

## Fitness in Parks T&Cs

### 1 DEFINITIONS AND INTERPRETATION

1.1 This Contract consists of the Order, these Terms & Conditions, and any documents expressly referenced herein.

1.2 In this Contract unless the context otherwise requires, references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

1.3 In the event of conflict between the documents that constitute this Contract, these Terms & Conditions shall prevail over the Order.

1.4 In this Contract the following expressions shall have the following meanings:

(i) "Additional Charges" means any charges in addition to the Hire Charge and the Bond levied by the Council for the Additional Requirements or otherwise as specified in the Order;

(ii) "Additional Requirements" means any additional requirements of the Customer as specified in the Order;

(iii) "Authorisations" means any and all third party licences, permits, clearances, consents, approvals, certificates, agreements, authorities or other permissions (including liaising with and complying with any instructions of the police, fire authority, ambulance service and Highways Agency in connection with traffic management in the vicinity of the Venue during the Event, as required by the Customer to hold the Event in compliance with the Law;

(iv) "Bond" means the security bond payable to the Council by the Customer as specified in the Order;

(v) "Capacity" means the maximum number of attendees that are permitted to attend the Event as specified in the Order;

(vi) "Clause" means a clause in the Terms & Conditions;

(vii) "Confidential Information" means any confidential information, matter, data, know-how, documents, secrets, dealings, transactions or affairs (however recorded or preserved), whether directly or indirectly disclosed by either party to the other whether before, on or after the date of this Contract, in connection with this Contract and / or any other information which would be regarded as confidential by a reasonable business person;

(viii) "Contract" means the Terms & Conditions, and the completed and signed Order;

(ix) "Contract Manager" means the Council Officer responsible for dealing with the Order;

(x) "Council" means the Mayor and Burgesses of the London Borough of Barnet, 2 Bristol Avenue, Colindale, London, NW9 4EW;

(xi) "Customer" means the 'Customer' specified in the Order;

(xii) "Data Protection Legislation" means the (i) the GDPR, and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy and (iii) all applicable Law about the processing of personal data and privacy.

(xiii) "DPA 2018" means the Data Protection Act 2018;

(xiv) "Due Date" means the 'Due Date' specified in the Order;

- (xv) "Event" means the event to be held at the Venue by the Customer as specified in the Order;
- (xvi) "GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679);
- (xvii) "Hire Charge" means the charge payable by the Customer for hire of the Venue, as specified in the Order;
- (xviii) "Hire Period" means the hire period as specified in the Order;
- (xix) "Law" means: (a) any applicable laws, regulations, regulatory constraints, obligations proclamations or rules (including binding codes of practice and statement of principles incorporated and contained in such rules); (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; or (c) any applicable judgment of a relevant court of law, and in each case in force in England and Wales;
- (xx) "Order" means the order form attached to these Terms & Conditions;
- (xxi) "Terms & Conditions" means the terms and conditions of this Contract; and
- (xxii) "Venue" means the park or open space owned by the Council to be hired to the Customer to hold an Event, as specified in the Order.

## 2 TERM

2.1 This Contract shall commence on the date of signature of the Order by both parties and shall terminate at the end of the Hire Period unless terminated in accordance with Clauses 9, 10.3(i), 15 or 16.

## 3 APPLICATIONS FOR HIRE

3.1 The Council reserves the right to refuse any application or accept the same upon such additional terms and conditions as it may from time to time deem necessary to impose.

## 4 COUNCIL OBLIGATIONS

4.1 The Council shall:

- (i) grant the Customer a non-exclusive licence to access and use the Venue during the Hire Period for the purpose of the Event;
- (ii) provide the Customer with all requisite access to the Venue at the commencement of the Hire Period; and
- (iii) appoint a Contract Manager to liaise with the Customer.

## 5 CUSTOMER OBLIGATIONS

5.1 The Customer shall conduct the Event:

- (i) in a safe, proper and orderly manner;
- (ii) in accordance with this Contract; and
- (iii) in accordance with the Law, including any Authorisations. The Customer's attention is, in particular, drawn to legislation relating to health and safety including, but not limited to, the Health and Safety at Work Act 1974, Management of Health and Safety at Work Regulations 1999, Control of Substances Hazardous to Health Regulations 1999 and Electricity at Work Regulations 1989.

