

## ILFRACOMBE HARBOUR MOORING LICENCE CONDITIONS

### 1.0 DEFINITIONS

- 1.1 For all the purposes of the Licence the terms defined in the Licence have the meanings specified in the second column of the Licence.
- 1.2 Headings are included in these Conditions for ease of reference only and shall not affect the interpretation or construction of the Licence or these Conditions
- 1.3 Any agreement by the Licensee not to do anything include an obligation not to permit or suffer that thing to be done by any other person
- 1.4 Where any party to the Licence comprises more than one person the obligations and liabilities of that party under the Licence are to be joint and several obligations and liabilities of those persons
- 1.5 Any reference to the singular shall include the plural and vice versa and references to one gender shall include all other genders

### 2.0 THE YEARLY REVIEW

- 2.1 Should the Licence last longer than one year the Licence Fee shall remain until the first Review Date and on each Yearly Review a new licence fee equal to the Licence Fee or such revised licence fee as may be ascertained and notified before 31<sup>st</sup> March in any year
- 2.2 The revised licence fee shall then become the Licence Fee for the purposes of this Licence
- 2.3 Payment is to be made within 14 days of written notification or 31<sup>st</sup> March, whichever is the later, and shall indicate acceptance by the Licensee that the Licence on the Conditions shall continue for another year

### 3.0 LICENSEES OBLIGATIONS

The Licensee undertakes with the Council the following:

#### **3.1 To pay:**

- 3.1.1 the Licence Fee to the Council, whether demanded or not
- 3.1.2 all present and future rates taxes assessments and outgoing whatever payable in respect of the Licence or the Vessel
- 3.1.3 for the **Tackle** and all replacement and repair of the Tackle as required
- 3.1.4 to the Council on demand, all expenses incurred by the Council in removing the Vessels and any attachments to the Vessel or the Moorings

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## INSURANCE AND INDEMNITIES

- 3.2 At all times to maintain effective third party insurance in a sum of not less than the Insurance Amount for each Vessel with an respected insurer to cover all claims arising from the mooring of each Vessel
- 3.3 To provide to the Harbour Master evidence of the insurance and payment of the premium
  - 3.3.1 upon entering into the Licence
  - 3.3.2 again upon the renewal date and
  - 3.3.3 within 14 days of being requested by the Harbour Master to provide such evidence
- 3.4 To indemnify and keep the Council, its employees and agents indemnified from and against all actions, proceedings, costs, claims, and demands by third parties in respect of any damage or liability caused by or arising from the use of the Moorings or the Tackle, the operation of the Licence or the Vessel, or by the Licensee or their employees or agents
- 3.5 To make good to the satisfaction of the Council all loss damage and injury resulting from the use of the Moorings or the Tackle by the Licensee

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## COMPLIANCE WITH LAWS

- 3.6 That the Licensee and all persons having control, charge of, or on board, the Vessels and each of them shall observe and perform all:
    - 3.6.1 statutory and other regulations relating to the Harbour
    - 3.6.2 the Byelaws
    - 3.6.3 any other statutes or obligations imposed by law
    - 3.6.4 the North Devon (Off-Street Parking Places) Order 2019 or any other replacement for it made from time to time
    - 3.6.5 any other regulations made by the Council from time to time and
    - 3.6.6 any direction given by the Harbour Master or any other authorised officer of the Council
- or any provision in any of them

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## NEGATIVE UNDERTAKINGS

Not to make any addition to the Moorings, without the prior approval of the Harbour Master

- 3.7 Not to allow or cause the Vessel or any of them to be used for habitation or for any residential purposes whatsoever while the Vessel is in the Harbour
- 3.8 Not to carry out any works of repair or maintenance of the Vessels while within the Harbour, without the prior approval of the Harbour Master (other than routine maintenance or mechanical checks) and to cease any works of repair or maintenance immediately upon being requested to do so by the Harbour Master
- 3.9 Not to store or leave on any quay wall or car park any equipment, vehicle, fish or bait in any position not specifically allocated by the Council for the purpose
- 3.10 Not to park anywhere in the Harbour, or elsewhere in the district, except by payment of the correct fee, and in accordance with the OSPO
- 3.11 Not to permit usage of the allocated moorings by vessels other than the Vessels [EXCEPT FOR vessels belonging to members of the Commercial Fishing Association and as agreed by the Council]
- 3.12 That nothing shall be done in or on the Vessels using the Moorings which in the opinion of the Harbour Master shall damage, or may be or grow to the nuisance, annoyance, or inconvenience of the Council or its licensees, tenants, or other owners, tenants, or occupiers of any adjoining or neighbouring property, or vessels **PROVIDED ALWAYS** and without prejudice to the generality of the foregoing the dumping, discharging, or other depositing of any substance, materials, or effluent whatsoever in the Harbour shall be deemed to be a breach of this clause
- 3.13 Not to allow any outboard motor to have an uncovered propeller at any time while the Vessel is on the Mooring
- 3.14 Not to moor on any other place in the Harbour, other than:
  - 3.15.1 From time to time when required by the Harbour Master in writing and to their satisfaction, to alter the position of the Moorings to such position as may be required by them **PROVIDED** that the Harbour Master shall not exercise their powers under the provisions of this clause unreasonably
  - 3.15.2 To move temporarily any Vessel on a Mooring when instructed by the Harbour Master to facilitate Harbour management or repairs the loading or unloading of stores or for any purpose which shall in the opinion of the Harbour Master be necessary for the proper management of the Harbour
  - 3.15.3 Nothing in these Conditions shall be taken or read as restricting the right of the owner or master of any of the Vessels to remove their Vessel from the Moorings to such other available safe berth or mooring within the Harbour at times when weather conditions reasonably threaten damage to the Vessel if and so long as it remains tied up at the Moorings

