

Adopted pursuant to resolution of the Commissioners passed on 26 November, 2007.

Issue no. 1: for use as from 1<sup>st</sup> January 2008

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

### **TERMS AND CONDITIONS**

#### **applicable to COMMERCIAL MOORING LICENCES**

#### **1. Interpretation**

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

"**Allocated Mooring**" means the Mooring notified to the Licensee as mentioned in paragraph 4.1 below.

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

"**Change of Control**" has the meaning given in paragraph 12.2(a), (b) or (c), as the case may be, of the Licence Application Procedure.

"**Commercial Mooring Charge**" means the commercial mooring charge levied by the Commissioners as part of the payment required for the issue of a Licence.

"**Commercial Mooring Licence**" or "**Licence**" means a licence that has been issued under the Licence Application Procedure.

"**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 12 below.

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

"**Harbour Dues**" means the harbour dues levied by the Commissioners as part of the payment required for the issue of a Licence.

"**Effective Date**" means 1<sup>st</sup> January 2008.

"**Eligible Boat**" has the meaning given in the Licence Application Procedure.

"**Family Change of Control**" has the meaning given in paragraph 12.2(d) of the Licence Application Procedure.

"**Family Member**" has the meaning given in the Licence Application Procedure.

"**Licence Application Procedure**" means the document entitled: "Commercial Moorings - Licence Application Procedure" excluding the Forms (as defined in it).

"**Licence Period**" means the Licence Period specified in the Licence or such shorter period as may occur by reason of the Licence ceasing to be valid or being terminated.

"**Licence Provisions**" means the provisions of this document and the terms and conditions set out in this document.

"**Licensee**" means:

- (a) in the case of a Commercial Operator who or which is a sole trader or company, the Commercial Operator to whom the Licence is issued;
- (b) in the case of a Commercial Operator which is a partnership, the one or two partner(s) to whom the Licence is issued in accordance with the Licence Application Procedure.

"**Licensed Boat**" means the boat specified in a Licence.

"**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.

"**Temporary Commercial Licence**" means a licence that has been issued as a Temporary Commercial Licence under the Licence Application Procedure.

"**Vessel**" has the meaning given in the Byelaws.

1.2 In these Licence Provisions, 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;

a reference to **termination** of or in relation to a Licence or to a Licence being terminated includes that Licence being terminated or not being, or ceasing to be, valid or being cancelled in any such case whether under these Licence Provisions or the Licence Application Procedure;

a reference to a **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;

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

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

## 2. **The Licensee's general obligations**

### 2.1 *Use of Mooring and boat:*

- (a) The Licensee shall use the Allocated Mooring solely for the mooring of the Licensed Boat (unless the Licence is a Temporary Commercial Licence, in which case paragraph 4.3 below applies). The Licensee shall not use the Allocated Mooring for any purpose not expressly permitted by these Licence Provisions, the Byelaws or other rules or regulations from time to time in force.

