LYMINGTON HARBOUR COMMISSIONERS

Terms and Conditions for Resident and Long Term Visitor ("LTV") Mooring Licences

These terms and conditions might have changed since you last reviewed them. Your use of a mooring or payment of your invoice amounts to acceptance of these terms and conditions.

1. DEFINITIONS

Authorised Use	Your personal leisure use only, unless commercial use has been specifically authorised by us
Designated Mooring	The mooring or berth allocated to you by us from time to time
Harbour	The area of the Harbour over which Lymington Harbour Commissioners exercise their jurisdiction as defined by the Pier and Harbour Order (Lymington) Confirmation Act, 1951 and the subsequent Lymington Harbour Revision Orders (HRO) 1976 to 2014, and as may be amended by subsequent enactments from time to time.
Licence	Any mooring or berthing Licence granted to you by us.
Licence Fee	The licence fee set by us as published on our website from time to time.
Licence Period	The period for which a mooring or berthing Licence has been granted to you as specified in your invoice or offer letter. In the case of LTV Licences, licences are granted for whole calendar months.
LTV	Long term visitor
Mooring Waiting List and Allocation Policy	The Mooring Waiting List and Allocation Policy for Resident and Long Term Visitor Moorings agreed by the Commissioners pursuant to which a waiting list for moorings is managed and moorings are allocated, as updated or amended from time to time.
Seniority Date	As defined in our Mooring Waiting List and Allocation Policy
Services	Mooring or berthing services
us, we, our	Lymington Harbour Commissioners as constituted from time to time (and its employees, servants and / or agents as the context requires).
Vessel	The vessel stated on your mooring application form or any such other vessel in connection with which the use of the mooring is authorised by us from time to time.

2. USE OF THE DESIGNATED MOORING

2.1 **Use of the Designated Mooring**: Provided you have given us satisfactory proof of residence and vessel ownership, and meet the qualifying criteria set out in our Mooring Waiting List and Allocation Policy, subject to these terms and conditions and payment of the Licence Fee (which is payable for the whole of the Licence Period whether or not you use the Designated Mooring), you are permitted to moor the Vessel at the Designated Mooring in connection with the Authorised Use only of the Vessel for the Licence Period in common with us and all others authorised by us (so far as is not inconsistent with your rights to use the Designated Mooring for the Authorised Use).

2.2 **Other moorings:** The Licence does not entitle you to the exclusive use of any particular mooring but to the use of any such mooring as is from time to time allocated to you by us, at our discretion. We retain control, possession and management of the Designated Mooring and you have no right to exclude us from the Designated Mooring. If you use a mooring other than the Designated Mooring you will be liable to pay mooring fees at our visitor overnight rate as published from time to time together with any VAT as may be chargeable.

2.3 **No assignment:** The Licence is not assignable without our consent (including without limitation following your death, a change in ownership of the Vessel or a change in the shareholding in the case of vessels owned by a partnership).

2.4 **No sub-letting:** You must not transfer or sub-let the Designated Mooring or permit the use of the Designated Mooring by any other vessel. If you do so:

2.4.1 you will be deemed to have terminated your Licence from the date you transferred or sub-let the Designated Mooring or permitted its use by another vessel; and

2.4.2 you will be liable to pay to us a sum equal to mooring charges at our visitor overnight rate as published from time to time for temporary moorings in respect of that vessel.

2.5 **Joint / co-mooring holders:** You must declare any joint or co-mooring holders in writing.

2.6 **Vessel relocation:** We may at any time relocate, move and/or re-berth/re-moor the Vessel (or require you to do so on no less than 7 days' notice, in default of which we may move the Vessel at your sole risk) although reasonable notice will be given to you where practicable. Where the Vessel is moved or we require the Vessel to be moved 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 Designated Mooring, for example a pontoon berth holder may be temporarily allocated a river mooring. In such circumstances no refund is payable. In the case of long term visitor mooring licences, we may move your Vessel from the Designated Mooring in the event of the return of the allocated licence holder.