5.2 The Customer agrees that it has examined all information, conditions and

specifications of the Venue and is satisfied that the Venue is suitable for the Event.

5.3 Prior to and during the Event, the Customer shall:

- (i) be solely responsible for the administration, running and organisation of the Event, unless otherwise agreed with the Council, including for the supervision, safety and control of Event participants, officials, visitors and spectators;
- (ii) ensure unrestricted access to all public footpaths located within the Venue by the general public;
- (iii) conduct a health and safety risk assessment and lodge a copy of such assessment with the Council not later than four (4) weeks prior to the Hire Period and implement adequate fire precautions and ensure emergency exits are maintained;
- (iv) undertake Cat and Genny survey or such survey as may be specified by the Council for any underground services prior to driving any stakes, pins or similar items into the ground;
- (v) keep the Venue clean and tidy and shall ensure that the Venue is regularly litter picked during the Event. The Customer shall further ensure that the Council's obligations under the Environmental Protection Act 1990 – Code of Practice on Litter and Refuse are discharged;
- (vi) if required by the Council, provide, at its own expense, temporary toilet facilities and other sanitary accommodation as necessary to properly accommodate the attendees of the Event and ensure all such attendees have unrestricted access to toilet facilities;
- (vii) ensure that no noise or nuisance is caused to occupiers of properties in the vicinity of the Venue and no loud noise is to be made after 22.30, or as otherwise agreed with the Council; and
- (viii) ensure the Event has finished by the time specified in the Order.

5.4 By the end of the Hire Period, the Customer shall:

- (i) dispose of all waste materials in a safe and secure manner and, where possible, recycle such waste materials; and
- (ii) (unless otherwise agreed by the Customer and the Contract Manager), ensure the Venue is returned to the condition it was provided to the Customer in, including but without limitation to, the removal of all equipment belonging to the Customer, removal of all litter and refuse and the making good of any damage caused. The Council shall not be liable for any property left at the Venue after the Hire Period has ended.

5.5 For the avoidance of doubt, the Customer shall bear the cost of any action required to fulfil the Customer's obligations in Clauses 5.3 and 5.4 of this Contract,

## 6 HIRING RESTRICTIONS

6.1 The Customer shall not:

- (i) in any way bring the Council into disrepute;
- (ii) sell tickets for the Event or advertise the Event until this Contract has been agreed and confirmed by the Council;
- (iii) allow the sale, display or use in any way of pornographic material or other items that may be construed as offensive;
- (iv) allow any exhibition or performance at the Event where animals are or might be involved; and / or
- (v) have barbeques at the Venue.

6.2 The Customer shall not, without the prior written consent of the Council:

- (i) remove, alter or obscure any Council property at the Venue including any notices, placards or other signage nor interfere with the structure, layout or arrangement of the Venue;
- (ii) allow any vehicles to be parked or driven across any public footpaths within the Venue;
- (iii) use generators at the Venue. If such approval is granted, the Customer shall ensure that any generators permitted at the Event are operated in a safe manner and are segregated from the public or are protected by suitable barriers or covers to prevent access to the generators by the public. All such generators must have a valid Electricity Certificate;
- (iv) use a public address system or glass drinking vessels at the Venue;
- (v) engage in any activities that may be deemed by the Council, in its sole discretion, to be ancillary to the Event;
- (vi) sell food at the Event. All proposals to sell food at the Event (including any proposal to hot food between the hours of 23.00 and 05.00) must be notified to the Council at least four (4) weeks prior to the commencement of the Hire Period. Any caterers used by the Customer must be members of the Nationwide Caterers Association;
- (vii) sell or allow the consumption of alcohol;
- (viii) use the Venue for boxing or wrestling events;
- (ix) carry out or permit to be carried out any photography, filming, taping, television or radio broadcasts or any other recording of the Event except by the attendees of the Event for their personal use;
- (x) allow highflying objects to be released at the Event;
- (xi) allow commercial traders to trade at the Event;
- (xii) allow any lotteries, sweepstakes, games of chance or betting of any kind to take place at the Event;
- (xiii) use motorised transport (save for mobility transport) at the Venue.

