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**THE YARMOUTH (ISLE OF WIGHT) HARBOUR
COMMISSIONERS**

COMMERCIAL MOORINGS

LICENCE APPLICATION PROCEDURE

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1. Interpretation

1.1 In this document, unless the context otherwise requires, the expressions below have the respective meanings given to them:

"**Accepted Family Change of Control**" has the meaning given in paragraph 12.2(d) below.

"**Administration Charge**" means the administration charge referred to in paragraph 5.7 below.

"**Allocated Mooring**" means the Mooring to which a Licence relates.

"**Applicant**" means a Commercial Operator who is applying:

- (a) for first registration on the waiting list or to remain on it;
- (b) for a Commercial Mooring Licence for the first time or by way of renewal,

as the case may be,

and references to an "**application**" shall be construed accordingly.

"**Byelaws**" means The Yarmouth (Isle of Wight) Byelaws 1973.

"**Change of Control**" in relation to an Existing Boat or a Commercial Operator has the meaning given in paragraph 12.2(a), (b) or (c) below, as the case may be.

"**Commercial Mooring**" or "**Mooring**" means a mooring in the Harbour from time to time made available by the Commissioners for the purposes of Commercial Mooring Licences whether on a sole or shared basis.

"**Commercial Mooring Charge**" means the commercial mooring charge at the rate determined by the Commissioners in accordance with this document.

"**Commercial Mooring Licence**" or "**Licence**" means a commercial mooring licence, whether for an Existing Boat or a Proposed Boat, in such form as the Commissioners may from time to time decide or, as the case may be, a commercial mooring licence that has been issued pursuant to this document.

"**Commercial Operator**" means a sole trader, partnership or company that carries on a business or trade or more than one business or trade.

"**Commissioners**" means The Yarmouth (Isle of Wight) Harbour Commissioners and includes any person authorised on behalf of the Commissioners under paragraph 17 below.

"**Current Council Tax Bill**" means, in relation to an Isle of Wight address specified for the purposes of any application or notification of change or other circumstance under this document, a Council Tax bill which:

- (a) is addressed to:
 - (i) the Commercial Operator (if a sole trader) or the working partner or director of the Commercial Operator (if a partnership or company, respectively) referred to in paragraph 3.2 below at the personal address on the Isle of Wight of that Commercial Operator or working partner or director; or

- (ii) a Family Member of that Commercial Operator (if a sole trader) or that working partner or director of that Commercial Operator (if a partnership or company, respectively), being a Family Member who is also resident at that address;
- (b) shows the payment of Council Tax at that address; and
- (c) relates to the tax year of the Isle of Wight Council which expires next after the date of the relevant application or notification of change or other circumstance.

"Eligible Boat" means, as regards a Commercial Operator, an Existing Boat:

- (a) that is owned, or a majority share in which is owned, by the Commercial Operator and, for this purpose:
 - (i) ownership by a Commercial Operator who is a sole trader or a company means ownership by and in the name of that Commercial Operator;
 - (ii) ownership by a Commercial Operator that is a partnership means ownership by and in the name of one of the partners or two or more of the partners jointly;
 - (iii) registration details at a port or place of registry of the boat shall be treated as *prima facie* evidence of ownership;
 - (iv) in the case of a registered fishing boat, registration in the name of the Commercial Operator (or in the name(s) of one or more of the partners in the case of a Commercial Operator that is a partnership) shall be treated as *prima facie* evidence of ownership;
 - (v) in the case of any boat, registration of that boat with an applicable licensing authority in the name of the Commercial Operator (or in the name(s) of one or more of the partners in the case of a Commercial Operator that is a partnership) shall be treated as *prima facie* evidence of ownership;
- (b) that is essential to the carrying on of the business or trade carried on by the Commercial Operator; and
- (c) which is suitable for the purpose intended.

"Eligible Commercial Operator" means a person who is accepted by the Commissioners as having fulfilled, or continuing to fulfil, the conditions specified in paragraph 3.1 below.

"Effective Date" means 1st January 2008.

"Existing Boat" means a boat specified in a Vessel Particulars Form other than a Proposed Boat and includes a Licensed Boat.

"Family Change of Control" has the meaning given in paragraph 12.2(d) below.

"Family Member" means, in relation to any individual, an individual who is the parent, spouse, co-habiting partner (whether or not as a member of a registered civil partnership), uncle, aunt, son, daughter, nephew or niece of that individual.

"Family Member Declaration" means a declaration in such form(s) as the Commissioners may from time to time require.

"Forms" means the various forms specified or described in this document as the Commissioners may from time to time require for use under or in connection with it.

"Harbour" has the meaning given in clause 2(1) of the Yarmouth (Isle of Wight) Harbour Revision Order 1971.

"Harbour Dues" means all dues, levies, fees and payments of whatever nature which the Commissioners shall from time to time decide to charge or proscribe in respect of Vessels entering the Harbour whether or not for the purpose of using Moorings or other facilities provided by the Commissioners.

"Invitation to Apply" means an invitation to apply for a Commercial Mooring Licence sent or to be sent in accordance with this document in such form as the Commissioners may from time to time require.

"Isle of Wight Resident" means a Commercial Operator who is accepted by the Commissioners as fulfilling the condition specified in paragraph 3.2(a) below.

"Licence Application Form" means such form(s) as the Commissioners may from time to time require for the purposes of applying for a Commercial Mooring Licence as provided in paragraphs 6 to 8 below, such form(s) to include (without limitation) such declarations and confirmations as regards residency, trading, eligibility and otherwise and acceptance of the Licence Terms and Conditions as the Commissioners may specify.

"Licence Period" means the Licence Period specified in the Commercial Mooring Licence as provided by paragraph 6.2 or 8.6(i) below or such shorter period as may occur by reason of the Licence terminating.

"Licence Terms and Conditions" means the provisions of the document entitled "Terms and Conditions applicable to Commercial Mooring Licences".

"Licensee" means:

- (a) except in the case of a partnership, a Commercial Operator to whom a Commercial Mooring Licence is issued;
- (b) in the case of a partnership, the partner or partners to whom a Commercial Mooring Licence is issued under paragraph 8.5(d) below.

"Licensed Boat" means a boat specified in a Commercial Mooring Licence.

"Monthly Instalment Request Form" means such form as the Commissioners may from time to time require for the purpose of requesting payment of Harbour Dues and Commercial Mooring Charge in accordance with paragraph 5.6 below.

"Notification of Change Form" means such form(s) as the Commissioners may from time to time require for the purposes of notifying changes pursuant to paragraphs 10.5 and 11 to 15 below, such form(s) to include (without limitation) such declarations and information as the Commissioners may specify.

"Previous Licence" means a licence issued under the Previous Moorings Policy having 31st December 2007 as its expiration date.

"Previous Licence Terms" means the terms and conditions applicable to a Previous Licence.

"Previous Moorings Policy" means the commercial moorings policy of the Commissioners in force immediately prior to the Effective Date.

"Proposed Boat" means a boat of the type specified in a Vessel Particulars Form that the Commercial Operator lodging that Form with the Harbour Office then intends or intended to acquire but has or had not done so as at the date of that Form.

"Temporary Commercial Licence" means a Commercial Mooring Licence which relates to a Proposed Boat which is to be issued or has been issued under this document:

- (a) to a Commercial Operator on the waiting list; or
- (b) to a Licensee under paragraph 12.6(b) or 12.8(b) below following a notification of change; or
- (c) to a Licensee upon renewal of a Temporary Commercial Licence referred to in sub-paragraph (b) above.

"Temporary Licensee" means a Licensee under a Temporary Commercial Licence.

"Vessel" or **"boat"** has the meaning given to Vessel in the Byelaws.

"Vessel Particulars Form" means:

- (a) such form(s) as the Commissioners may from time to time require for the purposes of providing information as regards an Existing Boat or Proposed Boat, such form(s) to include (without limitation) such declarations and confirmations as regards trading, ownership, insurance and otherwise as the Commissioners may specify; or
- (b) at any time in relation to a form that has been lodged with the Commissioners under any of the provisions of this document, that form or, where more than one such form has been lodged by the same person, the form that has most recently been so lodged.

"Waiting List Application Form" means such form(s) as the Commissioners may from time to time require for the purposes of applying to join the waiting list as provided in paragraph 4 below, such form(s) to include (without limitation) such declarations and confirmations as regards residency, trading, eligibility and otherwise as the Commissioners may specify.

1.2 The Forms are an integral part of this document.

1.3 In this document, unless the context otherwise requires:

a reference to the **Byelaws** (or a Byelaw), general or specific **directions** (or a direction), a **statute** or a **harbour revision order** or **other statutory instrument** or any provision thereof 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;

except in the Forms, a reference to **this document** includes (1) each of the Forms and the provisions in each Form and (2) this document, those provisions and those Forms as the same may from time to time be modified by the Commissioners;

in the Forms, a reference to the **Licence Application Procedure** means this document excluding the Forms;

a reference to the **main Harbour** means that part of the Harbour that is situated to the north of the bridge (and underneath it) and the road;

a reference to **termination** of or in relation to a Commercial Mooring Licence or to a Commercial Mooring Licence being terminated includes that Commercial Mooring Licence

being terminated or not being, or ceasing to be, valid or being cancelled in any such case whether under the Licence Terms and Conditions or this document, and "**terminate**", "**terminating**" and other derivatives of that word shall be construed accordingly;

a reference to any **person** includes a sole trader, a person or persons trading in partnership or a company and, as appropriate, that person's respective successors or assigns;

a reference to the **river** means that part of the Harbour that is situated to the south of the bridge and the road;

a reference to a **type of Mooring** means:

- (a) a Mooring at the training groyne;
- (b) a pile Mooring; or
- (c) a pontoon Mooring,

in any such case whether in the main Harbour or the river;

words importing the plural shall include the singular and vice versa.

- 1.4 The headings to the paragraphs and sub-paragraphs in this document and descriptive comments in relation to any cross-referenced paragraph of the Licence Terms and Conditions are inserted for convenience only and do not affect the interpretation of this document or such cross-referenced paragraph.

2. **Number and location of Commercial Moorings**

- 2.1 **Available Moorings:** The number, location and type of non-commercial Moorings available for the purposes of this document will be as the Commissioners shall from time to time decide. As at the Effective Date, the total number of Commercial Moorings will not exceed 28. The Commissioners may at any time decide that a Mooring shall be available as both a Commercial Mooring and a non-commercial Mooring and, similarly, may at any time decide that such dual availability shall cease.
- 2.2 **No obligation to provide:** The Commissioners shall be under no obligation to provide mooring or berthing facilities for commercial use but, in the event that they do so, any such facility shall be provided only on the terms and conditions of this document and the Licence Terms and Conditions.

