the Commercial Quays as we may from time to time specify for the purpose of loading or landing goods, catch, equipment and crew in connection with your business or trade and you must remove the Vessel from the Commercial Quays as soon as practicable once loading or unloading is completed.

6.4 You must not:

6.4.1 without our specific authorisation, leave on any pontoon decks, jetties or quays or elsewhere in the Harbour or on our property: any ropes, personal belongings, equipment, gear or other thing whatsoever except whilst you are transporting it to and from the Vessel and the Harbour.

6.4.2 without our specific authorisation, leave or store ashore on our property any items.

6.5 We may remove and / or dispose of any equipment or other items or paraphernalia left on the West Quay or elsewhere in the Harbour without notice or warning.

## 7. CHANGES IN CIRCUMSTANCES / ELIGIBILITY CRITERIA / VESSEL

7.1 **Change of vessel:** In the event that you change your vessel you must notify us in advance. If, in the sole opinion of the Harbour Master, the Allocated Mooring is not suitable for the new vessel we may offer you an alternative mooring (subject to availability). If you decline this alternative mooring or if we do not offer you an alternative mooring, the contract will terminate from the date on which you transfer ownership of the Vessel.

7.2 **Visitor Rates:** If you fail to inform us of any changes you will be liable to pay mooring fees at our Visitor Rates as published from time to time from the date of the change.

## 8. TERMINATION

8.1 **Termination date:** Unless terminated earlier or extended in accordance with these terms, the contract will automatically terminate at the end of the contract Period

8.2 **Termination by us:** We may terminate the contract and claim any sums due to us if:

8.2.1 you fail to pay in full any money owed to us by you, whether arising in connection with the contract or otherwise, within of 7 days us notifying you that payment is due;

8.2.2 you breach any of these terms;

8.2.3 where the contract is granted subject to conditions, you fail to satisfy or meet that condition;

8.2.4 any information given to us by you in connection with this contract or any other Licence issued by us to you was false or ceases to be correct due to any change in circumstances;