2.7 **Absence:** No refund will be made for any period the Designated Mooring is not occupied. We reserve the right to make use of the Designated Mooring during any period of absence by you without paying compensation or giving any discount to you.

3. CONSUMERS

If you are not a business customer, your attention is particularly drawn to paragraph 2.2 (use of a mooring other than the Designated Mooring), paragraph 5 (Our responsibility for loss or damage suffered by you), paragraph 6.3 (consequences of non-payment), paragraph 7 (Your obligations), paragraph 11.4 (Termination by us), paragraph 11.6 (failure to remove the Vessel on termination), paragraph 12.2 (Poor condition of Vessel).

4. BUSINESS CUSTOMERS

4.1 The rights for business customers differ from consumers. You are a business customer if your use of the Designated Mooring is wholly or mainly in connection with your trade, business, craft or profession, even if you are an individual. This paragraph applies to business customers only.

4.2 These terms together with your mooring application and mooring eligibility declaration forms constitute the entire agreement between you and Lymington Harbour Commissioners. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by us or on our behalf which is not set out in these documents and that you have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions.

4.3 Notwithstanding anything in paragraph 5:

4.3.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss whatsoever arising under or in connection with any contract between us; and

4.3.2 our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £1,000,000.

4.3.3 The terms implied by sections 13 and 14 of the Supply of Goods and Services Act 1982 are excluded.

5. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU

5.1 **Our responsibility:** Save as set out in paragraph 4, we are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking the terms of this Licence or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen. We do not exclude or limit in any way our liability to you where it would be unlawful to do so.

5.2 **Exclusion for business losses:** We are not liable for business losses. Unless you are a business customer, the services are provided to you for your own leisure purposes and private use only. If you use the mooring for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

5.3 **Limitation of liability:** Nothing in these terms affects our entitlement to limit liability in accordance with section 191 Merchant Shipping Act 1995 or any amendment or re-enactment thereof.

6. CHARGES AND PAYMENT

6.1 **Charges:** Mooring charges are published on our website 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, auto steering etc, your mooring licence will be terminated if you fail to attend the requested measurement verification on the Harbour Master pontoon, within one month of the request by an LHC Officer (if you boat is currently outside the harbour then measurement must be taken at the first entry. 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 Licence Period.

6.2 **Payment:** You shall pay:

6.2.1 the Licence Fee and any other fees payable under these terms without any deduction together with such VAT as may be chargeable within 21 days of the date of an invoice.

6.2.2 any applicable harbour protection levy or harbour dues at the published rates applicable from time to time.

6.2.3 interest on the Licence Fee or other payments at the rate of 4% per annum above the official bank rate of the Bank of England from time to time calculated on a daily basis from the due date until payment if you fail to pay the Licence Fee or any other payments due under this Licence within 21 days of the invoice (whether formally demanded or not).

6.3 **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:

6.3.1 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.

6.3.2 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 alternative mooring fees at our visitor overnight rate as published from time to time.

6.3.3 should the vessel be removed from the harbour by yourself, any outstanding fees will still be liable until paid in full.

7. YOUR OBLIGATIONS

7.1 You must ensure that at all times the Vessel:

7.1.1 and its equipment is maintained and kept in a safe, well maintained, seaworthy and clean condition and that the Vessel's electrical systems and equipment, including the shore power cable, are of proper manufacture, professionally inspected and to UK government approved standards.

7.1.2 is sound, watertight and seaworthy.

7.1.3 and its equipment is kept in such condition that it, they or any part of them:

a. is/are not dangerous, hazardous, poisonous, toxic, radioactive, flammable or injurious or liable to become so (other than distress signals/flares which are to be safely stowed);

b. will not contaminate or cause danger, injury, pollution or damage to any person, the harbour area, any other goods, equipment or vessel or the environment;

c. is/are not rotten, infested, verminous or subject to fungal attack or liable to become so;

d. contain no unauthorised or controlled substances, contraband, pornographic material, sanctioned or other illegal matter;

e. is/are in a safe, fit and proper condition to be handled or moved or otherwise dealt with by us and our subcontractors and our or their equipment.

