

# Outdoor Fitness Terms and Conditions

## 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 Southwark and includes any person nominated to act as the Authority’s Representative such as the Park Manager.

“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.

“Code of Conduct” means the Outdoor Fitness Code of Conduct published on the Authority’s website

“Condition” means a clause 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;

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

“Licensee” means the individual or company named as the applicant in the Application

“Licence” means the Approved Application and these terms and conditions read together

“Licence Period” means the period described in condition 4.1

“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 parks and other open spaces named in the Approved Application

“PARQ” means pre activity readiness questionnaire

“Session” means one period of fitness training and/or instruction lasting for no more than 60 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

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

- A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the 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.

## Notices

- 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's Application must be Approved by the Authority before the Licensee or its Trainers will be entitled to conduct training sessions in the Park.

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

- 2.2.1 Completed the online application form in full;
- 2.2.2 Paid the applicable licence fee stated in the Outdoor Fitness Fees and Charges; and
- 2.2.3 Submitted all supporting documents required by the online application form (such documentation to be submitted for the Licensee and each Trainer).

2.3 Failure to comply with condition 2.2 shall entitle the Authority to reject the Licensee's licence application or, where the Licensee's Application has been Approved, 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, when approving an Application, or at any time during the Licence Period by giving written notice to the Licensee, to limit the Licensee's access to the Park.

2.6 Upon Approval of the Application the Authority will provide the Licensee with identification armband(s) /Photo IDs which the Licensee and Trainers must wear at all times 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 it and its Trainers carry and wear the identification issued at all times whilst carrying out training sessions. The Authority will charge a replacement fee of £20 (Inc VAT) for each replacement of the identifying armband. At the end of the Licence Period 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 subject to these terms and conditions and then only 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 any Trainer to carry out training sessions. The Park maybe closed without notice in extreme circumstances for example extreme weather or unforeseen events. No claim shall be considered under such circumstances.

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

### **3 Licence fee**

3.1 The Licence fee payable by the Licensee shall be:

3.2 Calculated in accordance with the charging matrix contained in the Outdoor Fitness Fees and Charges, together with VAT on such fee if applicable.

3.3 If a Licensee wishes to conduct group and individual training sessions it must apply for both types of licence and pay the relevant applicable charges for each.

3.4 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.

3.5 Where the Application is approved after the 1st April the Licence fee shall be reduced on a pro-rata basis.

### **4 Duration**

4.1 This Licence shall come into force on the Commencement Date and remain in force until 31<sup>st</sup> March in the following year, subject to earlier termination pursuant to condition 8.

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

### **5 Licensee obligations**

5.1 The Licensee and its Trainers will at all times 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 for the purpose of fitness training must be hand-held only; any equipment used or activities undertaken must not be detrimental to the Park, the Authority's Property or any wildlife.

5.3 The Licensee and its Trainers shall not use the Authority's Property for the purpose of fitness training.

5.4 The Licensee and its Trainers must not leave any equipment or rubbish in the Park following a training session and shall 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 the Licensee or its Trainers damage the Park or the Authority Property.

5.5 The Licensee and its Trainers must not cause any annoyance or nuisance or interfere with the reasonable enjoyment of the Park by others.

5.6 The Licensee and its Trainers must adhere to and comply with the Code of Conduct at all times 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, deck chair areas, long grass, meadow land, conservation areas etc.

5.7 The Licensee and its Trainers shall comply with all applicable byelaws, orders and local restrictions applicable to the Park..

5.8 This Licence does not allow or permit vehicle access into the Park. This condition does not prevent the Licensee or its Trainers from parking in any car park within the Park subject to local parking restrictions and the payment of any parking charges.