- (b) Except for non-business use for periods of up to 14 days inclusive of weekends and public holidays but subject to the total number of such days in any Licence Period not exceeding 28, the Licensee shall not use the Licensed Boat whilst moored within the Harbour, or permit it to be so used, for any purpose other than the business or trade carried on by the Licensee as stated in connection with the application for the Licence.
- 2.2 **Identification:** The Licensed Boat must be named and the name must be clearly displayed on the Licensed Boat. The Licensee must also display on the Licensed Boat in a conspicuous position the current identification disc issued with the Licence.
- 2.3 **No permanent occupancy:** The Licensee shall not cause or permit the Licensed Boat to be used for living accommodation whilst moored within the Harbour except as follows:
- (a) on an overnight basis pending a proposed early morning departure from the Harbour or in the event of a late night arrival;
  - (b) by the Licensee or persons employed by the Licensee while carrying out maintenance, repairs or other work as referred to in paragraph 2.5 below;
  - (c) during periods of non-business use as mentioned in paragraph 2.1(b) above;
  - (d) upon application to the Commissioners by the Licensee (who shall be under no obligation to approve such application), for such other purposes connected with the commercial operation of the Licensed Boat, for such periods and for subject to such conditions as the Commissioners may in writing agree.
- 2.4 **Seaworthy condition and salvage:** The Licensee shall at all times keep the Licensed Boat in a sound watertight and seaworthy condition to the satisfaction of the Commissioners. If the Licensed Boat shall through any cause whatsoever sink within the limits of the Harbour, the Commissioners shall be entitled to raise and salvage the same and shall be entitled to recover the proper charges, fees and expenses from the Licensee in respect thereof. Private salvage will be permitted provided that prior approval of the method is obtained from the Commissioners.
- 2.5 **Maintenance and repairs:**
- (a) The Licensee may, and may employ others to, carry out maintenance, repairs or other work in the Harbour to the Licensed Boat but the Commissioners reserve the right to prevent maintenance, repairs or other work being carried out if they consider that the maintenance, repairs or other work are being carried out in a dangerous or obstructive manner or for any other reason it is undesirable that they should proceed.
  - (b) The Licensee may with the prior written consent of the Commissioners moor alongside any quayside or jetty in the Harbour as the Commissioners may specify for the purposes of loading and unloading equipment in connection with the carrying out of any maintenance, repairs or other work permitted under sub-paragraph (a) above or in order to carry out such maintenance, repairs or other work if the same cannot reasonably be carried out while the Licensed Boat is berthed at its Allocated Mooring.
  - (c) The Licensee shall comply with any directions given by the Harbour Master as regards the amount of time that the Licensed Boat may remain moored alongside any quayside or jetty in the Harbour for consent has been given under sub-paragraph (b) above and shall promptly remove the Licensed Boat from such quayside or jetty if no such loading or unloading or carrying out of such maintenance, repairs or other work is taking place or is about to take place.

- 2.6 **Mooring of the Licensed Boat:** The Licensee shall ensure that the Licensed Boat when using the Allocated Mooring is properly moored and shall comply with all such instructions that the Commissioners may give as regards the mooring of the Licensed Boat.
- 2.7 **Safeguarding of others:** The Licensee shall take reasonable precautions at all times to ensure that no person or Vessel using the Harbour is placed in jeopardy by any action or failure to act by the Licensee through the use of the Allocated Mooring by the Licensee or by any of the master of the Licensed Boat, crew members, agents, guests and/or invitees of the Licensee.
- 2.8 **Outboard engines:** If the Licensed Boat has an outboard engine or the Licensee uses a tender with an outboard engine, then whenever the Licensed Boat or tender is left in the Harbour (whether at the Allocated Mooring or elsewhere), the Licensee shall either:
- (a) leave the Licensed Boat or tender with the outboard engine in the lowered position (and leaving it in the lowered position shall be obligatory in the case of tenders left at any of the dinghy pontoons or other allocated tender mooring places within the Harbour); or
  - (b) leave the outboard engine in a raised position in which case the Licensee shall place a suitable covering or fender over the protruding end of the outboard motor so as to prevent damage to adjacent boats or other Harbour users or injury to individuals.
- 2.9 **Speed control:** The Licensee when entering or leaving or manoeuvring the Licensed Boat in the Harbour shall do so at such a speed and in such manner as not to endanger or inconvenience other Vessels in the Harbour and shall in any event observe the speed limits applicable in the Harbour and approaching the Harbour entrance from the Solent.
- 2.10 **Pollution:** The Licensee will not cause pollution within the Harbour by the spillage or dumping of waste, effluent, detergent, fuel or otherwise or the discharge of sea toilet holding tanks. No refuse is to be thrown overboard or left or disposed of in any way within the Harbour other than in receptacles provided by the Commissioners.
- 2.11 **Noise, nuisance and annoyance:** The Licensee shall not:
- (a) use any engines, generators, radios, music players or other apparatus or machinery within the Harbour that cause noise, light or fumes; or
  - (b) without limiting sub-paragraph (a) above, run the engines or any noisy generators or pumping gear of a Licensed Boat overnight between the hours of 2200 and 0700 while moored in the Harbour (except only running engines for the purposes of mooring or departing from a mooring or assisting others to moor or depart from a mooring or the use of pumping gear in connection with holding tanks on board the Licensed Boat for the purposes of keeping wet fish or shellfish fresh or alive); or
  - (c) generally behave,
- in any such case in such a manner that does, or would reasonably be likely to, cause any nuisance or annoyance to the Commissioners or to any other users of the Harbour or to any other person residing in the vicinity of the Harbour.
- The Licensee shall cause all halyards and other rigging to be secured so as not to cause such nuisance or annoyance.
- 2.12 **Fuelling:** The Licensee shall not refuel the Licensed Boat otherwise than at the authorised fuelling station or by other means which have been authorised or licensed in writing by the Commissioners. The Licensee shall in all respects comply with the terms and conditions of any such authorisation or licence. Throughout refuelling, all naked lights must be extinguished, engines must be stopped, smoking is prohibited and mobile phones and other mobile communication devices must be switched off.

