

Dated

2010/11



# **AGREEMENT**

**under Schedule 9 Gambling Act 2005**

**in respect of**

**Casino Premises Licence at [ ]**

Christopher Skinner  
Head of Central Services  
Great Yarmouth Borough Council  
Town Hall  
Great Yarmouth  
NR30 2QF



- (3) The Council has determined to grant to the Licensee the Licence [provisional statement] subject to the conditions mentioned in the said Licence/provisional statement and the terms of this Agreement
- (4) The parties have agreed to enter into an Agreement under schedule 9 of the Act 2005 in order to secure the delivery of the benefits set out at Schedule 1
- (5) The parties acknowledge that the Licence [provisional statement] will contain a condition to give effect to the Licensee's obligations contained in this Agreement
- (6) The parties acknowledge that the object of this Agreement is to enable the grant of the Licence to the Licensee by securing the delivery of the benefits set out at Schedule 1
- (7) This Agreement is entered into by the Guarantor who agrees that it is bound by its terms and conditions
- (8) The parties to this Agreement agree that these Recitals form part of the Agreement

## 1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement unless the context otherwise indicates or requires 'the Agreement' means this agreement constructed as a deed and the schedules hereto and all amendments to such agreement or schedules
- 1.2 Where in this Agreement reference is made to any clause paragraph or schedule such reference is to a clause paragraph or schedule in this Agreement
- 1.3 The clause headings in this Agreement are for reference only and are not to be taken into account in its construction or interpretation
- 1.4 Words importing the singular meaning include the plural and vice versa except where the context requires otherwise
- 1.5 Words of the masculine gender include other genders and words denoting persons include corporate persons and associations
- 1.6 Obligations by more than one person are joint and several and where any party to this Agreement is more than one person references to that party are to each person individually as well as jointly with the other comprising it
- 1.7 References to any party under this Agreement shall include successors in title to that party
- 1.8 Nothing in this Agreement creates or implies a partnership or joint venture between the parties and the Licensee shall not be or be deemed to be an agent

of the Council and shall not hold itself out as having authority or power to bind the Council in any way

1.9 The parties to this Agreement hereby acknowledge that this Agreement forms the entire agreement between them relating to its subject matter and the Licensee acknowledges that no representation whether oral or written has been made to it before this Agreement by or on behalf of the Council which has influenced or induced it to enter in to this Agreement or any other agreement connected in any way with the subject matter of this Agreement

1.10 If any provision of this Agreement is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement will be unaffected

1.11 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties Act) 1999 by any person who is not a party to this Agreement

1.12 References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall

include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it

1.13 This Agreement is to be governed and interpreted in accordance with English law

1.14 The Courts of England are to have jurisdiction in relation to any disputes between the parties to this Agreement arising out of or related to this Agreement.

## 2. **LEGAL BASIS**

2.1 This Agreement is made pursuant to schedule 9 of the Gambling Act 2005, section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000 and all other powers enabling such agreement

## 3. **CONDITIONALITY**

3.1 This Agreement is conditional upon the grant of the Licence [provisional statement]

#### 4. **BENEFITS**

4.1 The Licensee covenants to provide the benefits set out at Schedule 1 to the Council's satisfaction from the starting date or dates specified in that Schedule

4.2 In the event that the said benefits set out in Schedule 1 or any of them are not provided at any time following the date specified in Schedule 1 the Licensee covenants to pay to the Council the liquidated and ascertained damages set out in Schedule 1. Where any of the benefits are supplied for only a proportion of the month the liquidated and ascertained damages for that month shall be reduced proportionately

4.3 The Licensee acknowledges and agrees that the obligation in Clause 4.2 will be without prejudice to any other remedies which the Council has for non provision of the said benefits including but not limited to enforcement of the conditions of the Licence or [provisional statement], a claim in debt or specific performance

#### 5. **TERMINATION OF AGREEMENT**

5.1 The Licensee's covenants contained in this Agreement shall continue unless and until the Licence [provisional statement] is surrendered or terminated for any other reason

5.2 Upon surrender or other termination of the Licence [provisional statement] the Licensee shall remain liable for any liabilities accrued under this Agreement and/or any breach of covenant prior to surrender or other termination of the Licence [provisional statement] and the Council's remedies in respect thereof shall not be affected by such surrender