3. **Eligibility for a Commercial Mooring Licence**

- 3.1 **Eligibility conditions:** A Commercial Operator is eligible to apply for or renew a Commercial Mooring Licence if, and only if, that Commercial Operator fulfils the following conditions to the satisfaction of the Commissioners (the method by which the Commissioners must be so satisfied in the case of conditions (c)(i) below being as required by paragraph 8.3(a) below):
- (a) the person has applied and been accepted for initial registration on the waiting list under paragraph 4 below unless registration is not required by reason of paragraph 4.2(b) below; and
 - (b) the Commercial Operator is an Isle of Wight Resident;
 - (c)(i) in the case of an application to renew a Commercial Mooring Licence, the Commercial Operator has carried on a business or trade in or out of Yarmouth Harbour for at least one half the number days of the Licence Period in the Licence

being renewed (and for this purpose the number of days in an Absence Period under the Licence Terms and Conditions may be counted as days on which a business or trade has been so carried on); and

- (ii) in all cases (whether upon first application for a Licence or renewal), the Commercial Operator confirms in the Licence Application Form the intention to carry on a business or trade in or out of Yarmouth Harbour for at least one half the number days of the Licence Period of the Licence for which application is being made;

(and, for the avoidance of doubt, in the case of a Commercial Operator whose business or trade is in the fishing industry, any period during which a certain type of fishing normally conducted by a Commercial Operator is prohibited by UK law or regulation shall not of itself be interpreted as a period when the business or trade concerned has not been carried on or is not intended to be carried on); and

- (d) the business or trade as so carried on is one which in all respects complies with the Byelaws and any directions, regulations or orders from time to time made by the Commissioners.

3.2 ***Conditions as regards Isle of Wight residency:***

- (a) ***Resident individual:*** The condition that a Commercial Operator is required to fulfil in order to be accepted as an Isle of Wight Resident is that the Commercial Operator or, in the case of a partnership, at least one working partner or, in the case of a company, at least one working director is resident on the Isle of Wight. A partner or director will only be regarded as "working" for this purpose if that partner or director is an individual who spends the substantial part of his or her working time in the business or trade referred to in paragraph 3.1(c) above and is not part-time.
- (b) ***Requirement for Current Council Tax Bill:*** Commercial Operators who are required by or in connection with a Licence Application Form or notification of change or other circumstance to provide a copy of a Current Council Tax Bill relating to that Commercial Operator (if a sole trader) or to a "working" partner or director of that Commercial Operator (if a partnership or company) and, where applicable, Family Member Declaration in support of their application for a Commercial Licence or that notification of change or other circumstance but fail to do so will not be accepted as fulfilling the Isle of Wight residency test.

3.3 ***Eligible Commercial Operators only:*** Only an Eligible Commercial Operator may be issued with or hold a Commercial Mooring Licence. Therefore, before a Commercial Mooring Licence will be issued (whether on first application or proposed renewal), the proposed Licensee must be accepted by the Commissioners as satisfying, or, in the case of a renewal, continuing to satisfy, the conditions specified in paragraph 3.1 above.

3.4 ***Holding of more than one Commercial Licence:*** While a Commercial Operator may hold more than one Commercial Mooring Licence, nevertheless the Commissioners reserve the right to refuse to allow more than one Commercial Mooring Licence to be issued to a Commercial Operator if that Commercial Operator holds another Commercial Mooring Licence which has not been used for more than 180 calendar days (whether consecutive or in total) in a Licence Period or two consecutive Licence Periods if that other Commercial Mooring Licence is renewed.

4. **Transfer and waiting lists**

4.1 ***Lists and priorities:***

- (a) The Commissioners keep the following lists for Commercial Operators wishing to apply for a Commercial Mooring Licence relating to any particular type of Commercial Mooring:
 - (i) a transfer list for the purposes of paragraph 4.9 of the Licence Terms and Conditions; and
 - (ii) a waiting List.
- (b) Commercial Operators applying to be registered on the transfer list or the waiting list will be registered on a first come first served basis in the order in which they apply.

4.2 ***Requirement to register on the waiting list:***

- (a) Subject to sub-paragraph (b) of this paragraph 4.2, Commercial Operators who wish to be issued with a Commercial Mooring Licence must in the first instance apply to the Harbour Office for an application to register on the waiting list in accordance with paragraph 4.5 below. Registration on the waiting list, whenever effected and whether following an application or by operation of any of the provisions of this document, will expire on the following 31st December.
- (b) The requirement to register on the waiting list does not apply to a person who is the holder of a Previous Licence so far as the renewal of that Previous Licence is concerned.

4.3 ***More than one boat registrations:*** Subject to paragraph 3.4 above, a Commercial Operator may apply to be registered on the waiting list in respect of more than one business, trade or boat in which case a separate application form for each business, trade or boat will be required. Each application will be treated as a separate application and separate registration fees under paragraph 4.4 below will be payable in respect of each registration.

4.4 ***Fees:*** An initial registration fee will be payable at the time of first registration on the waiting list and thereafter an annual registration fee will be payable to remain on the waiting list. These fees are non-returnable in any circumstances nor will the annual registration fee be subject to any time-apportioned reduction. Each of the initial registration fee and the annual registration fee will amount to £35 as from the Effective Date. The amounts of the fees are subject to change by the Commissioners at any time.

4.5 ***Waiting list applications:***

- (a) Commercial Operators who wish to apply to be registered on the waiting list or to maintain their registration must notify the Harbour Office to that effect. While the Commissioners may send renewal reminders, they do not undertake to do so.
- (b) A Commercial Operator who wishes to apply to be or to remain registered on the waiting list need not specify any Existing Boat or Proposed Boat at the time of application. However, such Commercial Operator will not receive an Invitation to Apply for a Commercial Mooring Licence unless and until that Commercial Operator has duly completed and signed a Vessel Particulars Form (either in respect of an Existing Boat or a Proposed Boat) and lodged it with the Harbour Office. Nevertheless, a Commercial Operator wishing to apply to be registered on the waiting list for the first time or to remain registered on the waiting list must state in the Waiting List Application Form whether the Commercial Operator:

- (i) wishes to register an Existing Boat;
 - (ii) wishes to register a Proposed Boat;
 - (iii) does not own a boat but intends to acquire a boat of a type as yet undecided.
- (c) Applicants will be sent:
- (i) in the case of initial registration, an up-to-date copy of each of this document (excluding the Forms) and the Licence Terms and Conditions;
 - (ii) in the case of registration renewal, an up-to-date copy of each of this document (excluding the Forms) and the Licence Terms and Conditions but only if there have been any changes made to the copies sent under sub-paragraph (i) above;
 - (iii) information as to the respective amounts of waiting list registration fees, Harbour Dues and Commercial Mooring Charges then payable (including any Administration Charge applicable to monthly instalments); and
 - (iv) an applicable Waiting List Application Form and, if sub-paragraph (b)(i) or (ii) of this paragraph 4.5 applies, an appropriate Vessel Particulars Form.
- (d) A Commercial Operator wishing to be registered on the waiting list for the first time must complete and sign a Waiting List Application Form and lodge it at the Harbour Office together with payment of the initial registration fee.
- (e) A Commercial Operator wishing to remain registered on the waiting list must send to the Commissioners a written request to do so unless that Commercial Operator wishes to notify a change in the information provided in the previously lodged Waiting List Application Form. In that event, the Commercial Operator concerned must complete and sign a new Waiting List Application Form. Documents required under this sub-paragraph (e) must be lodged at the Harbour Office by 31st January each year together with payment of the annual registration fee. Failure to do so by that time will result in removal from the waiting list.
- 4.6 **Information not required:** A Commercial Operator will not be required at the time of registration on the waiting list or when providing any changed information as mentioned in paragraph 4.7 below to provide any information to show that the Commercial Operator is an Eligible Commercial Operator or, if an Existing Boat is specified, that the Existing Boat is an Eligible Boat. This will be required at the time of application for a Commercial Mooring Licence.
- 4.7 **Notification of changes:** Any change of details relating to a registration on the waiting list must be notified to the Harbour Office in accordance with paragraph 10 below. Commercial Operators who no longer wish to remain on the transfer list or waiting list are requested to notify the Harbour Office accordingly.
- 4.8 **Inaccurate information:** The information provided in the Waiting List Application Form and any Vessel Particulars Form and any applicable changed information provided pursuant to paragraph 10 below will not be verified for waiting list purposes but will simply be recorded on the waiting list. However, if such information is found to be inaccurate, the Commissioners may:
- (a) refuse the Applicant's request to be registered or to remain registered on the waiting list; or
 - (b) relegate the Applicant concerned to the bottom of the waiting list; or
 - (c) remove that Applicant from the waiting list without the possibility of that Applicant re-applying at all or for such period, if any, as the Commissioners may specify.

4.9 ***Three invitations only:*** A Commercial Operator to whom an Invitation to Apply for a Commercial Mooring Licence is sent three times under paragraph 7 below but who does not apply for that Licence or who does apply but fails to comply with the requirements for obtaining that Licence or is refused a Licence under paragraph 9 below will be removed from the waiting list. If a Commercial Operator is removed from the waiting list in these circumstances and wishes to return to or be registered upon the waiting list, the Commercial Operator concerned will be required to apply as a first registrant under this paragraph 4.

5. **Harbour dues, mooring and other charges**

5.1 ***Dues and charges payable:***

- (a) Harbour Dues and Commercial Mooring Charges are payable to the Commissioners by Applicants for Commercial Mooring Licences whether relating to an Existing Boat or a Proposed Boat and will be decided and calculated at the times and on the bases set out in the following provisions of this paragraph 5 or at such other times or on such other bases as the Commissioners may from time to time determine.
- (b) The Harbour Dues at any time will be the per metre rate decided by the Commissioners to apply generally at that time to Vessels using the Harbour.
- (c) The amounts of the Commercial Mooring Charges will be decided annually by the Commissioners prior to the commencement of each calendar year and will take effect as from 1st January in that year for the period of 12 months commencing on that 1st January.