2.13 **Loading and unloading:** The following provisions shall apply:

- (a) The Licensee shall be permitted to moor alongside the South Quay in such place(s) as the Commissioners shall from time to time direct for the purposes of loading and unloading the Licensed Boat.
- (b) The Licensee shall not moor the Licensed Boat alongside the South Quay at other places or at or alongside any other quayside or any jetty in the Harbour for the purposes of loading or unloading the Licensed Boat.
- (c) The Licensee shall comply with any directions given by the Harbour Master as regards the amount of time that the Licensed Boat may remain moored alongside the South Quay for the purposes of loading or unloading and shall promptly remove the Licensed Boat from the South Quay if no loading or unloading is taking place or is about to take place.

2.14 **Movement and storage of gear and equipment:** The Licensee shall not except with the specific written consent of the Commissioners:

- (a) leave on any pontoon decks, jetties or quays any ropes, personal belongings, equipment, gear or any other thing whatsoever except in the course of transporting the same to and from the Harbour (but this shall not prevent the Licensee from hanging from the pontoon or pile at which the Allocated Mooring is situate (or any other pontoon or pile within the Harbour in respect of which specific permission is given by the Commissioners) storage pots for the purposes of keeping shellfish alive); or
- (b) leave or store ashore on the Commissioners' property any items, vessels equipment, fishing gear or personal effects (other than fishing equipment which, subject to available space, may be left in any area designated by the Commissioners for such use).

All items or other paraphernalia left on the quay are liable to be disposed of by the Commissioners without notice or warning.

2.15 **Use of tenders:** The Licensee shall not use or leave at the Allocated Mooring any tender unless the Licensee has received from the Commissioners an identification disc for the tender in accordance with the Licence Application Procedure. The Licensee must display on the tender in a conspicuous position the current identification disc relating to it.

2.16 **General compliance:** Without in any way limiting any of the terms of the Licence or these Licence Provisions, the Licensee shall at all times:

- (a) observe and perform all statutory and other obligations relating to the Harbour;
- (b) comply with these Licence Provisions, the Byelaws and other applicable rules or regulations from time to time in force; and
- (c) comply with all lawful requests made by the Commissioners.

The Licensee acknowledges that neither the Licence nor these Licence Provisions in any way prejudices or abrogates the powers given to the Commissioners by the Byelaws or other applicable rules or regulations from time to time in force or by law.

2.17 **Compliance by others:** The Licensee shall at all times ensure that the master of the Licensed Boat (if not the Licensee), crew members, agents, guests and/or invitees of the Licensee (or of any such persons) are made aware of the foregoing provisions of this paragraph 2 and comply with such provisions and any directions made under such provisions.

2.18 **Compliance (partnerships and companies):** The Licensee (if it is a company) shall at all times ensure that all the directors of the company are made aware of the foregoing provisions

of this paragraph 2 and comply with such provisions. The Licensee (if a partner or partners of a partnership Commercial Operator) shall at all times ensure that all the other partners of the company are made aware of the foregoing provisions of this paragraph 2 and comply with such provisions and any directions made under such provisions.

