

Licenced Fitness Operator Terms and Conditions

1. Definitions

In these terms and conditions the following terms shall have the following meanings:

“Council” means the Mayor and Burgesses of the London Borough of Ealing

“Parks” means all sites in Ealing Borough covered by the 2000 byelaws relating to pleasure grounds, public walks and open spaces plus Warren Farm Sports Ground and such other open spaces as the Council may agree in writing;

“Registrant” means the individual or organisation to be Registered as named in the Registration Application Form;

“Registration” means registration by the Council as permitted to carry out Training Session in the Parks during the Registration Period and “Registered” shall be interpreted accordingly;

“Registration Application Form” means the application form to which these terms & conditions are attached.

“Registration Fee” means the registration fee payable by the Registrant;

“Registration Period” means Annual permits for the period from 1st April to 31st March. Summer permits for the period from 1st April to 30th September. Winter permits for the 1st October to 31st March. (Or such other date as shall be agreed with the Council)

“Events Team” means the Council’s Festivals and Events department;

“Trainer” means an individual who is to carry out Training Sessions in accordance with the Registration;

“Training Session” means a training session carried out by a Trainer for which a charge is made to the client.

2. Registration

2.1. All Trainers, or the Registrant who engages them, must be Registered with the Council in order to carry out Training Sessions in the Parks.

2.2. In order to be Registered, the Registrant must:

2.2.1. complete the Registration Application Form;

2.2.2. pay the Registration Fee; and

2.2.3. where the Registrant is an individual Trainer,

2.2.3.1. have a current REPS Level 3 Fitness qualification;

2.2.3.2. Evidence of this should be presented with the Registration Application Form;

2.2.3.3. be able to demonstrate that (s)he complies with the insurance requirements set out in paragraph 6;

2.2.3.4. provide 2 recent passport sized photographs with the Registration Application.

2.2.3.5 provide a current DBS (formally CRB) certificate

2.3. Where the Registrant is an organisation, it must:

2.3.1. ensure that all its Trainers have a current REPS Level 3 Fitness qualification;

2.3.2. comply with the insurance requirements set out in paragraph 6 and ensure that all its Trainers are covered by such insurance;

2.3.3. provide evidence of its compliance with paragraphs 2.3.1 and 2.3.2 to the Council upon request.

2.4. For the avoidance of doubt, failure to comply with the provisions of paragraph 2.3 shall entitle the Council to terminate this Agreement in accordance with paragraph 8.1.

2.5. The Council shall be under no obligation to accept an application from a Registrant to be Registered.

2.6. The Council reserves the right, when granting the Registration, or at any time during the Registration Period by giving written notice to the Registrant, to limit the Registration to named Parks.

2.7. Upon Registration the Council will provide the Registrant with an identification card(s) which the Trainer(s) must carry at all times whilst carrying out Training Sessions in the Parks and produce upon request by any officer or agent of the Council. It is the Registrant’s responsibility to ensure that its Trainers carry the identification card(s) issued at all times whilst carrying out Training Sessions under this Agreement.

2.8. Following Registration the Registrant/its Trainers may carrying out Training Sessions in any of the Parks during normal opening hours as shall be agreed between the Trainer and the Council and notified to the Trainer by the Council in writing.

2.9. The Registrant acknowledges that:

2.9.1. Registration does not guarantee that the Park will open or that there will be space in the Park for Trainer(s) to carry out Training Sessions.

2.9.2. Registration does not grant a Trainer priority over any other lawful user of the Park and that any pitch bookings or booked group activities will take priority over Training Sessions and the Trainer is expected to relocate if a conflict of interest occurs.

3. Registration Fee

3.1. The Registration Fee payable by the Registrant shall be:

3.1.1. £300 per annum where the Registrant is an individual carrying out Personal Training, £225 for Summer permits and £150 for Winter permits;

3.1.2. Where the Registrant operates Group Training the charges will be calculated as per the maximum attendance of each session and the cost to each attendee of the session. This is dependent on the time of year in line with the registration period; Annual, Summer or Winter.

Refer to Fitness in Parks Rates and Charges policy for further details.

4. Duration

4.1. Subject to paragraph 8.1, this Agreement shall continue until the end of the Registration Period. Upon expiry of this Agreement the Registrant may reapply to the Council for re-registration

5. Registrant's Obligations

5.1. The Registrant shall, and shall ensure that its Trainers shall at all times exercise the rights and duties under this Agreement in a proper and responsible way, having regard to the safety of users and other third parties. Any incidents, accidents or health and safety issues must be reported to the Events Team immediately and the relevant accident/incident forms completed.