5.9 The Licensee and its Trainers shall not display, produce or distribute any sign or advertisement whilst within the Park except to clients undertaking training. The restriction of advertising applies to all boards, hoardings, flags, posters etc. displaying any organisation, company or brand name of any goods, including those of the Licensee, unless previously approved by the licensing officer. However the Licensee and its Trainers are permitted to wear branded clothing as part of a uniform if they so wish. Any proposed use of the Authority's logo by the Licensee or its Trainers is subject to Approval by the Authority and, where such Approval is given, the Authority's logo may only be used in

connection with licensed fitness activities in the Authority's parks. The Authority retains all intellectual property rights in its name and brand mark.

5.10 Any music played within the Park must not be at such a level as to cause a nuisance to other users of the Park or properties neighbouring the Park and the Licensee must have the appropriate Performing Rights Society licence to play music.

5.11 The Licensee and its Trainers must not collect monies/fees from his clients whilst in the Park.

5.12 The Licensee and its Trainers are not permitted to distribute business cards whilst in the Park.

5.13 For the purposes of this Licence, one training Session shall be a period of fitness training and/or instruction lasting for no more than 60 minutes OR until there is a change of participants (whichever is the earlier or occurs first). If any training Session continues beyond the said 60 minute limit or after there has been a change of participants, the Licensee (or as the case may be, Trainer) will be deemed to be conducting another training Session for the purposes of this Licence. If the Licensee wishes to conduct Fitness Camps it must seek Approval from the Authority to do so prior to any such arrangements being made, carried out or advertised, and all proposed dates, times and locations shall be subject to Approval by the Authority. Additional charges may apply for such Fitness Camps.

5.14 The Licensee and its Trainers must not conduct more than the number of weekly training sessions indicated in the Approved Application.

5.15 The Licensee and its Trainers must not conduct training sessions outside the times and days of the week indicated in the Approved Application (where the Approved Application contains such details).

5.16 The maximum group size for training sessions conducted pursuant to this Licence is the group size indicated in the Approved Application and must not be exceeded.

5.17 The Licensee and its Trainers must not deliver fitness training in a style that deviates significantly from the training style indicated in the Approved Application (where the Approved Application contains such details).

5.18 This Licence only entitles the Licensee and its Trainers to deliver fitness training in the named Parks and does not authorise the Licensee or its Trainers to deliver fitness training at any other locations.

5.19 Each party to this Licence 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.

5.20 While on the Park, the Licensee and its Trainers shall comply with any health and safety measures implemented by the Authority in respect of users of the Park.

5.21 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.

5.22 The Licensee shall complete a PARQ to ensure that participants are able to join in the session and shall supply a sample copy along with the application form.

## **6 Independent Operator**

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

## **7 Indemnity & Insurance**

7.1 The Licensee shall throughout the Licence Period maintain public liability insurance of not less than two million pounds (£2,000,000) however a five million (£5,000,000) level is considerably preferred. Such insurance must cover any employees of the Licensee who will be engaged in delivering training sessions connected to this Licence. The Licensee shall ensure that any subcontractors engaged in delivering training sessions connected to this Licence hold public liability insurance that is equivalent to or greater than the levels of insurance required of the Licensee unless such subcontractors are covered by the Licensee's public liability policy. Copies of insurance

documents must be submitted with the Application and a copy of the current policy or policies 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 or any Trainer 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 its 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 7.4, 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 or any Trainer:

- 8.1.1 Is in breach of 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 requiring the Licensee to remedy the breach;
- 8.1.2 Commits a breach of this Licence that is incapable of remedy;
- 8.1.3 Commits a material breach of this Licence;
- 8.1.4 Repeatedly breaches this Licence; or
- 8.1.5 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 for convenience by giving the Licensee 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 Where the Authority terminates this Licence under condition 8.2, the Authority shall reimburse the fee on a pro-rata basis for the remaining duration of the Licence Period but shall not be obliged to pay any compensation to the Licensee for any outlay or anticipated revenues or profits connected to this Licence.

8.5 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.

8.6 For the avoidance of doubt, following termination of this Licence by either party, the Licensee and its Trainers 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).

## **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 No Tenancy and No Assignment**

12.1 This Licence does not nor is intended to confer any legal or other tenancy estate or interest in respect of the Park.

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.

## **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.