5.2 ***Calculation of dues and charges:*** Harbour Dues and Commercial Mooring Charges applicable to Commercial Mooring Licences will be calculated as follows:

- (a) a per metre rate of Commercial Mooring Charge will be established for each type of Commercial Mooring;
- (b) a minimum length basis of Commercial Mooring Charge may be fixed for any type of Commercial Mooring other than a pile Mooring;
- (c) except in the case of Temporary Commercial Licences (to which paragraph 5.4 below applies), the per metre rates of Harbour Dues and applicable Commercial Mooring Charge will be applied to the overall length (expressed in metres) of the Existing Boat (including bowsprits, davits and other extensions) or, if applicable and if longer, the minimum length basis fixed under sub-paragraph (b) of this paragraph 5.2 for the type of Commercial Mooring concerned.

5.3 ***Apportionment of dues and charges:*** If a Commercial Mooring Licence (other than a Temporary Commercial Licence) is to be issued other than on 1st January in any year, the Harbour Dues and Commercial Mooring Charge for the year in question will be apportioned on a day basis to the period from the date of issue until the next following 31st December (both dates inclusive).

5.4 ***Provisions applicable to Temporary Commercial Licences:***

- (a) If a new Temporary Commercial Licence is to be issued to a person on the waiting list, the Harbour Dues and Commercial Mooring Charge for the Licence Period under the Temporary Commercial Licence will be those applicable to the Allocated Mooring under paragraphs 5.1 and 5.2 above, apportioned on a day basis to that Licence Period.
- (b) The Harbour Dues and Commercial Mooring Charge for the Licence Period under a Temporary Commercial Licence issued under paragraph 12.6(b) or 12.8(b) below will be the

same as applied in relation to the Licensed Boat and Allocated Mooring under the Commercial Mooring Licence that terminated under those paragraphs, apportioned on a day basis to that Licence Period. Accordingly, no further or other Harbour Dues and Commercial Mooring Charge will be payable by the Licensee under such a Temporary Commercial Licence.

- (c) If an Invitation to Apply for a new Temporary Commercial Licence is to be sent upon renewal of a Temporary Commercial Licence issued under paragraph 12.6(b) or 12.8(b) below, the rates of Harbour Dues and Commercial Mooring Charges for the Licence Period under the new Temporary Commercial Licence will be those applicable to the Allocated Mooring under paragraphs 5.1 and 5.2 above, apportioned on a day basis to that Licence Period. If no Vessel Particulars Form in respect of a Proposed Boat had been lodged by the Licensee, the overall length (expressed in metres) of the Licensed Boat to which the terminated Commercial Mooring Licence previously held by the Licensee related will be the boat length for the purpose of paragraph 5.2(c) above; otherwise the overall length (expressed in metres) of the Proposed Boat will be the boat length for that purpose.

5.5 *Dues and charges upon issue of a new Licence to holders of Temporary Commercial Licences:*

- (a) The Harbour Dues and Commercial Mooring Charges payable for a new Commercial Mooring Licence issued or to be issued to the holder of a Temporary Commercial Licence pursuant to paragraph 8.6 below will be calculated separately for:
- (i) that part of the Licence Period under the new Commercial Mooring Licence that is equivalent to the unexpired portion of the Licence Period under the Temporary Commercial Licence (the "**first period**"); and
 - (ii) the remainder of the Licence Period under the new Commercial Mooring Licence (the "**second period**").
- (b) The Harbour Dues and Commercial Mooring Charge applicable to the first period will be whichever is the higher of:
- (i) those calculated under paragraph 5.2(c) above for the new Commercial Mooring Licence; and
 - (ii) those calculated under paragraph 5.4 above for the Temporary Commercial Licence concerned, apportioned on a day basis to the first period.
- (c) The Harbour Dues and Commercial Mooring Charge applicable to the second period will be those calculated under paragraph 5.2(c) above for the new Licence, apportioned on a day basis to the second period.

5.6 *Time for payment and instalments:*

- (a) Except as provided in paragraphs 8.7 to 8.9 (inclusive) below, Harbour Dues and Commercial Mooring Charges are payable:
- (i) in full at the time of application for the Commercial Mooring Licence; or
 - (ii) subject to sub-paragraphs (b) and (c) of this paragraph 5.6, at the option of the Applicant for a Licence, by two instalments, the first being due at the time of application and the second by 31st July; or
 - (iii) subject to sub-paragraphs (b) and (d) of this paragraph 5.6, if the Applicant for a Commercial Mooring Licence so requests at the time of application and the Commissioners agree, by monthly instalments payable in advance by bank standing order together with the Administration Charge (if any).

- (b) Payment by two instalments or monthly instalments by bank standing order will not be available for the payment of Harbour Dues and Commercial Mooring Charges in respect of Temporary Commercial Licences or any new Commercial Mooring Licence issued under paragraph 14.5 below. Payment by monthly instalments will not in any case be available to an Applicant who is unable or unwilling to complete a bank standing order.
- (c) If the date of application for a Commercial Mooring Licence in any year is after 31st March of that year, the option to pay by two instalments will not be available.
- (d) If the date of application for a Commercial Mooring Licence in any year is after 31st August in that year, payment by monthly instalments by bank standing order will not be available.

5.7 **Administration Charge:** Where payment by monthly instalments is an available option, the Commissioners reserve the right to levy an administration charge. The amount of any such charge will be added to the amount of the Harbour Dues and Commercial Mooring Charge and spread evenly across each of the monthly instalments.

5.8 **Other charges:** Other charges are levied by the Commissioners for other services or activities provided or carried out by them. Whenever a Licensee is required to pay for any such other service or activity, the charge will be the rate generally charged at the relevant time by the Commissioners for the service or activity in question.

6. **General provisions applicable to Commercial Mooring Licences**

6.1 **Invitations to apply:** Invitations to apply for Commercial Mooring Licences will only be sent to Commercial Operators who have duly completed and signed a Vessel Particulars Form (whether in respect of an Existing Boat or a Proposed Boat) and lodged it with the Harbour Office, and will relate only to the Existing Boat or Proposed Boat specified in that Form. A Vessel Particulars Form may be lodged at the Harbour Office at any time. Changes to the information contained in any Vessel Particulars Form must be notified in accordance with paragraph 10 below.

6.2 **Licence Periods:**

- (a) A Commercial Mooring Licence (other than a Temporary Commercial Licence), if and when issued, will be for a period of 12 months commencing 1st January in each year except in the case of a Commercial Mooring Licence (other than a Temporary Commercial Licence) issued for the first time at any other time of the year in which case the period of the Licence will be from the date of issue until the next following 31st December.
- (b) The period of a new Temporary Commercial Licence issued to a Commercial Operator on the waiting list will be 180 days.
- (c) The period of a Temporary Commercial Licence issued under paragraph 12.6(b) or 12.8(b) below will be as specified in those paragraphs.
- (d) The period of a Temporary Commercial Licence issued upon renewal of a Commercial Temporary Licence issued under paragraph 12.6(b) or 12.8(b) below will be as determined under paragraph 12.9(b) below.

6.3 **Licence Terms and Conditions:** Commercial Mooring Licences are issued upon and subject to the Licence Terms and Conditions.

7. **Invitations to Apply for Commercial Mooring Licences**

7.1 **General:** Invitations to Apply for a Commercial Mooring Licence in respect of a Commercial Mooring that becomes available will be sent in accordance with the following provisions of this paragraph 7 and the following order of priorities:

- (a) first, to Licensees on the transfer list; and
- (b) secondly, to persons on the waiting list.

7.2 **Invitations to persons on the transfer list:**

- (a) When a Commercial Mooring of any type becomes available and there is at least one Licensee on the transfer list in respect of that type of Commercial Mooring, an Invitation to Apply for a Commercial Mooring Licence will be sent to such Licensee (or the Licensee at the top of the list if more than one) but only if the Commissioners consider that the relevant Licensed Boat is suitable for that Commercial Mooring.
- (b) If there is more than one Licensee on the transfer list and the condition in sub-paragraph (a) of this paragraph 7.2 as to the suitability of the Licensed Boat is not fulfilled as regards the Licensee at the top of the list, an Invitation to Apply for the Commercial Mooring will be issued to the Licensee nearest the top of the transfer list in respect of that type of Mooring, and so on and so forth until a Licensee on the transfer list for that type of Mooring is identified as regards whom the suitability condition is fulfilled.
- (c) A Licensee on the transfer list who did not fulfil the condition in sub-paragraph (a) of this paragraph 7.2 will remain on the transfer list in the same position.

7.3 **Invitations to persons on the waiting list:**

- (a) If no Invitation to Apply is required to be sent under paragraph 7.2 above or for whatever reason no Licence is issued relating to the available Commercial Mooring under that paragraph, an Invitation to Apply for a Commercial Mooring Licence will be sent to the Commercial Operator at the top of the waiting list in respect of that type of Mooring provided that:
 - (i) such Commercial Operator has lodged at the Harbour Office a duly completed and signed Vessel Particulars Form relating to either an Existing Boat or a Proposed Boat; and
 - (ii) the Commissioners consider that the relevant boat is suitable for that Mooring.
- (b) If for whatever reason no Licence is issued relating to the available Mooring under sub-paragraph (a) of this paragraph 7.3 to the Commercial Operator at the top of the waiting list, an Invitation to Apply for a Commercial Mooring Licence will be sent to the Commercial Operator nearest the top of the waiting list in respect of that type of Mooring as regards whom the conditions at sub-paragraphs (a)(i) and (ii) of this paragraph 7.3 are fulfilled, and so on and so forth until a Licence in respect of that Mooring is issued.
- (c) A Commercial Operator on the waiting list who was not sent an Invitation to Apply for a Mooring Licence or who was sent an Invitation to Apply but did not apply for a Licence in response to that Invitation or, having applied, was not for any reason issued with a Mooring Licence will, subject to paragraph 4.9 above, remain on the waiting list in the same position.
- (d) If the Vessel Particulars Form referred to in sub-paragraph (a)(i) of this paragraph 7.3 relates to a Proposed Boat, the type of Licence specified in the Invitation to Apply will be a Temporary Commercial Licence relating to that Proposed Boat. If that Vessel Particulars Form relates to an Existing Boat, the Invitation to Apply will be for a Commercial Mooring Licence relating to that Existing Boat.