### **3. Third party insurance**

- 3.1 Each Licensee is required to maintain third party insurance in respect of the Licensed Boat and the master, crew members, agents, guests and/or other invitees of the Licensee (or of any such persons), and in respect of any tender used by the Licensee , to cover risks (including damage by fire, other hazards to other craft in the Harbour and to the Commissioners property, fuel spillage or release of other contaminants into or pollution of the Harbour) for a minimum sum of £2,000,000 (or such other minimum sum as the Commissioners may from time to time require).
- 3.2 Such insurance shall be effected and maintained with insurers authorised by law to carry on insurance business in the UK and must cover all owners of the Licensed Boat and tender, if any.
- 3.3 Evidence of compliance with the above third party requirements may be required to be produced to the Commissioners.

### **4. Allocation of and rights to a Mooring**

- 4.1 The Commissioners will notify the Licensee of the Mooring to which the Licence relates. Unless the Licence is a Temporary Commercial Licence, the Mooring so notified is the Mooring which the Licensee may use for the purposes of the Licensed Boat. The Commissioners may change that Mooring to another Mooring of a similar type at any time. Nothing in the Licence entitles the Licensee to the exclusive use of the Allocated Mooring and, depending upon its location and the type of Mooring, the Allocated Mooring may be required to be shared with other users (including visitors).
- 4.2 A Licence does not confer upon the Licensee any estate, right or interest whatsoever over or in connection with the Allocated Mooring or any other property belonging to the Commissioners other than except in the case of a Temporary Commercial Licence:
  - (a) the right to moor the Licensed Boat at the Allocated Mooring on and subject to the terms of the Licence and these Licence Provisions; and
  - (b) to have such access (if any) to the Allocated Mooring as may be available from time to time.
- 4.3 A Temporary Commercial Licence does not confer upon the Licensee:
  - (a) any right to moor any Vessel at the Allocated Mooring; or
  - (b) to have any access to the Allocated Mooring.

Accordingly, the Licensee under a Temporary Commercial Licence shall not be permitted to moor any Vessel or to otherwise use the Allocated Mooring until a new Commercial Mooring Licence has been issued following an application as mentioned in paragraph 5.3 below. If the Licence is such a new Commercial Mooring Licence and an amount by way of Harbour Dues and Mooring Charge is payable under paragraph 5.5 of the Licence Application Procedure following the issue of that Commercial Mooring Licence, the rights conferred under that new Commercial Mooring Licence mentioned in sub-paragraphs (a) and (b) of paragraph 4.3 above shall only take effect when that amount has been paid in full. Until then, sub-paragraphs (a) and (b) of this paragraph 4.3 shall apply to the new Commercial Mooring Licence.

