

## Terms and Conditions - Personal Training, Outdoor Fitness and Group Exercise

### 1. Interpretation

In these terms and conditions:

**"Application"** means the application form submitted by the Licensee as varied by any amendment agreed by the Licensee and the Authority or any direction issued by the Authority.

**"Approval"** and **"Approved"** means the written acceptance by the Authority.

**"Authority"** means The London Borough of Hammersmith & Fulham (The Council)

**"Authority's Property"** means the following trees, shrubs, railings, fences, lampposts, tables, benches, signs and signposts footpaths and all other such items located within the Park.

**"Condition"** means a condition within these Terms and Conditions

**"Commencement Date"** means the date of Approval of the Licensee's Application pursuant to conditions 2.1 and 2.2, or such later date as the Authority and the Licensee may agree in writing.

**"Common"** means a public area or park

**"Community Sessions"** means sessions and activities that are delivered to participants for free.

**"Fitness Camps"** means a focused number of back-to-back sessions with different participants in each

**"Licensee"** means the individual or group named in the Application

**"Licence"** means the Approved Application and these terms and conditions read together

**"Licence Period"** means the period running from the 1 April to the 31 March inclusive in any year

**"Outdoor Fitness Fees and Charges"** means the breakdown of fees and charges payable by the Licensee to the Authority as consideration for the granting of the Licence, as published on the Authority's website

**"Park"** means the park and commons, or parks named in the Application

**"Session"** means one period of fitness training and/or instruction lasting for no more than 90 minutes OR until there is a change of participants (whichever is the earlier or occurs first).

**"Trainer"** means individuals employed or paid by the Licensee to carry out the training specified in the application form.

The interpretation and construction of the Licence shall be subject to the following provisions:

- statute, enactment, order, regulation, or instrument as subsequently amended or re-enacted.
- The headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions.
- References to Conditions are references to Conditions in the section of the Terms and Conditions in which they appear, unless otherwise stated.
- Where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.
- Any notice to be served on the Licensee shall be sent by letter or email to the contact details set out in the Application until the Authority receives written notification of different contact details

## 2. Registration

2.1 The Licensee and any Trainers must be Approved by the Authority before the Licensee or its Trainers will be entitled to conduct training sessions in the Park. A Licensee is NOT required to pay a license fee for conducting training sessions with less than 2 participants but are still required to register for a licence. Community sessions which are being offered for free will also not require a paid licence but will need to be registered. Applicants are required to apply for a Licence to conduct sessions and activities in a specified park, which is non-transferable. If a Licensee requires an additional licence to conduct activities in another park this must be applied for separately. Providers can have a maximum of 4 named instructors per licence. There are also specific limits to the number of Licensees and Trainers that can operate per park you will be notified when applying if the limit for the park you are apply for has been exceeded. You cannot use this application to apply for a licence to conduct team sport sessions and activities, which includes, but is not limited to football, rugby, and cricket.

2.2 In order for the Licensee's Application to be considered by the Authority, the Licensee must have:

a) Completed the application form in full.

b) Paid the applicable licence fee stated in the Outdoor Fitness Fees and Charges and have:

- Evidence of current CIMSPA membership licensing scheme and level 3 or equivalent fitness qualifications in the application. (some qualification exceptions apply for activities such a Zumba and Yoga)
- Current public liability insurance a minimum of £5million, valid for a minimum of 3 months at the point of application. It is the Licensee's responsibility to ensure that they always have valid insurance and that this covers any Trainer.
- Current risk assessment – in line with government guidelines to be submitted, signed and dated.
- Evidence relating to First Aid provision and a process for accident reporting.
- Safeguarding – Basic Disclosure Barring Service

2.3 Failure to comply with 2.2 shall entitle the Authority to terminate this Licence in accordance with condition 8.

2.4 The Authority shall be under no obligation to Approve an Application.

2.5 The Authority reserves the right to limit the Licensee's access at any time to the park with written notice

2.6 Upon Approval of the Application the Authority will provide the Licensee with identification armband(s) which the Licensee and or Trainer must always wear whilst carrying out training sessions in the park and produce upon request by any officer or staff of the Authority. It is the Licensee's responsibility to ensure that its Trainers always carry and wear the identification issued whilst carrying out training sessions. The Authority will charge a replacement fee of £50 (Inc VAT) for each subsequent replacement of the identifying armband. At the end of the Licence the Licensee must return all identification armbands to the Authority.

2.7 Following Approval of the Application the Licensee may carry out training sessions in the park, during the hours which the park is open to members of the public or as specified in any direction issued by the Authority.

2.8 The Licensee acknowledges that:

2.8.1 This Licence does not guarantee that the park will be open or that there will be space in the park for the Licensee or Trainer to carry out training sessions.

2.8.2 This Licence does not grant a Trainer priority over any other lawful user of the park and that any pitch bookings, events or booked group activities will take priority over training sessions and the Licensee or Trainer is expected to relocate if a conflict of interest occurs.