- 7.4 ***Invitations to holders of Previous Licences:*** A holder of a Previous Licence who wishes to obtain a Commercial Mooring Licence will be required to apply for that Licence as a new Applicant under the terms of this document. Invitations to Apply for a Commercial Mooring Licence under this document will be sent to each such holder not later than 1st December 2007. However, the Commissioners may decide not to issue an Invitation to Apply for a Licence to any holder of a Previous Licence if it appears to the Commissioners that the boat concerned is not being used in any business in which case the Previous Licence will expire in accordance with its terms and no new Licence will be issued.
- 7.5 ***Invitations to apply for Licence renewal:*** Invitations to Apply for the renewal of Commercial Mooring Licences under this document (including renewal of a Temporary Commercial Licence) will be sent to each Licensee not later than 1st December each year. However, the Commissioners may decide not to issue an Invitation to Apply for renewal of a Licence to any Licensee if it appears to the Commissioners that the boat concerned is not being used in any business in which case the Licence will expire in accordance with its terms and no new Licence will be issued.
- 7.6 ***Invitation documents, information and invoices:***
- (a) A Commercial Operator who is sent an Invitation to Apply for a Commercial Mooring Licence will also be sent the following documents and information:
- (i) in the case of an Invitation to Apply for a Licence sent to the holder of a Previous Licence for the first time, an up-to-date copy of this document (excluding the Forms) and the Licence Terms and Conditions;
 - (ii) in the case of any other Invitation to Apply for a Licence sent to any Commercial Operator for the first time or upon renewal, an up-to-date copy of this document (excluding the Forms) and the Licence Terms and Conditions but only if there has been a change from the version previously sent to that Commercial Operator;
 - (iii) subject to paragraph (b) of this paragraph 7.6, the location and type of the Mooring to apply to the Licence;
 - (iv) a pro-forma invoice for the full amounts of Harbour Dues and Commercial Mooring Charge and applicable Value Added Tax, such invoice to state whether or not the payment of the amount invoiced must be made in full or may be made by two instalments under paragraph 5.6(a)(ii) above;
 - (v) if payment of the Harbour Dues and Commercial Mooring Charge by monthly instalments under paragraph 5.6(a)(iii) above may be requested, a Monthly Instalment Request Form showing the amounts of the monthly instalments and Administration Charge (if any); and
 - (vi) an applicable Licence Application Form and Vessel Particulars Form.
- (b) In the case of a Licence renewal, while the location and type of the Allocated Mooring will normally be the same location as the Allocated Mooring to which the previously held Licence related, there is no guarantee that this will be the case and the Commissioners reserve the right to specify a Mooring in a different location or of a different type. If this occurs, the Invitation to Apply sent under sub-paragraph (a) of this paragraph 7.6 will specify the change.
- 7.7 ***Payment by two instalments:*** If payment of the amount of Harbour Dues and Commercial Mooring Charge shown in the invoice referred to in paragraph 7.6(a)(iv) above by two equal instalments is an available option, the Applicant may elect to do so simply by making payment of the first such instalment when completing and returning the Licence Application Form in

accordance with paragraph 8 below. The second such instalment must be paid by the Applicant not later than 31st July in the year of application. No reminder will be sent and it is the responsibility of the Applicant to ensure that payment is made by that time.

7.8 ***Payment by monthly instalments:***

- (a) An Applicant who wishes to request the Commissioners to agree to the payment of the amount of Harbour Dues and Commercial Mooring Charge by monthly instalments together with the Administration Charge (if any) must complete and sign the Monthly Instalment Request Form sent under paragraph 7.6(a)(v) above and return it to the Harbour Office so as to be received there within 14 days of its despatch.
- (b) The Commissioners will consider the request and notify the Applicant in writing promptly, and in any event within ten working days, as to whether or not the Commissioners agree to the request.
- (c) If the Commissioners agree to the request:
 - (i) the Applicant will be sent:
 - (A) a pro-forma invoice showing the amounts of monthly instalments and Administration Charge and applicable Value Added Tax in substitution for the invoice referred to in paragraph 7.6(a)(iv) above; and
 - (B) a bank standing order form for completion and return with the Licence Application Form in accordance with paragraph 8.1 below;
 - (ii) the Applicant will be required to pay the first monthly instalment when completing and returning the Licence Application Form in accordance with paragraph 8.1 below; and
 - (iii) the remaining monthly instalments will be payable by the Applicant by means of bank standing order payments.
- (d) If the Commissioners do not agree to the request to pay by monthly instalments and the option to pay the invoice referred to in paragraph 7.6(a)(iv) above by two equal instalments is available, the Applicant will still be permitted to pay by two instalments by paying the first such instalment when completing and returning the Licence Application Form in accordance with paragraph 8.1 below. Paragraph 7.7 above will then apply as regards payment of the second instalment.

8. **Applications for and issue of Licences**

8.1 ***Application requirements:***

- (a) Except as provided in paragraph 14 below, applications for a Commercial Mooring Licence may only be made in response to an Invitation to Apply. If a tender is to be used, notification to the Harbour Office must be given in accordance with paragraph 8.11 below.
- (b) A Commercial Operator wishing to apply for a Commercial Mooring Licence for the first time under this document or to renew a Commercial Mooring Licence (including a Previous Licence) must complete and sign the applicable Licence Application Form sent under paragraph 7.6(a)(vi) above and lodge it at the Harbour Office within 30 days after the date of the Invitation to Apply, or by the next following 31st January in the case of a renewal, together with:

- (i) the information required by paragraphs 8.2 and 8.3 below, as applicable;
 - (ii) a copy of a Current Council Tax Bill (and, if applicable, duly completed and signed Family Member Declaration) as required by the Licence Application Form;
 - (iii) except where monthly instalments have been agreed under paragraph 7.8 above, payment of the amount of Harbour Dues and Commercial Moorings Charge and Value Added Tax as invoiced either:
 - (A) in full; or
 - (B) if the invoice so permits, of an amount equal to one half of the amount so invoiced (in which case the second instalment will be payable as mentioned in paragraph 7.7 above);
 - (iv) if payment by monthly instalments has been agreed under paragraph 7.8 above:
 - (A) payment in full of the first instalment of the amount of Harbour Dues, Commercial Moorings Charge and Administration Charge (if any) and Value Added Tax as invoiced; and
 - (B) the bank standing order form sent under paragraph 7.8(c)(i) above duly completed and signed by or on behalf of the Applicant.
- (c) Failure to comply with the foregoing provisions of this paragraph 8.1 within the time specified will result in the application not being considered and the Licence not being issued or renewed, as the case may be. In that event, paragraph 11 (*Removal of the Licensed Boat and lien*) of the Licence Terms and Conditions shall apply and the Mooring shall become available for the purposes of paragraph 7.1 above.

8.2 **Additional information:** A Commercial Operator wishing to apply for a Commercial Moorings Licence will be required by way of annexure(s) to the Licence Application Form to:

- (a) give a full description of the business or trade carried on by that Commercial Operator;
- (b) provide such information as will enable the Commissioners to determine that:
 - (i) the Commercial Operator is or, in the case of a Licence renewal, continues to be an Eligible Commercial Operator fulfilling all of the applicable conditions in paragraph 3.1 above; and
 - (ii) except in the case of an application for a Temporary Commercial Licence, the Existing Boat referred to in the Vessel Particulars Form is or, in the case of a Licence renewal, continues to be an Eligible Boat.

8.3 **Information guidance and requirements:**

- (a) The Commissioners will accept as proof of fulfilment by a Commercial Operator of the eligibility condition in paragraph 3.1(c)(i) above (namely, that the Commercial Operator has carried on a business or trade in or out of Yarmouth Harbour for at least one half the number days of the Licence Period in the Licence being renewed) any of the following:
 - (i) that the Commercial Operator (if a sole trader) or the working partner or director of the Commercial Operator (if a partnership or company, respectively) referred to in paragraph 3.2 above has in fact been observed by the Commissioners or the Harbour Master doing so; or

- (ii) in the case of a Commercial Operator whose Eligible Boat is registered fishing boat, a copy of a current certificate of registration in the name of the Commercial Operator (or in the name(s) of one or more of the partners in the case of a Commercial Operator that is a partnership); or
 - (iii) in the case of any Commercial Operator, a copy of a current certificate of registration with an applicable licensing authority relating to that Commercial Operator's Eligible in the name of the Commercial Operator (or in the name(s) of one or more of the partners in the case of a Commercial Operator that is a partnership); or
 - (iv) a letter from an independent chartered or certified accountant employed by that Commercial Operator confirming that the Commercial Operator fulfilled that condition for an accounting period of at least 12 months ended on a date which is not sooner than 4 months prior to the date of the Licence Application Form.
- (b) In the case of an application by a company, the information that the Applicant is required to provide includes the names and personal addresses of all of its directors and all of its shareholders and their respective percentage shareholdings and of each and every holding company if the Applicant is a subsidiary of another company (and, if any such registered shareholder is not the beneficial owner of all of the shares shown as registered in the name of that shareholder, the name and personal address of the beneficial owner or all of them if more than one).
- (c) In the case of an application by a partnership, the information that the Applicant is required to provide includes the names and personal addresses of all the partners.

8.4 ***Issue of Commercial Mooring Licence and identification disc:***

- (a) Unless a notice of refusal is given under paragraph 9 below or paragraph 8.1(c) above applies, a Commercial Mooring Licence will be issued in the name of the Applicant (or as provided in sub-paragraph (d) of this paragraph 8.5) and sent to the Applicant.
- (b) Renewal of a Commercial Mooring Licence will be effected by means of the issue of a new Licence.
- (c) If the type of Licence specified in the Invitation to Apply was for a Temporary Commercial Licence relating to a Proposed Boat, the Licence issued under sub-paragraph (a) of this paragraph 8.5 will be a Temporary Commercial Licence relating to that Proposed Boat. If the type of Licence specified in the Invitation to Apply was for a Commercial Mooring Licence relating to an Existing Boat, the Licence issued under that sub-paragraph will be a Commercial Mooring Licence relating to that Existing Boat.
- (d) If the Licence has been applied for on behalf of a partnership, the Licence will be issued in the name(s) of the partner(s) who signed the Licence Application Form. If the Licence has been applied for by a sole trader or by or on behalf of a company, the Licence will be issued in the name of the Applicant.
- (e) All Commercial Operators issued with a Commercial Mooring Licence (other than a Temporary Commercial Licence) will also receive an identification disc which must be displayed in a prominent position on the Licensed Boat. If notification of the use of a tender is given in accordance with paragraph 8.11 below, a separate identification disc for the tender will be sent which must be displayed in a prominent position on the tender. Each disc will be numbered and form part of the reference system for the Licensed Boat (and tender, if applicable) in the Harbour.
- (f) In the case of a Licence renewal and the issue of a new Licence following a notification of change or other circumstance, the old Licence and any identification disc should be destroyed as they will have ceased to be of any effect.