- 4.4 Except in the case of Moorings at the training groyne, the Commissioners reserve the right to berth other boats at the Allocated Mooring during any period when the Licensed Boat is absent from the Allocated Mooring. The Commissioners shall be entitled to retain for their own benefit any Harbour Dues and Mooring Charges received in respect of other boats so berthed. If an Allocated Mooring is occupied by another boat at a time when the Licensee wishes to return the Licensed Boat to its original Allocated Mooring, the Commissioners will allocate to the Licensee another Mooring of a similar type for use by the Licensee either until the original Allocated Mooring becomes vacant or until further notice.
- 4.5 The Commissioners reserve the right to berth boats at an Allocated Mooring specified in a Temporary Commercial Licence until a new Mooring Licence has been issued in respect of a new or replacement boat in respect of that Allocated Mooring as referred to in paragraph 5.3 below and the Licensee is permitted to moor the Licensed Boat at that Mooring under paragraph 4.3 above. The Commissioners shall be entitled to retain for their own benefit any Harbour Dues and mooring charges received in respect of other boats so berthed. If an Allocated Mooring is occupied by another boat at a time when the Licensee is permitted to moor the Licensed Boat at the Allocated Mooring, the Commissioners will allocate to the Licensee another Mooring of a similar type for use by the Licensee either until the original Allocated Mooring becomes vacant or until further notice. In the case of the Moorings at the training groyne, the Commissioners will use their best endeavours to ensure that the Licensee is able to moor at the originally Allocated Mooring as soon as possible.
- 4.6 A Licence (other than a Temporary Commercial Licence) relates only to the Licensed Boat and the Allocated Mooring. The Licensee will not, without the prior written consent of the Commissioners, moor any other Vessel at the Allocated Mooring other than a tender during any period when the Licensed Boat is absent from the Allocated Mooring.
- 4.7 Unless paragraph 4.4 or 4.5 above or 4.8 below applies, the Licensee will not moor the Licensed Boat at any mooring within the Harbour other than the Allocated Mooring. If the Licensee is in breach of this restriction, then without prejudice and in addition to any other rights that the Commissioners may have, the Commissioners may cause the Licensed Boat to be moved to the Allocated Mooring at the Licensee's sole risk and expense and shall be entitled to charge the Licensee for their services in doing so.
- 4.8 If for any reason the Commissioners determine in the case of an emergency or for navigational or safety reasons, and directs the Licensee, that the Licensed Boat must be moved, the Licensee shall immediately move the same as so directed. The Licensee shall return the Licensed Boat to the original Allocated Mooring or another mooring of a similar type when directed to do so by the Commissioners and not before. If the Licensee does not move the Licensed Boat from or to a Mooring as directed by the Commissioners under this paragraph 4.8, then without prejudice and in addition to any other rights that the Commissioners may have, the Commissioners may cause the Licensed Boat to be moved at the Licensee's sole risk and expense and shall be entitled to charge the Licensee for their services in doing so.
- 4.9 A Licensee who wishes to transfer the Licensed Boat to another Mooring within the Harbour and/or to change the type of Mooring allocated to that Licensee may notify the Commissioners accordingly whereupon the Licensee will be placed on the transfer list under the Licence Application Procedure.
5. **Licence renewal**
- 5.1 A Licence is valid only for the Licence Period and not beyond. A Licence confers no right upon the Licensee to the issue of another Licence upon the expiration of the Licence Period.
- 5.2 A Licensee who wishes to renew a Licence must do so under the Licence Application Procedure.

5.3 If prior to the end of the Licence Period of a Temporary Commercial Licence, or any earlier termination of it, the Licensee acquires a new or replacement boat, the Licensee should, in accordance with the Licence Application Procedure, duly complete and sign a new Vessel Particulars Form relating to the new or replacement boat, lodge it at the Harbour Office and make an appropriate application for a new Commercial Mooring Licence.

5.4 Licensees who do not wish to renew a Licence are requested to notify the Harbour Office accordingly.

## 6. **Assignment, transfer and change of control**

6.1 A Licence is personal to the Licensee and may not be transferred, assigned or sub-let save where expressly permitted in accordance with the Licence Application Procedure.

6.2 Any transfer, assignment or sub-letting or attempt to do so without such consent will automatically result in the Licence ceasing to be valid.

## 7. **Change of information**

7.1 Any change in the information supplied in, or in connection with, any waiting list registration or Commercial Mooring Licence whether a change of address, change of "working" partner or director (within the meaning of the Licence Application Procedure), change of other partner in the case of a partnership Licensee, change of other directors or shareholders in the case of a company Licensee, change or acquisition of a boat or other Change of Control of a Licensed Boat or Commercial Operator (including a Family Change of Control), or otherwise, must be notified to the Commissioners as soon as possible after the change or other circumstance occurs, and a request made for a Notification of Change Form and/or other Forms according to the nature of the change or other circumstance.

7.2 Licensees should refer to paragraphs 10 and 11 of the Licence Application Procedure in the case of a change of personal address of a sole trader or "working" partner or director or a change of such "working" partner or director other details.

7.3 Licensees should refer to paragraphs 10 and 12 to 15 of the Licence Application Procedure in the case of a Change of Control of a Licensed Boat or of a Commercial Operator including a Family Change of Control.