7.1.4 is clearly marked with its name or other means of identification which is clearly visible.

7.1.5 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 and carries a minimum of £3,000,000 in respect of public liability and third party cover.

7.1.6 has and uses mooring equipment which is suitable for the Vessel and maintained and in good condition (including fendering and mooring lines).

7.2 You must:

7.2.1 comply with all relevant national and local legislation, general and special directions and reasonable instructions given by us and any terms and conditions published from time to time by us.

7.2.2 promptly notify us of any changes to your contact details.

7.2.3 provide within 7 days of commencement of the Licence Period and / or within 7 days of a request to do so, the following documents (as applicable to the Licence) or any other document reasonably requested by us in the interests of good harbour management and monitoring compliance with our Mooring Waiting List and Allocation Policy:

a. a copy of any insurance policy relating to the Vessel from time to time in force which shows you, as the holder of the Licence, as a named insured;

b. a copy of the Bill of Sale or Certificate of Registry for the Vessel which shows your interest;

c. in the case of any Vessel owned by a partnership, a declaration of the owners and their interests, and you must provide an updated declaration within 7 days of any change in the ownership of the Vessel;

d. in the case of a fishing vessel that has been authorised by us to operate commercially, a valid fishing licence granted by the Marine Management Organisation for the Vessel and a valid certificate of registry for the Vessel from the UK Ship Register;

e. in the case of any other Vessel that has been authorised by us to operate commercially, a valid certificate for the Vessel issued by a certifying authority under the Maritime and Coastguard Agency Small Commercial Vessels Code of Practice or the Solent and Southern Harbour Master Association Code of Practice;

f. a copy of your council tax invoice for the current year and a copy of your valid driving licence or other documentation that we may request as proof of meeting the eligibility criteria for local residency within our Mooring Waiting List and Allocation Policy.

7.2.4 inform the harbour office in writing (including email) if you have authorised another person to use the Vessel.

7.2.5 inform the harbour office if the Designated Mooring is to be unoccupied for more than 14 days.

7.2.6 protect any exposed propeller on any outboard engines (whether on the vessel or any tender), buckets or similar work well.

7.2.7 immediately inform us should you notice any defects in pontoons, buoys, ropes, chains or moorings within the Harbour.

7.2.8 clear up and properly dispose of any fouling caused by any dog under your control and keep dogs under control and, unless onboard the Vessel, on a short lead at all times.

7.2.9 ensure compliance with these terms and conditions by all persons using or visiting the Vessel.

7.2.10 vacate the Designated Mooring immediately upon expiry of the Licence (failing which we may impound the Vessel or charge you at the visitor overnight rate as published from time to time).

7.3 You shall not:

7.3.1 permit the use of the Designated Mooring by any other person.

7.3.2 unless instructed by us, use any mooring or berth other than the Designated Mooring.

7.3.3 store any rubbish, equipment or fishing gear on pontoons without the consent of the Harbour Master.

7.3.4 attach or connect any equipment or fenders to pontoons without the prior consent of the Harbour Master.

7.3.5 permit persons to stay overnight on the Vessel in exchange for payment or other consideration.

7.3.6 use the Vessel for any residential purpose. The Vessel is deemed to be used for residential purpose if, amongst other things, you (or anyone else using the Vessel):

a. uses the Vessel as their principal or main place of residence; or

b. stays onboard the Vessel using the Designated Mooring in excess of an average of three nights per week over a twelve week period; or

c. uses the Harbour Office as a mailing address.

7.3.7 cause any nuisance or annoyance to other Harbour users, through noise, light or fumes from engines or generators, music or other equipment or machinery or otherwise.