5.2. Any equipment used or activities undertaken must not be detrimental to the Park, its trees and plants, the park furniture or any of the wildlife.

5.3. The Registrant must not, and shall ensure that its Trainers do not, leave any equipment and rubbish in the Park following a Training Session and shall ensure that the Park is left in the same condition as it was found. The Council reserves the right to charge the Registrant 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 Registrant or its Trainer(s).

5.4. The Registrant shall, and shall ensure that its Trainer(s), observe and perform all reasonable requirements of the Council relating to this Agreement.

6. Insurance and Liability

6.1. The Registrant shall, throughout the Registration Period maintain public liability insurance of not less than five million pounds (£5,000,000). Copies of the insurance documents shall be presented to the Council upon request.

6.2. The Registrant shall be liable for and indemnify and keep indemnified the Council against all liabilities, damages, costs, losses, claims, demands or proceedings whatsoever, whether in tort or contract or otherwise arising from or in connection with this Agreement, or caused by a breach by the Registrant or its Trainer(s), its employees and agents of the terms and conditions of this Agreement.

6.3. The Council accepts no liability to the Registrant, Trainer or to any third party for any costs, claims, damages or losses other than for personal injury or death caused by the Council's negligence.

7. Assessment and Monitoring

7.1. The Council may carry out assessments of the Registrant and/or its Trainers' ability at mutually agreed times throughout the Registration Period. Spot checks may also occur throughout the Registration Period. The Registrant is required to keep a record of any complaints made to him/her concerning or in connection with any Training Sessions held in the parks under this Agreement and must immediately notify the Events

Team of any such complaint and keep the record of complaints available for inspection.

8. Termination of Agreement

8.1. The Council may revoke the Registrant's Registration and terminate this Agreement with immediate effect where the Registrant and/or its Trainer(s):

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

8.1.2. becomes incapable for any reason of efficiently performing as a competent and qualified personal trainer.

8.1.3. acts in any way that is likely to bring the Council into disrepute or damage its reputation or interests.

8.2. The Council may terminate this Agreement giving one week's written notice.

8.3. Where the Council terminates this Agreement under paragraph 8.1 the Registrant shall not be entitled to receive any refund of the Registration Fee.

8.4. Where the Council terminates this Agreement under paragraph 8.2, the Council shall reimburse the Registration Fee on a pro-rata basis for the remaining duration of the Registration Period.

8.5. For the avoidance of doubt, following termination of this Agreement by either Party, the Registrant, and its Trainers shall no longer be Registered

9. General

9.1. Nothing in this Agreement shall render or be deemed to render the Registrant or any Trainer an employee or agent of the Council.

9.2. Neither Party shall be liable for any delay in the delivery in performing any of its obligations under this Agreement if any such delay is caused by circumstances beyond the reasonable control of the Party so delaying.

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

9.4. Pursuant to the Freedom of Information Act 2000 the Council is subject to certain legal obligations in relation to public disclosure of information. The Registrant shall cooperate with and assist the Council with any requests for disclosure which the Council receives under the Freedom of Information Act 2000 which relate to this Agreement.

9.5. Nothing in this Agreement shall be taken to confer any benefit on any person who is not a party to it and the parties hereby agree that the Contracts (Rights of Third Parties) Act 1999 does not apply hereto.

9.6. Nothing in these terms and conditions shall fetter the Council in the exercise or discharge of its functions, powers and duties as a local authority (including, without limitation, the power to close all or part of any Park either on a permanent or temporary basis.)

9.7. Nothing in this Agreement shall create any tenancy in favour of the Trainer.

10. Disputes

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

10.2. Disputes remaining unresolved following such endeavours shall, if the parties agree (and such agreement shall not be unreasonably withheld) be referred to nonbinding mediation.

10.3. In the event that the parties do not agree to non-binding mediation pursuant to Clause 10.2 or if the dispute remains unresolved, the dispute shall be referred to the exclusive jurisdiction of the Courts of England pursuant to clause 11 below.

11. Law and Jurisdiction

11.1. This Agreement shall be governed by and construed in accordance with English Law and the Council and the Registrant hereby submit to the exclusive jurisdiction of the English Courts.