**A Licensee proposing to change boat is strongly advised to check with the Commissioners before committing to a replacement boat in order to ensure that the replacement boat will be considered by the Commissioners as suitable to the relevant Allocated Mooring. Failure to do this could result in termination of the Licence under the Licence Application Procedure.**

## 8. **Acceleration of Harbour Dues and Commercial Mooring Charge**

8.1 If:

(a) the Licensee:

(i) fails to pay any agreed instalment of Harbour Dues and Commercial Mooring Charge when due (including any Administration Charge as defined in the Licence Application Procedure); or

(ii) cancels any bank standing order given for the purposes of the payment of monthly instalments; or

(b) any such bank standing order payment is not paid when due,

then, without prejudice and in addition to any other rights that the Commissioners may have, the Commissioners shall be entitled by notice in writing to the Licensee to require that the full amount, or, as the case may be, the outstanding portion of the Harbour Dues and Commercial Mooring Charge for the Licence Period (including any Administration Charge) be paid immediately.

8.2 Upon a notice being given by the Commissioners under paragraph 8.1 above:

- (a) the full amount, or, as the case may be, the outstanding portion of the Harbour Dues and Commercial Mooring Charge for the Licence Period (including any Administration Charge) will become immediately due and payable by the Licensee with interest at the rate of 4% above the base lending rate from time to time of National Westminster Bank plc compounded with monthly rests up to the date of payment); and
- (b) if applicable, the agreement under the Licence Application Procedure for the Harbour Dues and Commercial Mooring Charge to be payable by monthly instalments will automatically terminate.

## 9. Termination of the Licence

9.1 In addition and without prejudice to other rights of termination of the Licence under these Licence Provisions or the Licence Application Procedure, the Commissioners shall be entitled by notice in writing to the Licensee to terminate the Licence and bring the Licence Period to an end at any time if:

- (a) the Licensee fails to pay in full any Harbour Dues or Mooring Charges or any other amount payable by the Licensee under or in connection with the Licence and these Licence Provisions (including any instalment of any such amount) or any other amount owing by the Licensee in whatever capacity to the Commissioners and howsoever arising, in any such case within seven days of the due date for such payment; or
- (b) the Licensee shall at any time be in breach of any of the other Licence Provisions or any of the provisions of the Licence in any respect which in the opinion of the Commissioners is incapable of remedy or, if in their opinion the breach is capable of remedy, the breach is not remedied by the Licensee within 21 days after the Licensee first becomes aware of the event or circumstance giving rise to the breach; or
- (c) the Commissioners have agreed under the Licence Application Procedure to issue a new Licence to the Licensee notwithstanding a previous non-compliance by the Licensee but the Licensee has failed to remedy that non-compliance within the agreed timescale; or
- (d) any information, declaration or confirmation given or made by the Licensee to the Commissioners in the application for the Licence or otherwise in connection with the issue of the Licence or the issue of any other Licence by the Commissioners to the Licensee was, when made or given, false or inaccurate in any respect or shall by reason of a change in circumstances have ceased to be accurate at the date of issue of the Licence or other Licence; or
- (e) an event entitling the Commissioners to terminate the Licence has occurred under the Licence Application Procedure including, without limitation:

paragraph 11.1(d) (*failure to provide copy of Current Council Tax Bill*);

paragraph 11.2(b)(i) (*change of address, or change, of working partner or director of resulting in the Licensee ceasing to be an Isle of Wight Resident*);

paragraph 12.6(b) (*request for time: issue of a Temporary Licence in place of a Commercial Mooring Licence*);

paragraph 12.7(i) (*boat ceasing to be an Eligible Boat*);

paragraph 12.8(b) (*replacement boat being unsuitable for the Allocated Mooring and no suitable alternative being available: issue of a Temporary Commercial Licence in place of a Commercial Mooring Licence*);

paragraph 12.10(i) (*Change of Control of a Commercial Operator which is not an Accepted Family Change of Control*);

paragraph 14.10 (*death of a sole trader Commercial Operator where no Family Change of Control is claimed or a claim is made but refused*);

or

(f) the Licensed Boat is not berthed at the Allocated Mooring for more than 180 calendar days (whether consecutive or in total) in a Licence Period or such other period as may be applicable under paragraph 10 below.

9.2 Termination of the Licence under the Licence Application Procedure or any of these Licence Provisions shall be without prejudice and in addition to any other rights that the Commissioners may have as a result of or in connection with such termination (including, without limitation, the rights mentioned in paragraph 11.4 below). In particular, termination shall not release the Licensee from the obligation to pay the Harbour Dues and Commercial Mooring Charge nor shall termination entitle the Licensee to a refund of any Harbour Dues and Commercial Mooring Charge.