## 7 ADMITTANCE TO THE VENUE

7.1 All employees, officers or other persons authorised by the Council shall be entitled to enter the Venue at all times during the Hire Period.

7.2 The Council reserves the right to refuse admission or remove any person from the Venue during the Event, in its sole discretion.

## 8 AUTHORISATION

8.1 The Customer shall secure all necessary Authorisations prior to the Event and shall provide the Council with copies of all such Authorisations no later than seven (7) days prior to the Hire Period.

## 9 CHANGES

9.1 The Council reserves the right to vary the Contract on written notice to the Customer. The Customer may within seven (7) calendar days of the notice:

- (i) agree to such variation in writing, in which case the variation shall be deemed to be incorporated into this Contract; or
- (ii) refuse such variation in writing and this Contract shall terminate on receipt by the Council of such written notification and the Council may refund any sums paid

and payable in its sole discretion

9.2 Any changes required to the Contract by the Customer must be notified to the Council in writing no later than fourteen (14) calendar days prior to the commencement of the Hire Period. The Council, in its sole discretion, may agree to the Changes or may terminate this Contract.

## 10 PAYMENT

10.1 The Council shall raise an invoice for the Hire Charge and, if specified in the Order, the Bond and the Additional Charges four (4) weeks prior to the Hire Period.

10.2 Any sums payable by the Customer to the Council shall become due on the Due Date.

10.3 If any sum due by the Customer to the Council is not paid (in cleared funds) by the Due Date, the Council reserves the right (without prejudice to the Council's other rights and remedies) to:

- (i) terminate this Contract with immediate effect; or
- (ii) charge statutory interest on that sum in the manner prescribed by, and at the then prevailing rate specified in, the Late Payment of Commercial Debts (Interest) Act 1998.

## 11 BOND

11.1 Within forty-eight (48) hours following the end of the Hire Period, the Council shall inspect the Venue to ensure it has been returned to its original state including being adequately cleaned, free from damage, loss or other unauthorised alteration as a result of the Event.

11.2 If the Council, in its sole discretion, finds that the Venue:

- (i) is in its original state, the Bond shall be refunded to the Customer within a further thirty (30) days; or
- (ii) is not in its original state, the Council shall retain the Bond in order to clean the Venue and / or repair any such loss or damage (the "Repairs"). If the cost of the Repairs: (a) is less than the Bond, the Council shall refund the balance of the Bond to the r within thirty (30) days of completion of the Repairs; or (b) exceeds the Bond, the Customer shall indemnify the Council for all further costs and expenses for the Repairs.

## 12 CONFIDENTIALITY

12.1 Each party that receives ("Receiving Party") Confidential Information from the other ("Disclosing Party"), whether before or after the date of this Contract shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 12.2 or 12.3; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("Permitted Purpose").

12.2 The Receiving Party may disclose Confidential Information to its own officers, directors, employees contractors agents and advisers who reasonably need to know for the Permitted Purpose (each a "Permitted Third Party"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 12 of such Permitted Third Party as if

such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 12.

12.3 The terms of Clause 12.1 shall not apply to any information which:

- (i) is or becomes public knowledge other than by breach of this Clause 13; or
- (ii) is independently developed without access to the Confidential Information; or
- (iii) pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure pursuant to Clause 13.3; or
- (iv) is requested by a regulatory body, provided the Disclosing Party shall notify the regulatory body of the confidentiality of the Confidential Information and shall exercise any rights under the Law to limit the regulatory body's rights to publish or otherwise disseminate such Confidential Information.

## 13 FREEDOM OF INFORMATION

13.1 The Customer acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (collectively the "FOI Legislation") and shall assist and cooperate with the Council to enable the Council to comply with its disclosure obligations.