5.3 In the event that the grant of a casino premises licence follows the grant of a provisional statement:-

5.3.1 the Licensee's covenants herein shall continue in full force and effect unless and until the Licence is surrendered, revoked or lapses; and

5.3.2 all references herein to the Licence shall be deemed to include reference to a casino premises licence following the grant of the provisional statement

5.4 In the event of a transfer of the Licence [provisional statement] the Licensee's obligations under this Agreement shall continue unless and until the Council agrees in writing to terminate this Agreement

5.5 In the event of termination of this Agreement as detailed in clause 5.4 the Licensee shall remain liable for any liabilities accrued under this Agreement and/or any breach of covenant prior to termination and the Council's remedies in respect thereof shall not be affected by such termination

**6. WAIVER OF AGREEMENT**

6.1 No waiver (whether express or implied) by the Council of any breach or default in performing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant covenants terms or conditions of this Agreement or for acting upon any subsequent breach or default

**7. INTEREST AND INDEXATION**

7.1 Where any monetary payment due under this Agreement is not paid within (ten) 10 working days of the due date it shall carry interest at the rate of 4% above the base rate of the Bank of England from time to time calculated from the due date (whether before or after any judgement) until actual payment

7.2 Any fixed monetary payments due under this Agreement shall increase on 1st January each year by an amount equivalent to the increase in the Retail Prices Index issued by the Office for National Statistics on 1st January of the preceding year

## 8. **LEGAL COSTS**

8.1 The Licensee shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation preparation and execution of this Agreement

## 9. **DISPUTE RESOLUTION**

9.1 If a dispute arises between the parties in connection with this Agreement, the parties shall each acting in good faith use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate level

9.2 If a dispute is not resolved within 14 days of referral under clause 9.1 then the parties may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree

9.3 If the procedure set out in clause 9.1 and 9.2 fails to resolve the Dispute the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) (Resolve) Model Mediation Procedure. To initiate the mediation a party must give notice in writing (the Alternative Dispute Resolution "ADR" notice) to the other parties requesting mediation in accordance with this clause. The mediation will take place not later than 28

days after the ADR Notice or within such period as the parties may agree. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 days of the ADR notice, then either (CEDR-Resolve) will, at the request of any party, decide the issue for the parties having consulted with them

- 9.4 If the Dispute is not resolved under clauses 9.1-9.3 then the parties may commence proceedings in the Courts for resolution of the Dispute. For the avoidance of doubt compliance with clauses 9.1-9.3 shall be a condition precedent to the commencement of any such proceedings SAVE THAT:-
- nothing in this clause 9.3 shall prevent any party applying for emergency relief from the Court, including injunctive relief, at anytime; and
- where any dispute party fails to comply with any part of the procedure in clauses 9.1-9.3 inclusive, any other dispute party may commence proceedings in accordance with this clause notwithstanding that the said procedure has not been complied with and attempts to resolve the Dispute by negotiation and mediation have not been deemed to have failed

## 10. **GUARANTEE**

- 10.1 The Guarantor shall comply with the obligations set out in Schedule 2

11. **DEALINGS**

11.1 This Agreement may not be assigned, charged, held on trust or in any way dealt with by the Licensee or the Guarantor

12. **INFORMATION**

12.1 The Licensee acknowledges:-

That the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and

12.1.1 that any information which the Licensee provides to the Council on the basis that it is confidential information may nevertheless need to be disclosed by the Council in order for the Council to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and

12.1.2 that in the event of a request for information the Council shall be responsible for determining at its absolute discretion whether information is exempt from disclosure and whether information is to be disclosed

and the Licensee agrees that it shall facilitate the Council's compliance with its information disclosure requirements pursuant to the aforementioned

13. **NO FETTER OF STATUTORY FUNCTIONS**

13.1 The obligations of the Council under this Agreement are obligations of the Council in its capacity as Licensing Authority and nothing in this Agreement shall operate as an obligation upon or in any other way fetter or constrain the Council in any other capacity nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Council to the Licensee

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

**SCHEDULE 1**

**The Benefits**

*[Please specify:*

- (1) *The benefit as fully as possible, together with whether and if so what periodic payments are being proposed*
- (2) *The starting date for the provision of the benefit*