9.3 If termination of the Licence occurs by reason of sub-paragraph (f) of paragraph 9.1 above, the Licensee may apply under the Licence Application Procedure as a first registrant to be registered on the waiting list.

9.4 Those obligations of, and other provisions binding on, a Licensee under the Licence and these Licence Provisions such as are capable of application after the Licence Period shall remain, to the extent so applicable, in full force and effect and binding upon the Licensee after the end of the Licence Period in the same manner as the same are binding upon the Licensee during the Licence Period.

## 10. **Periods of absence from the Harbour**

10.1 The Licensee shall not cause the Licensed Boat to be absent from the Allocated Mooring for more than 180 calendar days (whether consecutive or in total) in a Licence Period unless the Licensee has first notified the Commissioners in writing that the Licensed Boat will be engaged in work elsewhere which will result in the Licensed Boat being absent from the Allocated Mooring for a longer period. Such notice (an "**Absence Notice**") shall specify the total number of days of absence which may not, subject to paragraph 10.5 below, exceed an overall period (the "**Absence Period**") of 360 days or the unexpired portion of the period of the Licence, whichever shall be the shorter.

10.2 An Absence Notice must be given not later than 14 days prior to the expiration of the period of 180 days from the date when the period of absence commenced. The Commissioners shall be entitled to berth other boats at the Allocated Mooring during the Absence Period, and the Commissioners shall be entitled to retain for their own benefit any Harbour Dues and Mooring Charges received.

10.3 Absence from the Allocated Mooring shall not release the Licensee from the obligation to pay the full amount of Harbour Dues and Mooring Charge attributable to the Absence Period.

10.4 Except in the case of an Absence Period which is the unexpired portion of the Licence Period, the Commissioners will use their best endeavours to ensure that the Licensee is able to return to the original Allocated Mooring as soon as possible as from the end of the Absence Period.

10.5 If the Commercial Mooring Licence is a renewed Licence (that is to say, a Licence issued to the Licensee upon renewal of an expired Licence) and an Absence Notice has been given under the expired Licence at any time, the time limits below shall apply to the renewed Licence namely:

- (a) If there was an Absence Period which was (i) the unexpired portion of the Licence Period of the expiring Licence and (ii) less than 360 days, then the difference in days shall be brought forward to the renewed Licence and count against the 360 day period referred to in paragraph 10.1 above.
- (b) If sub-paragraph (a) of this paragraph 10.5 applies, the Licensee shall automatically be treated as having given an Absence Notice under paragraph 10.1 of the renewed Licence for an Absence Period that commenced on the date of issue of the renewed Licence and expires on the date of the brought-forward period referred to in that sub-paragraph.

## 11. **Removal of the Licensed Boat and lien**

11.1 Subject to paragraph 11.2 below, when the Licence Period under a Licence other than a Temporary Commercial Licence ends (whether because the Licence expires or it ceases to be valid or is terminated or cancelled under the Licence or these Licence Provisions or the Licence Application Procedure), the Licensee shall immediately remove the Licensed Boat and any tender from the Allocated Mooring. The Licensee shall be charged the visitor's rate of Harbour Dues and Mooring Charge applicable to the non-commercial non-walk ashore pontoon moorings within the main Harbour (as defined in the Licence Application Procedure) from the date on which the Licence Period ends until the Licensed Boat and any such tender is removed.

11.2 Paragraph 11.1 above does not apply if a new Licence is granted by the Commissioners to the Licensee in respect of the Licensed Boat, and takes effect, to commence immediately after the end of the Licence Period of the previous Licence. If the new Licence relates to a new Allocated Mooring, , the Licensee shall immediately move the Licensed Boat and any tender from the previous Allocated Mooring to the new Allocated Mooring.

11.3 If a Commercial Mooring Licence is terminated with a Temporary Commercial Licence being issued in its place under the Licence Application Procedure and any Vessel belonging to the Licensee remains moored at the relevant Allocated Mooring, the Licensee shall remove that Vessel from the Allocated Mooring.