8.5 ***Issue of a new Licence (Existing Boat) to Temporary Licensee:***

If a Vessel Particulars Form in respect of a new or replacement boat is lodged at the Harbour Office by a Temporary Licensee, then, provided that the Commissioners consider that:

- (a) based on the information in that Vessel Particulars Form and/or such other information as may be in the possession of the Commissioners, the new or replacement boat is an Eligible Boat; and
- (b) the new or replacement boat is suitable for the Allocated Mooring to which the Temporary Commercial Licence relates,

the Commissioners will send to the Temporary Licensee concerned:

- (i) a new Commercial Mooring Licence relating to the same Allocated Mooring and the new or replacement Existing Boat with a Licence Period that commences on the date of issue of the new Licence and expires on the next following 31st December (such new Licence to replace the Temporary Commercial Licence which will automatically terminate);
- (ii) an identification disc for the new or replacement boat;
- (iii) a statement showing the calculation under paragraph 5.5 above of the Harbour Dues and Commercial Mooring Charge applicable to the issue of the new Licence and whether any additional amount is payable for the issue of the new Licence; and
- (iv) if that statement shows an amount of Harbour Dues and Commercial Mooring Charge due to be due and payable:
 - (A) a pro-forma invoice for that amount and applicable Value Added Tax, such invoice to state whether or not the payment of the amount invoiced must be made in full or may be made by two instalments under paragraph 5.6(a)(ii) above; and
 - (B) if payment by monthly instalments under paragraph 5.6(a)(iii) above of the amount of Harbour Dues and Commercial Mooring Charge due may be requested, a Monthly Instalment Request Form showing the amounts of the monthly instalments and Administration Charge (if any).

8.6 ***Payment of balance due:*** The amount due shown in a pro-forma invoice sent under paragraph 8.6(iv)(A) above is, subject to paragraphs 8.8 and 8.9 below, payable by the Licensee in full within 14 days of the date of the invoice.

8.7 ***Payment by two instalments:*** If payment of the amount shown in the invoice sent under paragraph 8.6(iv)(A) above by two equal instalments is an available option under paragraph 5.6(a)(ii) above, the Licensee may elect to do so simply by making payment of the first such instalment within the 14 days of the date of the invoice. The second such instalment must be paid by the Licensee not later than 31st July in the Licence Period. No reminder will be sent and it is the responsibility of the Licensee to ensure that payment is made by that time.

8.8 ***Payment by monthly instalments:***

- (a) If payment by monthly instalments is an available option under paragraph 5.6(a)(iii) above, a Licensee who wishes to request the Commissioners to agree to the payment of the amount shown in the invoice sent under paragraph 8.6(iv)(A) above by monthly instalments together

with the Administration Charge (if any) must complete and sign the Monthly Instalment Request Form sent under paragraph 8.6(iv)(B) above and return it to the Harbour Office so as to be received there within 14 days of the date of the invoice.

- (b) The Commissioners will consider the request and notify the Licensee in writing promptly, and in any event within ten working days, as to whether or not the Commissioners agree to the request.
- (c) If the Commissioners agree to the request:
 - (i) the Licensee will be sent:
 - (A) a pro-forma invoice showing the amounts of monthly instalments and Administration Charge and applicable Value Added Tax in substitution for the invoice referred to in paragraph 8.6(a)(4)(A) above; and
 - (B) a bank standing order form for completion and return with payment of the first instalment in accordance with sub-paragraph (ii) below;
 - (ii) the Licensee will be required to pay the first monthly instalment and return to the Harbour Office the duly completed and signed bank standing order form so as to be received there within 14 days of the date of such invoice; and
 - (iii) the remaining monthly instalments will be payable by the Applicant by means of bank standing order payments.
- (d) If the Commissioners do not agree to the request to pay by monthly instalments, the full amount of the invoice sent under paragraph 8.6(iv)(A) above will be payable by the Licensee within 14 days of being notified to that effect. If however the option to pay by two equal instalments is available, the Licensee will still be permitted to pay by two instalments by paying the first such instalment within such 14 days period

8.9 **No refunds:** Notwithstanding that the calculation under paragraph 5.5 above shows that the Harbour Dues and/or Commercial Mooring Charge would have been less for the new or replacement boat, no refund of Harbour Dues or Commercial Mooring Charge will be made.

8.10 **Tenders:**

- (a) Each Licensee (other than the holder of a Temporary Licence) shall be entitled without payment of any further or additional Harbour Dues or Mooring Charge to the use of one tender in connection with the Licensed Boat for the duration of the Licence Period. A tender must not exceed 4 metres in length (ignoring any outboard).
- (b) A Licensee wishing to use a tender must notify the Harbour Office by delivering a Vessel Particulars Form giving details of the tender as shown on the Form. Any change of tender should be similarly notified by delivering a new Vessel Particulars Form.
- (c) The Form giving details of a tender may be the same Form as that which gives the details of the Licensed Boat or a separate Form. If a separate Form is used, that Form must also give the name of the Licensed Boat and must be signed by the same person(s) as signed the Vessel Particulars Form that specified the Licensed Boat.

9. **Refusals, termination, non-acceptances and appeals**

9.1 ***Non-compliance (Licence Terms):***

- (a) In the case of a Licensee applying to renew a Licence, the Commissioners may refuse to issue a new Licence unless the Licensee has in all respects complied with the previously issued Licence and the Licence Terms and Conditions or, if the Licensee held a Previous Licence, with the Previous Moorings Policy and the Previous Licence.
- (b) The Commissioners may agree to the issue of the new Licence notwithstanding any such non-compliance if the non-compliance is, in the opinion of the Commissioners, capable of remedy and steps satisfactory to the Commissioners are being taken by the Licensee to ensure that such non-compliance will be remedied within an agreed timescale.

9.2 If the Commissioners consider that, based on the information in the Licence Application Form and other information supplied under paragraph 8 above that:

- (a) the Applicant is not or, in the case of a Licence renewal, has ceased to be an Eligible Commercial Operator; or
- (b) except in the case of an application for a Temporary Commercial Licence, the boat referred to in the Vessel Particulars Form is not or, in the case of a Licence renewal, has ceased to be an Eligible Boat; or
- (c) the Commissioners are entitled to terminate, or have terminated, any Commercial Moorings Licence, non-commercial moorings licence or other type of licence previously issued to the Applicant or are entitled to refuse or have previously refused to issue any such Commercial Moorings Licence, non-commercial moorings licence or other type of licence to the Applicant (whether on first application, renewal or otherwise);

the Commissioners shall be entitled, by notice in writing to the Commercial Operator, to refuse to issue a Licence to that Commercial Operator or to renew the Licence concerned.

9.3 ***False declarations:*** If a false declaration is made in any Licence Application Form or other document lodged at the Harbour Office in connection with any Licence application or a notification of change or other circumstance, the Commissioners shall be entitled to refuse to issue the Licence or, in the case of the renewal of a Licence, refuse to renew it. The Commissioners may also refuse to permit the Commercial Operator concerned returning to the waiting list at any time or for such period as they may decide.

9.4 ***Notice of and reasons for refusals, termination or non-acceptances:***

- (a) If the issue or renewal of a Commercial Mooring Licence is refused under any of the provisions of this document, written notice of refusal will be given to the Applicant and any payment of Harbour Dues and/or Commercial Mooring Charge made will be refunded.
- (b) If the issue of a Commercial Mooring Licence or the renewal of a Commercial Mooring Licence is refused or a Commercial Mooring Licence is terminated under any of the provisions of this document or the Licence Terms and Conditions, the reasons for the refusal or termination will be given.
- (c) If:
 - (i) a Commercial Operator is not accepted as being or continuing to be an Isle of Wight Resident or as an Eligible Commercial Operator; or

- (ii) an Existing Boat is not accepted as being or continuing to be an Eligible Boat; or
- (iii) a Family Change of Control in relation to either a Commercial Operator or an Existing boat has been claimed under paragraph 14 or 15 below and has not been accepted as an Accepted Family Change of Control,

the reasons for the non-acceptance will be given.

9.5 ***Appeals:***

- (a) A Commercial Operator who feels aggrieved by a refusal to issue, or a termination of, a Licence or to renew a Licence or a non-acceptance of any of the matters referred to in paragraph 9.4(c) above may appeal to a committee comprising the Chairman of the Commissioners, one other Commissioner (excluding the Chief Executive/Harbour Master or separate Chief Executive if those offices are at any time held by separate persons) and one other person independent of the Commissioners and the appellant appointed for the purpose upon request by the applicant by any of the British Marine Federation, the Royal Yachting Association, the Maritime and Coastguard Agency, the Department of Transport Ports Decision or, only in the case of an appeal by a Commercial Operator whose business or trade is that of fishing, the Marine and Fisheries Agency. An appeal must be made in writing stating the reasons for it and must be lodged at the Harbour Office within 14 days of the date of refusal or termination or notification of non-acceptance.
- (b) The appellant may be asked by any committee member, and the appellant has the right, to appear before the committee to argue the appellant's case.
- (c) While the decision of the committee will be final, nothing in this document shall prevent the aggrieved Commercial Operator from taking such legal proceedings as may be available in connection with a refusal by the Commissioners to issue or renew a Licence or the termination by the Commissioners of a Licence or the non-acceptance by the Commissioners of any of the matters referred to in paragraph 9.4(c) above.

9.6 ***Removal of boat:*** If a Commercial Licence (other than a Temporary Commercial Licence) is terminated or terminates under any of the provisions of this document, paragraph 11 (*Removal of the Licensed Boat and lien*) of the Licence Terms and Conditions shall apply.

10. **Changes in circumstances, boat or information supplied: general provisions**

- 10.1 ***General requirement to notify changes:*** Subject to paragraph 10.2 below, any change in the information supplied in, or in connection with, any waiting list registration or Licence (including, without limitation, a change of address, change of "working" partner or other partner in the case of a partnership, change of "working" director or other directors or shareholders in the case of a company, change or acquisition of a boat or other Change of Control of a Licensed Boat or Commercial Operator or otherwise) must be notified to the Commissioners as soon as possible after the change or other circumstance occurs. At the same time, a request should be made for a Notification of Change Form and other Forms according to the nature of the change or other circumstance being notified under paragraph 10.5, 11, 12, 13, 14 or 15 below, as applicable.
- 10.2 ***Notification not required:*** A notification of change by a Commercial Operator in connection with the renewal of registration on the waiting list is not required pursuant to this paragraph 10 if that Commercial Operator completes, signs and lodges a new Waiting List Application Form under paragraph 4.5(e) above instead.