(3) *The liquidated and ascertained damages payable per calendar month for any period following the starting date over which the benefit in question is not being provided]*

Benefit	Starting Date	Liquidated and ascertained damages: sum payable per calendar month
1.		
2.		
3.		
4.		
5. etc		

**SCHEDULE 2**

**Guarantor's Provisions**

**1. OBLIGATIONS GUARANTEED**

1.1 The Guarantor as primary obligor and not only as guarantor, guarantees to the Council that the Licensee will comply with the terms of this Agreement

- 1.2 As an independent obligation, the Guarantor agrees with the Council to comply with the terms of this Agreement if the Licensee does not do so and to indemnify the Council against any breach of those terms
- 1.3 The Guarantor agrees that the Council may make a claim under this guarantee and indemnity without first making a claim against the Licensee
- 1.4 The Guarantor is to pay all sums due to the Council under this guarantee and indemnity without any legal or equitable set-off, counterclaim or deduction.

## 2. **CONTINUATION OF THE GUARANTEE**

2.1 The obligations of the Guarantor are not to be released by:-

- 2.1.1 any delay or neglect by the Council in enforcing the terms of this Agreement or any time allowed by the Council for their performance;
- 2.1.2 any variation of the terms of this Agreement;
- 2.1.3 the disclaimer of this Agreement by the Crown or by a liquidator or trustee in bankruptcy of the Licensee;
- 2.1.4 the Licensee being struck off the register of companies or otherwise ceasing to exist;
- 2.1.5 the Licensee or the Council giving consent to any matter under this Agreement;

2.1.6 any legal limitation, immunity, disability, incapacity or other circumstances relating to the Licensee, whether or not known to the Council; or

2.1.7 anything else which would have released the Guarantor whether by the variation of the obligations guaranteed or by the conduct of the parties

### 3. **DEFAULT OF LICENSEE**

3.1 The provisions of this clause 3 will apply:-

3.1.1 if the Licensee commits a breach of the terms of this Agreement which cannot be remedied;

3.1.2 if the Licensee commits a breach of the terms of this Agreement which is capable of being remedied and;

3.1.2.1 does not begin diligently to remedy that breach within ten working days of written notice from the Council or immediately inn case of emergency; and

3.1.2.2 does not remedy the breach within a reasonable period of time, to be specified in the notice, to the reasonable satisfaction of the Council;

3.1.3 following the disclaimer of this Agreement by the Crown or by a liquidator or trustee in bankruptcy of the Licensee; or

3.1.4 if the Licensee is a company, the Licensee is struck off the register of companies or otherwise ceases to exist.

3.2 If any of the provisions in paragraph 3.1 apply and the Council requests the Guarantor to do so in writing, the Guarantor is to:-

3.2.1 enter into a new agreement with the Council on the terms of this Agreement with the substitution of the Guarantor for the Licensee and with due allowance to be made in the new agreement for any sums paid by the Licensee under this Agreement when calculating any sums due under the new agreement

4. **NO ASSIGNMENT**

4.1 The Guarantor is not to take an assignment of this Agreement from the Licensee

**5. ADDITIONAL PROVISIONS**

5.1 The Guarantor is not to claim any rights of subrogation in respect of the obligations guaranteed by the Guarantor and is not entitled to participate in any security held by the Council in respect of those obligations unless and until those obligations have been performed or discharged in full

5.2 The Guarantor is not to claim in competition with the Council in the insolvency of the Licensee and is not to take any security, indemnity or guarantee from that person in respect of those obligations

5.3 If any payment made to the Council is set aside or avoided under the laws relating to insolvency, the Council may claim under this guarantee and indemnity in respect of that payment and any settlement, release or discharge of the obligations guaranteed by the Guarantor is to take effect subject to this condition

5.4 If there is more than one Guarantor, the obligations which they undertake can be enforced against them all jointly or against each individually

THE COMMON SEAL of )  
 )  
GREAT YARMOUTH BOROUGH COUNCIL )  
 )  
was affixed in the presence of: )

Authorised Signatory

EXECUTED as a DEED by )  
 )  
THE LICENSEE )  
 )  
in the presence of: )

EXECUTED as a DEED by )  
 )  
THE GUARANTOR )  
 )  
in the presence of: )