11.4 If the Licensee has not removed the Licensed Boat, tender or other Vessel from the Allocated Mooring within 28 days of being required to do so under paragraph 11.1, 11.2 or 11.3 above (or such longer period as the Commissioners may agree upon the request of the Licensee), the Commissioners may at any time thereafter cause the Licensed Boat, tender or other Vessel to be removed from the Allocated Mooring at the Licensee's sole risk and expense and shall be entitled to charge for their services in doing so. Any storage or Mooring used will be charged at the daily rate applicable to such alternative facilities. If the Licensed Boat, tender or other Vessel is moved to a visitor's berth, the visitor's rate for that berth shall be charged to and payable by the Licensee.

11.5 If a new Allocated Mooring has been notified to a Licensee under the Licence Application Procedure for the purposes of mooring a Licensed Boat and the Licensee does not move the Licensed Boat and any tender to the new Allocated Mooring within 14 days after being required to do so (or such longer period as the Commissioners may agree upon the request of the Licensee), then, without prejudice and in addition to any other rights that the Commissioners may have, the Commissioners may at any time thereafter cause the Licensed Boat and/or tender to be moved to the new Allocated Mooring at the Licensee's sole risk and expense and shall be entitled to charge the Licensee for their services in doing so.

- 11.6 The Commissioners shall have a lien upon each Licensed Boat, and/or any tender and/or any gear or cargo from time to time belonging to the Licensee, for any sum due to them from the Licensee in whatever capacity and howsoever arising.
12. **Authorised Officers**
- Each of the Chief Executive/Harbour Master (and separate Chief Executive and the 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 the Licence and these Licence Provisions on their behalf. The Chief Executive/Harbour Master (or separate Harbour Master) is authorised by the Commissioners to delegate to such one or more of the Deputy Harbour Master and the Berthing Masters the power to implement such of the Licence Provisions as the Chief Executive/Harbour Master (or separate Harbour Master) shall think fit. 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 these Licence Provisions or the Licence is final save only as regards an appeal under the Licence Application Procedure.
13. **Commissioners' general obligations/no other liability of Commissioners**
- 13.1 Subject to paragraph 13.3 below, by granting a Licence, the Commissioners undertake to the Licensee to take all reasonable steps to maintain the pontoons or piles at which the Allocated Mooring is situate in a reasonably good state of repair and usable condition.
- 13.2 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 these Licence Provisions or the Licence.
- 13.3 The Commissioners shall not by the permission granted by the Licence be deemed to give the Licensee 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 the Allocated Mooring.
- 13.4 The Commissioners accept no liability whatsoever for the death or injury to any person or damage to any property of the Licensee or the Licensee'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 or the failure by the Commissioners substantially to perform their obligations to the Licensee under paragraph 13.1 above..
14. **General Provisions**
- 14.1 ***Extensions of time:*** Wherever a time is specified in these Licence Provisions by which certain matters are required to be implemented, the Commissioners may agree to an extension of that time in any particular case.
- 14.2 ***Review of Licence Provisions:*** These Licence Provisions are under constant review by the Commissioners and may be changed at any time.
- 14.3 ***Sole rights:*** The rights and permissions conferred on and given to a Licensee by a Licence and these Licence Provisions are the sole rights and permissions as regards the matters concerned. The Licensee shall have no rights as regards any of those matters nor shall the Licensee be treated as having been given any permissions as regards any of those matters save only as shall have been conferred or given to the Licensee under or by virtue of the Licence.
- 14.4 ***Notices:***
- (a) All documents and other written communications to be sent to Licensees will be sent by ordinary post to the Licensee's most recent address as notified in writing to the Commissioners. Unless notice is given to the contrary, the most recent address will be

regarded as that recorded on the Licence. In the case of a Licence which has been issued to more than one partner of a partnership Commercial Operator, all such documents and other written communications will be given only to the partner first named on the Licence.

- (b) All documents and other written communications to be sent to the Commissioners should be sent by ordinary post to the Harbour Office or delivered by hand 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](mailto:info@yarmouth-harbour.co.uk).