10.3 *Mooring no longer required and refunds:*

- (a) If prior to end of the Licence Period under any Commercial Mooring Licence, the Licensee no longer requires the Mooring specified in that Licence, instead of lodging a Notification of Change Form, the Licensee may in writing notify the Harbour Commissioners to that effect (such notification to specify the date as from which the Licence is no longer required if that date is sooner than the end of the existing Licence). In that case, the Commercial Mooring Licence will remain in force until the end of the Licence Period or it will automatically terminate on the date specified in such notification, if sooner.
- (b) If a notification is given under sub-paragraph (a) of this paragraph 10.3 by a Licensee under a Commercial Mooring Licence and
- (i) that notification specifies a date which is on or before 30th September in the Licence Period;
 - (ii) the Licensee vacates the Allocated Mooring on the date so specified or in any event on or before 30th September in the Licence Period; and
 - (iii) a Commercial Mooring Licence is issued by the Commissioners in respect of the same Allocated Mooring to another Commercial Operator under the procedures in this document for the whole or part of the period (the "**refund period**") from the date so specified (or actual date of vacation by the Licensee of the Allocated Mooring, if later) until the end of the original Licence Period of the terminated Licence,

the Licensee giving the notification shall be entitled (subject to paragraph (c) of this paragraph 10.3) to a refund of the Harbour Dues and Commercial Mooring Charge (ignoring any Administration Charge) paid by that Licensee by reference to the refund period equal to whichever is the lower of:

- (A) the amount so paid by that Licensee; and
- (B) the amount of Harbour Dues and Commercial Mooring Charge paid in respect of the new Licence by reference to the refund period.

Amounts referable to the refund period specified above will be calculated by means of an apportionment of the amount on a day basis to the refund period.

- (c) The Commissioners shall be entitled to deduct from any refund due under this sub-paragraph (b) a service charge based on the amount of administrative work involved in implementing the procedures referred to in sub-paragraph (iii) and the refund process. In that event, an invoice showing the amount of the service charge and applicable value added tax will be sent to the Licensee.
- (d) Any refund owing, less deduction (if any) made under sub-paragraph (c) of this paragraph 10.3, will be paid within 14 days of the date of issue of the new Licence. No refund of Harbour Dues or Commercial Mooring Charge will be made except as provided in this paragraph 10.3.
- (e) No Invitation to Apply for renewal of a Commercial Mooring Licence will be sent to a Licensee giving a notification under sub-paragraph (a) of this paragraph 10.3 relating to a Licensed Boat and the Licensee will not be permitted to re-apply for a Commercial Mooring Licence. The Licensee may, however, apply for registration on the waiting list as a new registrant at any time.

10.4 *Despatch of Forms:* A Notification of Change Form and other Forms will be sent to the Commercial Operator notifying the change or other circumstance as requested and must be

duly completed, signed and lodged at the Harbour Office accompanied by the other applicable forms and documents required by paragraph 10.5, 11, 12, 13, 14 or 15 below as soon as possible and in event by any time limit specified in the applicable paragraph(s).

10.5 ***Unspecific changes:*** In the case of a change or circumstance other than as mentioned in paragraph 11, 12, 13 or 14 below, the Notification of Change Form should be accompanied by a separate note or memorandum giving brief details of the change.

11. **Change of address or change of "working" partner or director**

11.1 ***Requirement to notify:***

- (a) A Notification of Change Form under this paragraph 11 is required if in relation to a Commercial Operator on the waiting list or transfer list or a Licensee:
- (i) there has been a change of:
 - (A) business address;
 - (B) the personal address on the Isle of Wight of the Commercial Operator which, or of the working partner or director who, enabled the Commercial Operator to qualify as an Isle of Wight Resident under paragraph 3.2(a) above; or
 - (C) the personal address of any partner or director given as mentioned in paragraph 8.3 above; or
 - (ii) the "working" partner or "working" director who enabled the Commercial Operator to qualify as an Isle of Wight Resident under paragraph 3.2(a) above ceases to reside on the Isle of Wight or ceases to be a "working" partner or "working" director of the Commercial Operator within the meaning of paragraph 3.2(a) above.
- (b) If paragraph 11.1(a)(i)(B) applies, the Notification of Change Form must be accompanied by:
- (i) a copy of a Current Council Tax Bill relating to the new address; or
 - (ii) if a Current Council Tax Bill relating to the new address is not then available, an undertaking to deliver a copy of the Current Council Tax Bill when issued.
- (c) If paragraph 11.1(a)(ii) applies, the Notification of Change Form must specify the name and personal address on the Isle of Wight of the new "working" partner or "working" director who will enable the Commercial Operator to qualify or continue to qualify as an Isle of Wight Resident under paragraph 3.2(a) above and must be accompanied by:
- (i) a copy of a Current Council Tax Bill relating to that individual and that address; or
 - (ii) if a Current Council Tax Bill relating to that individual and that address is not then available, an undertaking to deliver a copy of the Current Council Tax Bill when issued; and
 - (iii) in either such case, a Family Member Declaration, if applicable.
- (d) If an undertaking to deliver a Current Council Tax Bill is given under paragraph (b) or (c) of this paragraph 11.1, the Commercial Operator concerned is expected to ensure that the Isle of Wight Council is notified of the relevant address as soon as possible. The Commercial Operator must deliver a copy of the Current Council Tax Bill to the Commissioners for verification promptly after it has been received by that Commercial Operator or other individual concerned. The Commissioners may by notice in writing to the Commercial

Operator concerned terminate the Licence of a Commercial Operator who fails to comply with this sub-paragraph (d).

11.2 ***Consequences of non-residency or other non-compliance:*** If there has been a change of personal address of a "working" partner or "working" director or a change of "working" partner or "working" director or other change referred to in paragraph 10.5 above (whether or not notified to the Commissioners) and the Commissioners are of the opinion that the Commercial Operator is not or has ceased to be an Isle of Wight Resident, the Commissioners may by notice in writing to the Commercial Operator concerned:

- (a) remove that Commercial Operator from the waiting list or transfer list; or
- (b) in the case of a Licensee:
 - (i) terminate the Licence held by the Licensee with immediate effect or with effect from the expiration of such period as may be specified in the notice of termination; or
 - (ii) permit the Licence to continue until its date of expiration and inform the Licensee that an application to apply for a Licence or renew the Licence upon its expiration will not succeed based on the information provided.

12. **Change of Control of boat or Commercial Operator**

12.1 ***Requirement to notify:***

- (a) This paragraph 12 applies to the notification of a Change of Control of an Existing Boat or a change of intention as regards a Proposed Boat or a Change of Control of a Commercial Operator that is a partnership or company. Paragraphs 13 and 14 below apply to a notification of Change of Control of a Licensed Boat where the Change of Control concerned results from the death of a Licensee who is a sole trader or a transfer of business by such Licensee to a Family Member. Paragraph 15 below also applies if a Change of Control of a Commercial Operator is claimed to be a Family Change of Control.
- (b) Except where paragraph 13 below applies and subject to paragraph 10.3 above, a Notification of Change Form under this paragraph 12 is required whenever there has been a Change of Control of an Existing Boat (whether or not a Licensed Boat) or a change of intention as regards a Proposed Boat or a Change of Control of a Commercial Operator that is a partnership or company.
- (c) A notification under this paragraph 12 shall also state whether the Change of Control is claimed to be a Family Change of Control (in which case paragraph 14 or 15 below will apply).

12.2 ***Defined terms:***

- (a) A "**Change of Control**" of an Existing Boat occurs if it is sold or if the ownership of the Existing Boat is not for any other reason the same as was shown in the Vessel Particulars Form relating to that Existing Boat. If the Existing Boat concerned is registered and the registration details show its ownership divided into shares, a change in the registered ownership details at the port or place of registry shall be treated as conclusive in determining whether or not there has been a sale or other change of ownership of that Existing Boat.
- (b) A "**Change of Control**" of a Commercial Operator that is a partnership occurs when the partners are not the same as they were on the date of the Waiting List Application Form or, if a Licence has been issued, the Licence Application Form (or date of notification of such a Change of Control, or most recent date of notification if more than);

- (c) A "**Change of Control**" of a Commercial Operator that is a company occurs when that company (or any holding company of that company) is no longer effectively controlled at board level or voting shareholder level by the same individual(s) who so controlled it on the date of the Waiting List Application Form or, if a Licence has been issued, the Licence Application Form (or date of notification of such a Change of Control, or most recent date of notification if more than).
- (d) A "**Family Change of Control**" of a Licensed Boat or Commercial Operator occurs when:
- (i) the Change of Control is one which relates solely to changes of an individual and the new individual is a Family Member in relation to the previous or any remaining individual(s); and
 - (ii) the business or trade in connection with which the Licensed Boat is being used continues to be carried on and controlled by the same Commercial Operator as carried it on and controlled it prior to the change save only for such change in individual,

and an "**Accepted Family Change of Control**" is a claimed Family Change of Control where the Commissioners accept that the requirements of sub-paragraphs (i) and (ii) are fulfilled in accordance with the provisions of paragraph 14 or 15 below in response to an application made under whichever of those paragraphs is applicable.

12.3 ***Change of Control of boat (waiting list):*** In the case of the Change of Control of an Existing Boat or a change of intention as regards a Proposed Boat, in either such case as specified in a Vessel Particulars Form lodged by a person on the waiting list, the Notification of Change Form may be accompanied by a new Vessel Particulars Form. The new Vessel Particulars Form may relate to the same Existing Boat (such as where majority ownership of that Boat has changed but is still held by the same Commercial Operator), a new Existing Boat or a Proposed Boat. If a new Vessel Particulars Form is not duly completed, signed and lodged at the Harbour Office with the Notification of Change Form, the information on the list concerned will be amended to show that Commercial Operator as no longer owning, or owning a majority share in, any boat or proposing to acquire any particular boat, as the case may be; otherwise that information will be amended so as to reflect the information given in the Vessel Particulars Form.