### **3. Licence fee**

3.1 The Licence fee payable by the Licensee shall be:

3.1.1 In accordance with the charging matrix as advertised on the Authority's website, together with VAT on such fee.

3.1.2 If a Licensee wishes to conduct group and individual training sessions, they must apply for both and pay the relevant charges for each.

3.1.3 If an Application is approved for activities involving Fitness Camps there may be additional charges and or restrictions placed on the Licensee by the Authority.

3.1.4 If an Application is approved for activities involving several large sessions operating at the same time by the Licensee then additional charges will apply. The licensee will be informed of the additional charges at the time of applying for a licence to operate.

3.1.5 Where the Application is approved after the 1 April the Licence fee shall be reduced on a pro-rata basis. The Licensee should contact the individual Park concerned to determine the amount of licence fee payable.

### **4. Duration**

4.1 Subject to condition 8, this Licence shall continue until the end of the Licence Period.

4.2 On or before the end of the Licence Period the Licensee may re-apply for a licence to be approved for a further year but nothing in this Licence shall imply any obligation on the Authority to approve a further application.

## 5. Licensee obligations

5.1 The Licensee shall and ensure that its Trainer will always exercise the rights and duties under this Licence in a proper and responsible way, having regard to the safety of users of the park, the Authority's staff and other third parties.

5.2 Any equipment used must be handheld only; any equipment used, or activities undertaken must not be detrimental to the park, the Authority's Property or any wildlife. A Trainer shall not conduct any activities or group in our playgrounds and ornamental gardens or use street furniture or trees to attach equipment to.

5.3 The Licensee shall ensure that the Authority's Property is not used for the purpose of fitness training.

5.4 The Licensee must not and ensure that its Trainer does not leave any equipment or rubbish in the park following a training session and ensure the park is left in the same condition that it is found. The Authority reserves the right to charge the Licensee the cost of reinstating the park to its original condition where substantial damage is caused as a result of the training sessions held by the Licensee or its Trainer.

5.5 The Licensee and its Trainer must not cause an annoyance or nuisance or interfere with the reasonable enjoyment of other persons using the park or disturb residents.

5.6 The Licensee or its Trainer must always adhere to and comply with the Authority's Code of Conduct whilst conducting training sessions within the park. A map depicting the formal garden areas of the park and other unsuitable locations for training is available and the Licensee must avoid training in these areas and other smaller sensitive areas of the park such as; waterside areas, picnic areas, long grass, meadow land, conservation areas, playgrounds, ornamental gardens.

5.7 The Licensee shall comply with the 'Byelaws for Pleasure Grounds, Public Walks and Open Spaces.' Copies are obtainable on the Council's website.

5.8 This Licence does not allow or permit vehicle access into the park provided that this condition does not prevent the Licensee or its Trainer from parking in any car park within the park subject to the payment of any parking charges.

5.9 The Licensee shall not display, produce, or distribute any, sign or advertisement whilst within the park except to clients undertaking training. The Licensee may display a combined maximum of 4 boards and portable flags while undertaking training or exercise activities within the park, although all displays boards and portable flags must be removed and taken down after the session and activity has been completed. No banners, boards or any advertising or marketing material are permitted at Gwendwr Gardens, Gwendwr Gardens Open Space and Edith Road Open Space. The restriction of advertising applies to all boards, banners, hoardings, flags, posters etc. displaying any organisation, company, or brand name of any goods, including those of the Licensee. The Licensee and its Trainer are permitted to wear branded clothing as part of a uniform if they so wish.

5.10 The Licensee and or its Trainer must not play any amplified music whilst within the park

5.11 The Licensee will not be permitted to distribute business cards whilst in the park.

5.13 One session shall be deemed as lasting no longer than 90 minutes and / or engaging the same participants. Therefore, the Licensee and or its Trainer cannot return to engage in sessions and activities within the park with the same participants after a 90 minute session has been completed until a minimum of 90 minutes has passed since the last session or activity was completed. If the Licensee wishes to conduct additional 'fitness camps' to their usual business then they must seek permission from the Authority to do so prior to any such arrangements being made, carried out or advertised with specific dates, times and locations agreed by the Authority. Additional charges may apply for such related intensive camps.

5.14 The Licensee must not operate outside of the agreed number of weekly sessions and / or the agreed group capacity size.

5.15 Each party shall notify the other of any health and safety hazards which may arise in connection with the performance of this Licence as soon as they become aware of them.

5.16 While on the park, the Licensee shall comply with any health and safety measures implemented by the Authority in respect of users of the park.

5.17 The Licensee shall notify the Authority immediately in the event of any incident occurring where that incident causes any personal injury or damage to property and if requested by the Authority shall provide a copy of the incident investigation report if appropriate.

## 6. Independent operator

6.1 Nothing in this agreement shall be construed as creating a partnership, contract of employment or relationship of principal and agent between the Authority and the Licensee.

## 7) Indemnity and insurance

7.1 The Licensee shall throughout the Licence Period maintain public liability insurance of a five million (£5,000,000) level is considerably preferred. Copies of insurance documents must be submitted with the Application and a copy of the current policy must be available for inspection by the Authority at any time during the Licence Period upon request.