7.3.8 act or behave in such a manner or act in such a way that causes, or is reasonably likely to cause any injury, distress, danger, obstruction, nuisance or annoyance to us, other users of or person in the Harbour or any person residing in the vicinity of the Harbour.

7.3.9 cycle or use any scooter, skateboard or similar on any pontoon or slipway.

8. TENDERS

8.1 You will require a separate licence if you wish to have your own tender mooring. Applications must be made in the same way as for this Licence in accordance with our Mooring Waiting List and Allocation Policy.

8.2 You must not moor any tender in the allocated tender mooring area (or, for the avoidance of doubt, in any other part of the Harbour) without a mooring licence in respect of the tender. We will impound any tender not displaying a valid mooring permit or which is not moored in the authorised mooring area and a fee will be payable for its release, which fee will be published on our website from time to time.

8.3 Tender should be made fast with the painters being 2m in length.

9. FISHERMEN'S QUAY

9.1 If you have a commercial fishing berth licence, you may use the Commercial Quay (Fishermen's Quay) for the purpose of loading or landing goods, equipment and crew in connection with your commercial activity subject to complying with any terms and conditions of use applicable to the Commercial Quay (Fishermen's Quay) and to these terms.

9.2 You must:

9.2.1 Promptly pay any relevant harbour / landing dues in respect of commercial use of the quayside.

9.2.2 If authorised by us to store temporarily any fishing gear or equipment on the quay, store the same neatly and ensure that it does not impede safe use or access to the working quayside by others.

9.2.3 If parking a vehicle at the quayside, park with consideration so as not to obstruct access. You must move or remove your vehicle upon request when access is required by any other person or thing if it is causing an obstruction to any other person, thing or activity.

9.3 You must not:

9.3.1 Leave any rubbish on the quay.

9.3.2 Leave any unattended fishing gear or equipment on the quay. In exceptional circumstances to facilitate maintenance or transport of fishing gear or equipment, you may make a request to us in advance for temporary storage for a maximum period of 48 hours.

9.3.3 Leave any vehicle or vessel parked or moored unattended on or at the quayside (including vessels other than those in respect of which the use of the Designated Mooring is authorised). A vehicle or vessel is unattended for this purpose if the driver or skipper is not at the quayside or at their moored vessel within hailing distance of the quayside.

9.4 If you contravene any of the terms in this paragraph 9, notwithstanding our right to terminate the Licence in accordance with paragraph 11, we may prohibit you from using the quay facilities.

10. CHANGE OF ADDRESS OR VESSEL

10.1 **Change of address:** Provided you notify us in advance of any change of address, if you cease to satisfy the qualifying criteria due to a house move which leads to non-compliance with the qualifying criteria from time to time in our Mooring Waiting List and Allocation Policy, you may, subject to payment of the published annual Licence Fee from time to time applicable (or to a pro rata sum thereof, as applicable), choose to extend the termination date by up to 12 months from notification. If you fail to inform us in advance of any change of address or house move you will be liable to pay mooring fees at our visitor overnight rate as published from time to time for temporary moorings from the date of your house move.

10.2 Change of vessel: In the event that you change your vessel you should notify us in advance. If, in the sole opinion of the Harbour Master, the Designated Mooring is not of a suitable size for the new vessel we may offer you an alternative mooring. If you decline this alternative mooring or if we do not offer you an alternative mooring you may join the waiting list at your original Seniority Date and you will be treated as an applicant for a mooring in accordance with our Mooring Waiting List and Allocation Policy.

11. TERMINATION

11.1 **Termination date:** Unless terminated earlier or extended in accordance with these terms, the Licence will automatically terminate at the end of the Licence Period or if earlier, upon your death or on the date on which you cease to comply with the qualifying criteria from time to time in our Moorings Waiting List and Allocation Policy due to a house move (unless you have informed us of the house move in advance and we have agreed a termination date in accordance with paragraph 10.1).