13.2 The Customer shall transfer to the Council all requests for information under FOI Legislation that it receives as soon as practicable and in any event within three (3) days of receiving a request for information or an apparent request under the FOI Legislation or ("FOI Request") and provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the FOI Request within the time for compliance set out in FOI Legislation. In no event shall the Customer respond directly to a FOI Request unless expressly authorised to do so by the Council.

13.3 The Customer acknowledges that the Council may, acting in accordance with the Law be obliged to disclose information without consulting or obtaining consent from the Customer, or despite having taken the Customer's views into account.

13.4 The Customer shall ensure that any documents that it considers may be partially or fully exempt from disclosure under the FOI are clearly marked indicating the basis of such exemption (whether "commercially sensitive" or otherwise). Notwithstanding the foregoing, the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOI Legislation.

## 14 DATA PROTECTION

14.1 Both parties shall comply with their respective obligations in respect of all relevant Data Protection Legislation in connection with this Contract.

## 15 CANCELLATION

15.1 The Customer shall be entitled to cancel the Order in writing prior to the Hire Period provided that if the Order is cancelled:

- (i) after the date of this Contract, but at least three (3) weeks prior to the commencement of the Hire Period, the Customer shall be liable for fifty per cent

- (50%) of the Hire Charges and Additional Charges paid and payable; or
- (ii) between two (2) and three (3) weeks prior to the commencement of the Hire Period, the Customer shall be liable for seventy five per cent (75%) of the Hire Charges and Additional Charges paid and payable; or
  - (iii) less than two (2) weeks prior to the commencement of the Hire Period, the Customer shall be liable for one hundred per cent (100%) of the Hire Charges and Additional Charges paid and payable,
  - (iv) each as payable in accordance with Clause 10.

## 16 TERMINATION

16.1 The Council shall be entitled to terminate this Contract at any time on written notice to the Customer if:

- (i) the Customer has failed to secure all necessary Authorisations prior to the Event Date and as required by Clause 8.1;
- (ii) the Council has reasonable grounds to believe that the safety of the participants or attendees of the Event may be at risk;
- (iii) the Council does not agree to the Customer seeking to vary the Contract in accordance with Clause 9;
- (iv) the Venue has been requisitioned for emergency purposes;
- (v) if an event of force majeure occurs (as described in Clause 19.1);
- (vi) the Customer commits a material breach of the terms of this Contract and fails to remedy such breach within: (a) ten (10) days of receipt of the Council's written notice specifying such breaches; or (ii) the Event Date, whichever is earlier; or
- (vii) the Customer commits a material breach of the terms of this Contract where such breach is incapable of remedy; or
- (viii) the Customer fails to pay any sums due under this Contract in accordance with Clause 10.2; or
- (ix) the Customer, being a company, shall pass a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction where the resulting entity is at least as credit-worthy as the Customer and assumes all of the obligations of the Customer under the Contract) or a court shall make an order to that effect; or the Customer, being a natural person, shall die, or (being a partnership or other unincorporated association) shall be dissolved; or if the Customer shall cease to carry on its business or substantially the whole of its business; or if the Customer becomes or is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or if a liquidator, receiver, administrator, administrative receiver, manager, trustee, or similar officer is appointed over any of the assets of the Customer.

16.2 If this Contract is terminated in accordance with Clause 16.1(i) – 16.1(v) the Council shall determine, in its sole discretion, whether it shall refund any sums paid by the Customer to the Council.

16.3 On termination of this Contract howsoever caused: (a) the rights and duties created by Clauses 10, 11, 12, 13, 15, 17 and 19 shall survive; and (b) any rights of either party which arose on or before termination shall be unaffected.

## 17 LIABILITY AND INDEMNITY

17.1 Neither party shall exclude or limit its liability for:

- (i) death or personal injury caused by its negligence; and / or
- (ii) fraudulent misrepresentation.

17.2 Subject to Clause 17.1, the Council shall not be liable for:

- (i) the death of or personal injury to any attendee of the Event; and / or
- (ii) any loss or damage to any goods brought in to the Venue by the Customer or an attendee of the Event.

17.3 The Council hereby excludes any implied condition or warranty concerning the fitness for purpose of the Venue, whether such condition or warranty is implied by statute or common law, or otherwise.