7.2 The Licensee shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, loss of or damage to property, which is caused directly or indirectly by any act or omission of the Licensee **PROVIDED ALWAYS** that the Authority shall be at liberty to settle as it may think fit after consultation with the Licensee any such actions claims or demands by payment of such sum or sums as it in his discretion may consider reasonable and it may in his discretion after giving notice in writing to the Licensee cause any such damage to be made good and the expenses incurred by the Authority in doing or in making any such payment shall be repaid by the Licensee to the Authority on demand **PROVIDED NEVERTHELESS** that the Licensee shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the

circumstances of the case and in particular (where the payment is legally enforceable) to the damages which might be recoverable at common law

7.3 Subject to clause 7.3, the Authority is not liable for:

- (a) the death of, or injury to the Licensee, its Trainers, clients or invitees to the park; or
- (b) damage to any property of the Licensee or that of the Trainers, clients or other invitees to the park; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Trainer, clients or other invitees to the park in the exercise or purported exercise of the rights granted by this Licence

7.4 Nothing in clause 7.3 will limit or exclude the Authority's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Authority or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Authority to exclude or restrict liability.

## **8. Termination of agreement**

8.1 The Authority may revoke this Licence with immediate effect where the Licensee and/or its Trainer:

8.1.1 Is in breach of its obligations under this Licence and, where the breach is capable of remedy, fails to remedy such breach to the satisfaction of the Authority within 7 calendar days of receipt of written notice to remedy the breach.

8.1.2 Acts in any way that is likely to bring the Authority into disrepute or damage its reputation or interests.

8.2 The Authority may terminate the Licence giving not less than one week's written notice.

8.3 Where the Authority terminates this Licence under condition 8.1 the Licensee shall not be entitled to receive any refund of the Licence fee or any compensation for any outlay made by the Licensee in connection with this Licence.

8.4 The Licensee must give not less than one month's written notice to terminate this Licence. No refund for termination of the licence will be given in this instance and any monies outstanding by the Licensee to the Authority will be required to be paid in full.

8.5 For the avoidance of doubt, following termination of this Licence by either party, the Licensee and/or its Trainer shall no longer be licenced and therefore not permitted to run training sessions within the park.

## **9) General**

9.1 Nothing in this Licence shall render or be deemed to render the Licensee or any Trainer an employee or agent of the Authority.

9.2 This Licence contains the entire understanding and agreement between the parties and supersedes all prior representations, documents, negotiations or understandings. The Licensee acknowledges that it has not entered into this Licence in reliance upon any representation by the Authority or anyone acting on its behalf.

9.3 Pursuant to the Freedom of Information Act 2000 the Authority is subject to certain legal obligations in relation to public disclosure of information. The Licensee shall co-operate with and assist the authority with any requests for disclosure which the Authority receives under the Freedom of Information Act 2000 which relate to this Licence. The Licensee understands and agrees that the Authority may be required to provide information relating to this Licence or the Licensee to a third party in order to comply with its obligations under these provisions

9.4 Nothing in this Licence shall fetter the Authority in the exercise or discharge of its functions, powers and duties (Including, without limitation, the power to close all or part of the park either on a permanent or temporary basis or to temporarily use all or part of the park for an event).

9.5 An approved Authority officer and/or enforcement and management contractor to the Authority reserves the right to stop sessions and activities temporarily or permanently, which are deemed to have breached all or any of the Licensee obligations outlined in clause 5.

## **10. Disputes**

10.1 In the event that any dispute arises between parties in connection with this Licence, the parties shall, in the first instance, use their reasonable endeavours to resolve it amicably themselves.

10.2 Disputes remaining unresolved shall, if parties agree, be referred to non-binding mediation.

10.3 In the event that the parties do not agree to non-binding mediation or if the dispute remains unresolved, the dispute shall be referred to the exclusive jurisdiction of the Courts of England pursuant to condition 11 below.

## **11. Law and jurisdiction**

11.1 This Licence shall be governed by and construed in accordance with English Law and the Authority and Licensee hereby submit to the exclusive jurisdiction of the English courts.

## **12. Agreement and declaration**

12.1 That this Licence does not, nor is intended to confer, any legal or other tenancy estate or interest in respect of the park and that the Authority is not empowered to do so.

12.2 The benefit of this Licence is personal to the Licensee and is not capable of being claimed by any other person, body of persons, firm or corporation, whatsoever and shall not be assignable in whole or in part, by the Licensee to any such person, body, or persons, firm or corporation, and for the purposes hereof the parties agree that the Contract ( Rights of Third Parties) Act 1999 shall not apply

12.3 The licensee will submit any proposals for marketing and promotion of its services in the parks for approval by The LBHF Parks. Use of The LBHF Parks logo is by permission only and can only be used in connection with licensed fitness activities in LBHF Parks. LBHF Parks retains all Intellectual Property Rights in its name and brand mark.

## **13. Variation of the Licence**



13.1 The Authority or the Licensee may propose changes to the scope or terms of this Licence from time to time. Proposed changes will only become binding if expressly agreed in writing by both parties. The Licensee acknowledges that changes to the scope or terms of the Licence may require it to pay additional fees and charges.