8.2.5 the Vessel is sold; or

- 8.3 **Removal of vessel on termination:** You must vacate the Mooring immediately upon termination of the Licence (however terminated). If you fail to remove the Vessel on or before termination of the licence (however terminated):
- 8.3.1 You will be liable to pay mooring fees at our Visitor Rates for the period between termination of the Licence (however terminated) and removal of the Vessel from the Allocated Mooring or any other location within the Harbour (whether the vessel is removed by you or by us).
- 9. Miscellaneous**
- 9.1 **Contractual lien:** If any payment owed by you to us is overdue, we may detain your Vessel and / or goods, equipment and cargo, and prevent the Vessel from leaving the harbour, and we shall be entitled to retain possession and control of the Vessel, goods, equipment and cargo until such time as all sums payable to us by you are paid in full. If the contract is terminated or expires whilst we are exercising this lien you will be liable to pay Visitor Rates for a Vessel of equivalent length on a similar type of mooring for each day between termination or expiry of the contract and the latest of either the actual date of payment (or provision of security) by you and the removal of the Vessel and any tender from the Harbour. You shall at any time be entitled to remove the Vessel or other property upon providing proper security in a form acceptable to us, for example a letter of guarantee from a bank sufficient to cover the debt with interest and where the debt is contested, a reasonable sum in respect of our prospective legal costs.
- 9.2 **Vessel keys:** Any Vessel keys left at the Harbour Office are left at your own risk and we accept no responsibility or liability for any loss or damage to the Vessel's keys.
- 9.3 **Changes to the services:** We may change the services we provide (and you will not be entitled to any refund) to reflect changes in relevant laws and regulatory requirements which we anticipate may prevent your access to the services for any period affected. We may have to suspend the services to deal with an emergency or circumstances outside our control or carry out urgent or essential works or maintenance.
- 9.4 **Inspection of Vessel:** We may enter upon and inspect the Vessel (including the interior) on giving reasonable notice to you and you must cooperate with us to facilitate such inspection. We can inspect the Vessel without notice in the case of an emergency or if we have reasonable grounds to suspect a breach of these terms as they relate to the condition of the Vessel or risk to persons, property, the environment or the Harbour.
- 9.5 **Poor condition of Vessel etc:** In the event of breach of paragraph 4 or, if your Vessel, goods or equipment otherwise reasonably appears to us to be in disrepair, sinking, neglected, abandoned or poses a potential risk or hazard to safety, the environment or to navigation within the Harbour or to be injurious to the amenity of the Harbour or the reasonable enjoyment of the Harbour by other Harbour users (or if we have any reason whatsoever to suspect that is the case), we may give notice to you requiring you to take some or all of the following actions within a specified timescale:
- 9.5.1 remove, relocate, re-moor, re-berth or move the Vessel, goods or equipment;
- 9.5.2 carry out any repairs or works to the Vessel, goods or equipment or take any action we consider appropriate as specified in the notice.
- If we consider necessary (or if you fail to take the action required by a notice given in accordance with this paragraph 13.5 within the specified timescale), we may, without notice, take such action at your expense and risk (but we shall not be obliged to do so). In addition, we may:
- 9.5.3 remove, relocate, re-moor, re-berth, move, board, enter or carry out any work on the Vessel;
- 9.5.4 immediately remove to any place we consider fit and where necessary dispose of the Vessel, goods or equipment.
- If we take any action under this paragraph 13.5 we may charge you, and recover from you as a debt, the costs of doing so (where applicable, in accordance with our usual charges), including without limitation any costs of removal, disposal, sale or storage and repair or works and where applicable we may retain any proceeds of sale or part thereof to satisfy in full or in part these charges and any other payments due to us.
- 9.6 **Salvage:** If the Vessel shall, for any reason, sink within the Harbour, we may raise and salvage it and recover from you the proper charges, fees and expenses in respect thereof. If you arrange salvage, you must obtain our prior approval to the method and timing of such salvage.
- 9.7 **Events outside our control:** We are not responsible for circumstances, events or delays outside our control. If our provision of a Mooring is affected by an event or circumstances outside of our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the event or delay. Provided we do this we will not be liable for delays or effects caused by the event but if there is a risk of substantial delay to the start of the Licence Period you may contact us to end the Licence and receive a refund for any part of the contract Period you have paid for during which a Mooring was not available to you due to circumstances outside of our control.
- 9.8 **Statutory rights and powers:** Nothing in these terms and conditions affects our powers or duties under any enactment or our entitlement to limit liability other than in accordance with these terms and conditions.
- 9.9 **Notices:** Any notice given under these terms and conditions shall be valid if given:
- 9.9.1 **To you:** in writing by hand or by pre-paid first-class post or other next working day delivery service at your registered office (if a company) or your principal place of business or your address or email address as stated in the Application Form or at any address and / or email address later notified to us or by affixing it to the Vessel in a prominent place.
- 9.9.2 **To us:** in writing by hand or by pre-paid first-class post or other next working day delivery service FAO The Administration Department, Yarmouth Harbour Commissioners, Harbour Office, Harbour Office, The Quay, Yarmouth, Isle of Wight, PO41 0NT or to the following email address: [info@yarmouth-harbour.co.uk](mailto:info@yarmouth-harbour.co.uk).
- If a notice complies with these criteria it shall be deemed to have been received:
- a. if delivered by hand, at the time the notice is left at the proper address as stated above; or
- b. if sent by pre-paid first-class post or other next working day delivery service or emailing, at 9.00 am on the second working day after posting or sending by email; or
- c. if affixed to the Vessel in a prominent place, at 9.00 am on the seventh day after being affixed to the Vessel.
- 9.10 **Personal Data:** How we use any personal data you give us is set out in our Privacy Policy which is available on our website at [www.yarmouthharbour.co.uk/privacy-notice](http://www.yarmouthharbour.co.uk/privacy-notice).

- 9.11 **Third parties:** This contract is between you and us. No other person shall have any rights to enforce any of its terms.
- 9.12 **Amendments:** We may revise these terms and conditions of use at any time. In this event we will notify you. If you do not agree with the changes, you may terminate the contract and we will reimburse you for any unexpired part of the Licence Period.
- 9.13 **Law and jurisdiction:** The Licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this licence or its subject matter or formation (save for proceedings for the arrest of a vessel which may be brought in any other jurisdiction).