11.2 **In the event of your death:** If the Licence terminates upon your death, your estate may, subject to our agreement and payment of the published annual Licence Fee from time to time applicable (or to a pro rata sum thereof, as applicable), request to agree a new Licence for a period of up to 12 months from the date of your death at our discretion.

11.3 **Termination by you:** You may terminate the Licence by giving at least 14 days' notice to us in writing.

11.4 **Termination by us:** We can terminate the Licence and claim any compensation due to us if:

11.4.1 you don't make any payment to us when it falls due and you still do not make payment within 7 days us notifying you that payment is due; or

11.4.2 in our reasonable opinion, you do not, or cease to comply with the qualifying criteria in our Mooring Waiting List and Allocation Policy; or

11.4.3 you contravene any of these terms and conditions.

11.5 **Refunds:** If, following termination of the Licence (however terminated), the Designated Mooring is reallocated to a new person within the Licence Period, provided you have paid all sums due to us, we will refund you:

11.5.1 in the case of annual resident moorings, a pro-rata sum from the date of commencement of the new licence; or

11.5.2 in the case of LTV moorings, the Licence Fee less the cost of the expired portion of the Licence Period as at the date of commencement of the new licence at our visitor overnight rate as published from time to time.

We will use reasonable endeavours to grant a new licence reallocating the Designated Mooring in accordance with our Mooring Waiting List and Allocation Policy. If the Designated Mooring is not reallocated to another person you will not be entitled to a refund.

11.6 **Removal of vessel on termination:** You must vacate the Designated 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):

11.6.1 You will be liable to pay mooring fees at the visitor overnight rate as published from time to time for the period between termination of the Licence (however terminated) and removal of the Vessel from the Designated Mooring (whether the vessel is removed by you or by us).

11.6.2 We may at your risk, move the Vessel from any part of the harbour and secure it elsewhere, whether on a different mooring, or 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 alternative mooring fees at our visitor overnight rate as published from time to time.

11.7 **Rights on termination:** Termination of the mooring licence shall not affect the rights of either party in connection with any breach of any obligation under this mooring licence which existed at or before the date of termination.

12. MISCELLANEOUS

12.1 **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.

12.2 **Poor condition of Vessel etc:** If your Vessel, goods or equipment reasonably appears to us to be in disrepair, sinking, neglected, abandoned or poses a potential risk or hazard to safety or the environment or to be injurious to the amenity of the Harbour or the reasonable enjoyment of the Harbour by other Harbour users, we may give notice to you requiring you to take some or all of the following action within a specified timescale:

12.2.1 remove, relocate, moor, re-berth or move the Vessel, goods or equipment;

12.2.2 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 12.2 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:

12.2.3 remove, relocate, moor, re-berth, move, board, enter or carry out any work on the Vessel;

12.2.4 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 12.2 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.

12.3 **Events outside our control:** We are not responsible for circumstances, events or delays outside our control. If our provision of the Designated Mooring is affected by an event or circumstances outside 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 Licence Period you have paid for during which the Designated Mooring was not available to you due to circumstances outside our control.

12.4 **Statutory duties and powers:** Nothing in these terms and conditions affects our powers or duties under any enactment.

12.5 **Notices:** Any notice given under these terms and conditions shall be valid if given:

12.5.1 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 mooring 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.

12.5.2 To us: in writing by hand or by pre-paid first-class post or other next working day delivery service to Lymington Harbour Commissioners, Harbour Office, Bath Road, LYMINGTON, Hampshire SO41 3SE or to the following email address: info@lymingtonharbour.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.

12.6 **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.lymingtonharbour.co.uk/harbour-business.

12.7 **Third parties:** This contract is between you and us. No other person shall have any rights to enforce any of its terms.

12.8 **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 Licence and we will reimburse you for any unexpired part of the Licence Period.

12.9 **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).

12.10 **Complaints:** On receipt of a formal written complaint, the Harbour Master or CEO will review the matter and issue a response. Following this, complaints may be escalated for determination by the Board of Commissioners or relevant committee.