12.4 ***Change of Control (Licensed Boats):***

- (a) Unless a notification under paragraph 10.3 above has been given, the Notification of Change Form required by paragraph 12.1 above in relation to a Licensed Boat must either:
- (i) be accompanied by a duly completed and signed new Vessel Particulars Form showing the Change of Control that has occurred with details of the same Existing Boat or of a replacement boat; or
 - (ii) make a request in the Notification of Change Form for time to replace the boat concerned.
- (b) If the Notification of Change Form is not accompanied by either a new Vessel Particulars Form or does not contain a request for time as required by sub-paragraph (a)(i) or (ii) of this paragraph 12.4, the Commissioners may treat the Notification of Change Form as a notification given under paragraph 10.3 above.

12.5 ***Family Change of Control:*** If the Change of Control of a boat or Commercial Operator that is a partnership or company is claimed to be a Family Change of Control, the Commercial Operator must make an application under paragraph 15 below.

12.6 ***Request for time:*** Where a request for time is made for the replacement of a boat as envisaged by paragraph 12.4(a)(ii) above, the following provisions will apply:

- (a) The time granted will be a period of 180 days commencing on the date of the Notification of Change Form.
- (b) The Licensee's Commercial Mooring Licence will automatically terminate with immediate effect and a Temporary Commercial Licence will be issued to the Licensee in its place, such Temporary Commercial Licence to relate to the same Allocated Mooring with a Licence Period that expires at the end of that 180 days period or the end of the Licence Period under the terminated Commercial Mooring Licence, whichever occurs first.

12.7 ***Termination due to lack of boat eligibility requirements:*** If the Commissioners are of the opinion (whether or not as a result of a Notification of Change Form delivered under this paragraph 12) that:

- (a) a Licensed Boat has ceased to be an Eligible Boat other than by reason of a Change of Control of the Licensed Boat which is an Accepted Family Change of Control; or
- (b) in the case of a replacement boat specified in a Vessel Particulars Form lodged with the Notification of Change Form, the replacement boat is not an Eligible Boat,

the Commissioners shall be entitled by notice in writing to the Commercial Operator concerned either:

- (i) to terminate the Commercial Operator's Commercial Mooring Licence with immediate effect or with effect from the expiration of such period as may be specified in the notice of termination; or
- (ii) to permit the Commercial Operator's Commercial Mooring Licence to continue until its date of expiration and inform the Commercial Operator that an application to renew the Licence upon its expiration will not succeed based on the information provided.

12.8 ***Unsuitability of a replacement boat:*** If the Commissioners are of the opinion that the Allocated Mooring is not suitable for the replacement boat specified in a Vessel Particulars Form lodged with the Notification of Change Form under paragraph 12.4(a)(i) above, the Commissioners shall be entitled by notice in writing to the Commercial Operator concerned to:

- (a) allocate a different Mooring if a suitable one is available and require the Commercial Operator to use the different Mooring for the replacement boat;
- (b) if a different suitable Mooring is not available for the replacement boat, terminate the Licensee's Commercial Mooring Licence with immediate effect and issue a Temporary Commercial Licence to the Commercial Operator in its place, such Temporary Commercial Licence to relate to the same Allocated Mooring with a Licence Period that expires at the end of that 180 days period or the end of the Licence Period under the terminated Commercial Mooring Licence, whichever occurs first.

Licensees proposing to change their boat are strongly advised to check with the Commissioners before committing themselves to a replacement boat in order to ensure that the replacement boat will be considered by the Commissioners as suitable for the Mooring allocated to that Licence holder. Failure to do this could result in termination of their Commercial Mooring Licence as provided above.

12.9 ***Further provisions to apply in the case of the issue of a Temporary Commercial Licence:***

- (a) No refund of Harbour Dues or Commercial Mooring Charge paid in respect of a Commercial Mooring Licence that has terminated under paragraph 12.6(b) or 12.8(b) will be made and paragraph 5.4 above shall apply as regards those Dues and Charges.
- (b) If the 180 days period referred to in paragraph 12.6(a) or 12.8(b) above would expire after the end of the Licence Period under the terminated Commercial Mooring Licence, the balance of that 180 days period will be carried forward so as to apply to the year immediately following the date of expiration of the Licence Period under the Temporary Commercial Licence. In that case, if a new Temporary Commercial Licence is issued by way of renewal of the Temporary Commercial Licence issued under paragraph 12.6(a) or 12.8(b) above, the Licence Period applicable to that new Temporary Commercial Licence will be the carried forward period.

12.10 ***Termination due to Change of Control of a Commercial Operator:*** If the Commissioners are of the opinion (whether or not as a result of a Notification of Change Form delivered under this paragraph 12) that a Change of Control of a Commercial Operator has occurred other than a Change of Control which is an Accepted Family Change of Control, the Commissioners shall be entitled by notice in writing to the Commercial Operator concerned either:

- (i) to terminate the Commercial Operator's Commercial Mooring Licence with immediate effect or with effect from the expiration of such period as may be specified in the notice of termination; or
- (ii) to permit the Commercial Operator's Commercial Mooring Licence to continue until its date of expiration and inform the Commercial Operator that an application to renew the Licence upon its expiration will not succeed based on the information provided.

12.11 ***Removal of Licensed Boat:*** Paragraph 11 (*Removal of the Licensed Boat and lien*) of the Licence Terms and Conditions will apply if a Licence is terminated or terminates under any of the provisions of this paragraph 12.

13. **Death of a sole trader**

13.1 ***Application:*** This paragraph 13 applies in the event of the death of a Commercial Operator on the waiting list as a Licensee under a Commercial Mooring Licence where the Commercial Operator is a sole trader.

13.2 ***Removal from waiting list:*** The death of a Commercial Operator on the waiting list who is a sole trader will result in the removal of that Commercial Operator from the waiting list.

13.3 ***Termination of Licences:*** The death of a Commercial Operator under a Commercial Mooring Licence who is a sole trader will result in the automatic termination of that Licence unless a Family Change of Control is claimed under paragraph 14 below.

13.4 ***Notice of termination:*** If a Licence in respect of a Licensed Boat terminates under paragraph 13.3 above, the Commissioners shall send to the address of the deceased Licensee a notice addressed to "The Owner of", specifying the name of the Licensed Boat concerned. Such notice shall state that the Licence has been terminated and shall specify a date (not being less than 14 days from the date of the notice) by which the Licensed Boat must be removed from the Mooring and either moored at a visitor's berth or taken out of the Harbour. If that does not occur within such 14 days period, paragraph 11 (*Removal of the Licensed Boat and lien*) of the Licence Terms and Conditions will apply.

14. **Family Change of Control (sole trader)**

14.1 ***Transfer of business:*** If a sole trader Licensee has agreed to transfer the business or trade carried on by that sole trader to a Family Member of that sole trader, that sole trader may by notice in writing to the Commissioners apply in accordance with this paragraph 14 for a Commercial Mooring Licence for the same Allocated Mooring and in respect of the same Licensed Boat, if applicable, to be issued to that Family Member.

14.2 ***Death of a sole trader:*** In the event of the death of a sole trader Licensee, a Family Member of the deceased Licensee who is carrying on the same business or trade in succession to the deceased Licensee may by notice in writing to the Commissioners apply in accordance with this paragraph 14 for a Commercial Mooring Licence for the same Allocated Mooring and in respect of the same Licensed Boat, if applicable, to be issued to that Family Member. Such notice must be given within 90 days of the date of death.

14.3 ***Requirements:***

(a) The Family Member referred to in paragraph 14.1 or 14.2 above must be:

- (i) eligible to apply under this document for a Commercial Mooring Licence;
- (ii) an Eligible Commercial Operator; and
- (iii) an Isle of Wight Resident

and, if a Licensed Boat is involved, the Licensed Boat must remain an Eligible Boat owned by, or a majority share in which is owned by, the Family Member.

(b) In the case of a transfer of business, evidence confirming the transfer of the business and ownership or majority ownership of the Licensed Boat, if applicable, will be required by the Commissioners.

(c) In the case of death of a sole trader Licensee, evidence confirming the death of the Licensee and of the succession of the business and ownership or majority ownership of the Licensed Boat, if applicable, in favour of the Family Member will be required by the Commissioners.

(d) A duly completed Family Member Declaration signed by the Family Member referred to in paragraph 14.1 or 14.2 above evidencing that such Family Member is a Family Member of the sole trader will also be required by the Commissioners.

14.4 ***Despatch of Invitation to Apply and documents:***

(a) If a notification is received by the Commissioners under paragraph 14.1 or 14.2 above, the Family Member concerned will be sent an Invitation to Apply for a new Commercial Mooring Licence for the same Allocated Mooring and in respect of the same Licensed Boat, if applicable, to be issued to that Family Member together with the same documents and information as would be applicable under this document for an application for a new Licence.

(b) No invoice will accompany the Invitation to Apply sent under sub-paragraph (a) of this paragraph 14.4 but, if a new Commercial Mooring Licence is issued to the Family Member, any outstanding instalments of Harbour Dues and Commercial Mooring Charge must be paid in full with the Family Member's Licence Application Form. No option or request to pay Harbour Dues and Commercial Mooring Charge by instalments will be available in respect of a new Commercial Moorings Licence issued under this paragraph 14.

14.5 ***Application for a new Commercial Mooring Licence:*** A Family Member who fulfils the requirements of paragraph 14.3 above or in relation to whom those requirements are fulfilled may respond to the Invitation to Apply sent under paragraph 14.4(a) by completing, signing and lodging at the Harbour Office the Waiting List Application Form and new Vessels

Particulars Form accompanied by the Family Member Declaration and other evidence required by paragraph 14.3 above and the payment (if any) required by paragraph 14.4(b) above.

14.6 ***Time for delivery of documents:*** The duly completed and signed Forms, documents, evidence and payment referred to in paragraph 14.5 above must be lodged with the Harbour Office within 14 days of the date of despatch of the Invitation to Apply under paragraph 14.4 above failing which the Commercial Mooring Licence will terminate.

14.7 ***Refusal of Licence:*** If the Commissioners are of the opinion that the Family Member concerned does not fulfil the requirements of paragraph 14.3 above or that the requirements for an Accepted Family Change of Control have not been fulfilled in all respects, the issue of a new Commercial Mooring Licence to the Applicant will be refused.

14.8 ***Issue of new Mooring Licence:***

(a) Unless the issue of a new Licence is refused under paragraph 14.7 above, a new Commercial Mooring Licence will be issued to the Family Member concerned relating to the same Allocated Mooring and Licensed Boat, if applicable, and for the remainder of the Licence Period, as under the Licence previously issued to the sole trader concerned.