## 4.0 PASSENGER VESSELS

4.1 In the case of a Passenger Vessel, the Council grants licence to the Licensee under the Byelaws to use the Vessel for passengers, and the Licensee shall:

- 4.1.1 Comply with the relevant Maritime and Coastguard Agency (MCA) Code of Practice for the passenger vessel class they are and have been issued with valid Certificates by a recognised Certifying Authority
- 4.1.2 Have additional insurance necessary for a passenger vessel including public liability
- 4.1.3 Ensure that any person operating the Vessel shall be commercially endorsed to the appropriate level for the type of use and/or have a boatmasters or above licence as necessary
- 4.1.4 Present the valid medical certificate either ENG1 or ML5 for each person operating the Vessel to the Harbour Master for inspection at the beginning of the Licence or at the change of any operator of the Vessel

For the purposes of this clause 0 and permission **Error! Reference source not found.** of the Licence, a **Passenger Vessel** shall mean those Vessels in the Licence indicated in column two with a description of their classification by one of the Recognised Classification Societies defined by regulations made under Council Directive 94/57/EC (or any replacement in domestic law for it)

## 5.0 END OF LICENCE

The Council and the Licensee agree:

5.1 This Licence shall end:

- 5.1.1 on 31<sup>st</sup> March in each year, unless the Licensee shall pay the Licence fee upon the Yearly Review, when it will renew
- 5.1.2 automatically in respect of any Vessel in the event of a disposal of the Vessel by the Licensee, for the avoidance of doubt the mooring does not pass with the Vessel
- 5.1.3 automatically upon expiry of a period of 12 months of the mooring not being used
- 5.1.4 (in the event of any breach of, non-performance or non-observance of any of the undertakings in clause 0 or any of these Conditions) immediately at any time by the Council giving written notice to the Licensee
- 5.1.5 (if evidence of such third party insurance is not provided in accordance with clause 3.3) immediately at any time by the Council giving written notice to the Licensee

5.2 The Licensee shall not be entitled to pay the Licence fee and renew the Licence under clause 0 if at 31<sup>st</sup> March:

5.2.1 there have been persistent breaches of the conditions in this Licence

5.2.2 the mooring is not being used, or

5.2.3 the Vessel is no longer in the ownership of the Licensee

5.3 Termination of the Licence under clause 5.1 or 0:

5.3.1 shall be at the absolute discretion of the Harbour Master

5.3.2 the Licensee shall be entitled to present evidence to the Harbour Master, eg that there are exceptional circumstances why the mooring is not being used; that the Vessel is still in the ownership of the Licensee or a suitable alternative boat has been acquired or any breaches have ceased

5.3.3 any unexpired Licence fee paid in advance will be refunded to the Licensee within 7 days of the Vessel having been removed from the Harbour

5.3.4 shall be without prejudice to the rights and remedies of the Council in these Conditions

5.4 The Licensee shall immediately serve notice on the Harbour Master in the event of transfer of ownership of the Vessel

5.5 The Licence may also be determined at any time either by the Licensee or the Council by the giving of one month's written notice to the other party. In the event that the Licence is determined by the Council under the provisions of this sub-clause the Council shall refund to the Licensee any unexpired part of the Licence fee which may have been paid in advance

5.6 At the end or sooner determination of the Licence and at the Licensee's own cost, immediately to remove the Vessels and the Tackle, and any attachments to the Vessel or the Moorings

## 6.0 AGREEMENTS AND DECLARATIONS

6.1 The Tackle shall belong to the Licensee

6.2 The Licence shall be personal to the Licensee and shall not be capable of being assigned to a third party

6.3 Any notice to the Licensee by the Council shall be deemed to be properly served by:

6.3.1 sending it by first class post

- 6.3.2 leaving it at the Licensee's last known place of abode or business
  - 6.3.3 delivering it personally to the Licensee or their authorised employee or agent
  - 6.3.4 by attaching a copy of the notice to a conspicuous place on the superstructure of the vessel
- 6.4 Any notice to the Council by the Licensee shall be deemed to be properly served by:
- 6.4.1 delivering it by hand to the Harbour Master
  - 6.4.2 posting it by registered or recorded delivery post to the Harbour Master, Ilfracombe Harbour The Pier, Ilfracombe, Devon or
  - 6.4.3 posting it by registered or recorded delivery post North Devon District Council, Lynton House, Commercial Road, Barnstaple, EX31 1DG
- 6.5 The Council gives no warranty as to the safety or security of the Moorings or the Vessel (or its contents) whilst within the Harbour or moored at the Moorings
- 6.6 The Council its officers, employees and agents shall not be held liable for any loss or damage to or caused by the Vessel (or its contents) or the Moorings whether as a result of the Moorings having become damaged or unusable or otherwise except such as may be directly attributable to any failure of the Council's equipment or apparatus due to the neglect or negligence of the Council's Officers Servants or Agents

## 7.0 AUTHORITY

**THE** Licensee **EXPRESSLY** and **IRREVOCABLY** authorises the Council through its Harbour Master or their duly appointed agents to take all necessary steps or actions including without prejudice to the generality of this authority to release all moorings and anchors to which the Vessel is attached and the making of all necessary attachments to the Vessel for the purpose of removing same from the water and transporting and storing the same and for the purpose of this clause the Licensee **WARRANTS** they are entitled to grant the authority in this clause