17.4 The Customer shall indemnify and keep the Council indemnified from and against any and all costs, losses and all other expenses incurred by the Council in connection with:

- (i) any breach of this Contract;
- (ii) returning the Venue to the state provided to the Customer at the commencement of the Hire Period; and
- (iii) any claims by any third party brought against the Council in connection with the Event.

17.5 The Customer shall:

- (i) carry insurance, including but not limited to public liability, employers' liability and occupier's liability insurance, with financially viable insurers of good repute against its liabilities under this Contract for a minimum of £5 million (five million pounds) per event or series of events;
- (ii) in addition to Clause 17.5 (i) the Customer shall comply with any request by the Contract Manager for the Customer to carry insurance in respect of any risks as may be identified by the Contract Manager and in such amounts as deemed sufficient by the Contract Manager;
- (iii) ensure that any performer, exhibitor, entertainer or other persons hired for the purposes of the Event shall carry insurance, including but not limited to public liability with financially viable insurers of good repute against its liabilities for attending the Event for a minimum of £5 million (five million pounds) per event or series of events;
- (iv) and in each case provide evidence of such cover to the Council by the Due Date or at any time on demand.

## 18 ASSIGNMENT AND SUB-CONTRACTING

18.1 The Customer may not assign any of the benefits of this Contract or transfer or sub-contract any of the burdens of this Contract without the prior written consent of the Council. This Contract will be binding on the successors of either party and on the assignees of the Council.

18.2 The Council shall be entitled to freely assign, transfer, delegate, and / or novate any or all of its rights and obligations under this Contract to any body that is statutorily appointed to fulfil any duties that the Council fulfils as at the date of this Contract.

## 19 GENERAL TERMS

19.1 Force Majeure. Neither party shall be in breach of this Contract to the extent that it is prevented from performing its duties and obligations under this Contract directly as a result of any event beyond its reasonable control including act of God, governmental regulation, fire, war, terrorist activity or civil commotion.

19.2 No Corruption. Neither the Customer nor any employee or agent of the Customer shall offer, give or agree to give to the Council, its staff or agents any inducement or reward for doing or refraining from doing or having done or refrained from doing any act in relation to the obtaining or execution of this Contract or any other agreement or for showing or refraining from showing any favour or disfavour to any person in relation to this Contract or any other agreement.

19.3 No Waiver. No failure or delay by either party to exercise any right, power or remedy shall operate as a waiver of that right, power or remedy nor shall any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

19.4 Capacity. Each party warrants and represents to the other that it has full authority power and capacity to enter into this Contract and that all necessary actions have been taken to enable it lawfully to enter into this Contract.

19.5 Entire Agreement. This Contract contains the whole agreement between the parties in respect of the Services and supersedes any prior written or oral agreement between them relating to the Services. the Council accepts liability for any representations which have become warranties in relation to this Contract and for any fraudulent misrepresentations made on its behalf but shall not be liable for any other representations including negligent misrepresentations.

19.6 Notices. The respective addresses for service of notices under this Contract shall be as specified in the Order and all notices and other communications under this Contract shall be made by hand, courier, or first class pre-paid mail (either recorded delivery or registered) and will be deemed to have been communicated upon the date of actual delivery, provided that the parties may agree to serve notices by ordinary first class pre-paid mail, fax and / or email.

19.7 Severance. Any provision of this Contract which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms hereof.

19.8 Remedies. No right or remedy conferred by either party is exclusive of any other right or remedy contained in this Contract or as the Law may provide, but each shall be cumulative of every right or remedy given in this Contract now or hereafter existing and may be enforced concurrently therewith or from time to time.

19.9 Third Party Rights. Except as otherwise provided in this Contract, the rights of any third party under this Contract, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, are hereby excluded.

19.10 Relationship. Nothing in this Contract shall constitute or imply, or be deemed to constitute or imply, any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Contract. Nothing in this Contract shall be deemed to constitute either party the agent of the other party, and neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

19.11 Counterparts. This Contract may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original.

19.12 Jurisdiction. This Contract shall be governed by the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.