(b) If a new Commercial Mooring Licence is issued under sub-paragraph (a) of this paragraph 14.8, the Family Change of Control of the Licensed Boat and sole trader Commercial Operator that occurred will be deemed for all purposes of this document to be an Accepted Family Change of Control.

14.9 ***Multiple claims:*** If paragraph 14.2 applies and more than one Family Member gives a notice under that paragraph, the notice given by a Family Member first in time will be the notice that will be considered to the exclusion of the other notice(s). The second notice will be considered by the Commissioners only if the issue of a new Commercial Mooring Licence to that Family Member is refused (and so on and so forth if more than two notices are given).

14.10 ***Termination if no claims are made:***

(a) If no claims are made by any Family Member under this paragraph 14 following the death of sole trader Licensee within the 90 days period referred to in paragraph 14.2 above or claims are made but are refused under paragraph 14.7 above, the Commercial Moorings Licence will be terminated by the Commissioners by giving notice under sub-paragraph (b) of this paragraph 14.10.

(b) A Licence may be terminated under sub-paragraph (a) of this paragraph 14.10 by the Commissioners sending to the address of the deceased Licensee a notice addressed to "The Owner of", specifying the name of the Licensed Boat concerned, if applicable. Such notice shall state that the Licence has been terminated and, if applicable, shall specify a date (not being less than 14 days from the date of the notice) by which the Licensed Boat must be removed from the Mooring and either moored at a visitor's berth or taken out of the Harbour. If that does not occur within such 14 days period, paragraph 11 (*Removal of the Licensed Boat and lien*) of the Licence Terms and Conditions will apply.

15. **Family Change of Control (partnerships and companies)**

15.1 ***Transfer of shares:*** If a partner of a partnership or shareholder of a company has agreed to transfer the partnership share or shares of the company to a Family Member and that transfer would constitute a Change of Control of the Commercial Operator concerned, the Commercial Operator may by notice in writing to the Commissioners apply in accordance with this paragraph 15 for the Change of Control to be accepted as an Accepted Family Change of Control.

15.2 ***Death of a partner or shareholder:*** If the death of a partner of a partnership or shareholder of

a company occurs with the result that the partnership share and/or shareholding concerned is transferred to another partner or shareholder of the Commercial Operator or a third party, and that transfer would constitute a Change of Control of the Commercial Operator concerned, the Commercial Operator may by notice in writing to the Commissioners apply in accordance with this paragraph 15 for the Change of Control to be accepted as an Accepted Family Change of Control.

15.3 ***Change of board level control of a company:*** If:

- (a) there has been a change of board level control of a Commercial Operator that is a company or of any holding company of that company with the result that a Change of Control of that Commercial Operator has occurred; and
- (b) that change of board level control is caused by:
 - (i) one or more individual director(s) being replaced by a person(s) who is/are Family Member(s) in relation either to such replaced director(s) or to at least one of the remaining directors; or
 - (ii) by the appointment of an additional director(s) who is/are Family Member(s) in relation to at least one of the existing remaining directors,

the Commercial Operator may by notice in writing to the Commissioners apply in accordance with this paragraph 15 for the Change of Control to be accepted as an Accepted Family Change of Control.

15.4 ***Change of shareholder level control of a company:*** If:

- (a) there has been a change of shareholder level control of a Commercial Operator that is a company or of any holding company of that company not falling within paragraph 15.1 or 15.2 above with the result that a Change of Control of that Commercial Operator has occurred; and
- (b) that change of shareholder level control is caused by one or more individual shareholder(s) transferring shares to a person(s) who is/are Family Member(s) in relation to such transferring shareholder(s),

the Commercial Operator may by notice in writing to the Commissioners apply in accordance with this paragraph 15 for the Change of Control to be accepted as an Accepted Family Change of Control.

15.5 ***Requirements:***

- (a) The Commercial Operator referred to in paragraph 15.1, 15.2, 15.3 or 15.4 above (referred to in this paragraph 15.5 as an "**Affected Commercial Operator**") must, notwithstanding the Change of Control, continue to be:
 - (i) eligible to apply under this document for a Commercial Mooring Licence;
 - (ii) an Eligible Commercial Operator; and
 - (iii) an Isle of Wight Resident

and, if a Change of Control of a Licensed Boat is involved, the Licensed Boat must remain an Eligible Boat owned by, or a majority share in which is owned by, the Affected Commercial Operator.

- (b) The transferee of the partnership share or shareholding referred to in paragraph 15.1 or 15.2

above must be a Family Member of the transferring or deceased partner or shareholder. In that connection, a duly completed Family Member Declaration signed by such transferee evidencing that such transferee is a Family Member of the transferring or deceased partner or shareholder will be required by the Commissioners.

- (c) The replacement director, and each of them if more than one, referred to in paragraph 15.3(b)(i) above must be a Family Member of the director being replaced or of at least one of the remaining directors. In that connection, a duly completed Family Member Declaration signed by such replacement director evidencing that such replacement director is such a Family Member will be required by the Commissioners.
- (d) The additional director, and each of them if more than one, referred to in paragraph 15.3(b)(ii) above must be a Family Member of at least one of the existing remaining directors. In that connection, a duly completed Family Member Declaration signed by such additional director evidencing that such additional director is such a Family Member will be required by the Commissioners.
- (e) The transferee shareholder, and each of them if more than one, referred to in paragraph 15.4 above must be a Family Member of the transferring shareholder. In that connection, a duly completed Family Member Declaration signed by such transferee shareholder evidencing that such transferee shareholder is such a Family Member will be required by the Commissioners.

15.6 ***Application for acceptance:*** An Affected Commercial Operator in relation to which the applicable requirements of paragraph 15.5 above are fulfilled in all respects may apply to the Commissioners requesting the Commissioners to accept that a Family Change of Control has occurred and that the Family Change of Control should be regarded as an Accepted Family Change of Control. Such application must be accompanied by the Family Member Declaration required by paragraph 15.5(b), (c), (d) or (e) above.

15.7 ***Time for delivery of documents:*** The application and Family Member Declaration required by paragraph 15.6 above must be lodged at the Harbour Office within 28 days of the date of the event giving rise to the Family Change of Control failing which the Commercial Mooring Licence will be liable to termination under paragraph 12.7 or 12.10 above.

15.8 ***Acceptance of application:*** If the Commissioners are satisfied that the requirements for an Accepted Family Change of Control have been fulfilled in all respects, notice of acceptance will be sent to the Affected Commercial Operator. The completion of a new Notification of Change Form and other forms by the Affected Commercial Operator may be required.

15.9 ***Refusal of application:*** If the Commissioners are not satisfied that the requirements for an Accepted Family Change of Control have been fulfilled in all respects, notice of non-acceptance will be sent to the Affected Commercial Operator and the Commercial Mooring Licence will be liable to termination under paragraph 12.7 or 12.10 above.

16. **Payments and receipts**

16.1 Value added tax will be added to all fees and charges at the applicable rate.

16.2 All payments may be made either by cheque, crossed and made payable to Yarmouth (Isle of Wight) Harbour Commissioners or by any credit card or debit card that is from time to time accepted by the Commissioners.

16.3 All payments may also be made in cash. Receipts will only be issued in respect of cash payments.

17. **Authorised Officers**

Each of the Chief Executive/Harbour Master (and separate Chief Executive and Harbour Master if those offices are at any time held by separate persons) is appointed by the Commissioners to implement and enforce the provisions of this document (including acceptance or refusal to accept a person as an Isle of Wight Resident) on their behalf. The decision of the Chief Executive/Harbour Master (or separate Chief Executive or Harbour Master) as regards any matter in the implementation or enforcement of the provisions of this document is final save only as regards an appeal under paragraph 9 above.

18. **No liability of Commissioners**

- 18.1 Neither the Commissioners nor any individual Commissioner nor any of the Commissioners' authorised officers or other employees will be liable for any claim whatsoever arising out of or in connection with grant or refusal to grant any Licence or the implementation or enforcement of the provisions of this document.
- 18.2 The Commissioners shall not be deemed to have given any person any warranty or condition as to the maintenance by the Commissioners of a sufficient or any level of water at or at the approaches to any Allocated Mooring.
- 18.3 The Commissioners accept no liability whatsoever for the death or injury to any person or damage to any property of any person or any person's invitees, agents or employees or any other persons except where such act is proved to be the result of gross negligence by the Commissioners, their servants or authorised agents.

19. **Powers of Attorney**

Any document required to be signed and lodged with the Harbour Office by any person under this document may be signed by that person's authorised attorney(s). In that case, the original of the power of attorney (or a copy certified by a member of the legal profession) must be produced with the signed document for inspection.

20. **Signatory provisions**

- 20.1 ***Electronic or facsimile signatures:*** Any Commercial Mooring Licence, notice or other document requiring to be signed on behalf of the Commissioners for the purposes of this document will, in the absence of manifest error or fraud, be treated as duly signed if it bears the electronic or facsimile signature of the person authorised to sign the same.
- 20.2 ***Partnerships and companies:*** All forms, documents and other written communications to be sent to the Commissioners which are required to be signed by or on behalf of Commercial Operator that is a partnership or company must be signed by at least one partner (but not more than two partners) of the partnership or a director(s) of the company who has been duly authorised on its behalf. Evidence of such due authorisation may be required by the Commissioners.

21. **General Provisions**

- 21.1 ***Extensions of time:*** Wherever a time is specified in this document by which certain matters are required to be implemented, the Commissioners may agree to an extension of that time in any particular case.
- 21.2 ***Reviews:*** The provisions of this document are under constant review by the Commissioners and may be changed at any time.

21.3 **Notices:**

- (a) All documents and other written communications to be sent to a Commercial Operator will be sent by ordinary post to the Commercial Operator's most recent business address as notified in writing to the Commissioners. Unless notice is given to the contrary, the most recent business address will be regarded as that recorded on the waiting list or shown on the Licence, as the case may be. In the case of a Licence issued to a partner(s) of a partnership Commercial Operator, all such documents and other written communications will be given to the Licensee and, if more than one, to the partner first named on the Licence.
- (b) All documents and other written communications to be sent to the Commissioners or lodged at the Harbour Office should be sent by ordinary post or delivered by hand to the Harbour Office marked for the attention of the Administration Department. Communications other than documents that are required to be signed may also be sent to the Harbour Office by e-mail to info@yarmouth-harbour.co.uk.

Forms used in connection with this document:

Commercial Mooring Licence
Family Member Declaration
Licence Application Form
Monthly Instalment Request Form
Notification of Change Form
Vessel Particulars Form
Waiting List Application Form