



Twyford Parish Council

Outdoor Fitness Training Licence Terms & 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 reasonable direction issued by the Authority.

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

"Authority" means the Twyford, Hampshire, Parish Council.

"Authority's Property" means all structures, including trees, playground equipment, furniture and all other such items located within the Park.

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

"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.

"Park" means Hunter Park, Park Lane, Twyford, SO21 1QS or any other park named in the Approval.

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

"Client" – a person participating in a training session supervised by the Trainer.

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 are for ease of reference only and shall not affect the interpretation or construction of these Terms & Conditions;
- references to Conditions are references to Conditions in the section of the Terms & 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 confirms written receipt of notification of different contact details

2. Registration

2.1 The Licensee and any Trainers must be Approved by the Authority in order to carry out training sessions in the Park.

2.2 In order to be Approved, the Licensee must:

- a) Completed the online application form in full.
- b) Pay the licence fee.
- c) Provide evidence of:
 - Current REPS level 3 fitness qualifications.

- Current public liability insurance a minimum of £2million, but a preferred £5m, 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.
- A current risk assessment, signed and dated.
- First Aid provision and a process for accident reporting.
- **Enhanced DBS check if training children or vulnerable adults.**

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 The Licensee and or Trainer must possess a copy of the Approval whilst carrying out training sessions in the Park and produce it upon request by any officer or staff of the Authority.

2.7 Following Approval, 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 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 Trainer shall relocate if a conflict of use 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 any VAT on such fees.

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

3.1.3 Payment for the Licence can be made for individual month periods during which the Licensee wishes to operate.

3.1.4 Licence fee payments must be made in advance.

4. Duration

Subject to Condition 8, this Licence shall continue until the end of the Licence Period, upon expiry 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 ensure that its Trainer 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 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 shall ensure that the Authority's Property is not used for the purpose of fitness training unless it is specifically designated for such use.

5.4 No Trainer shall 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 Trainer.

5.5 Trainers shall not cause an annoyance or nuisance or interfere with the reasonable enjoyment of other persons using the Park.

5.6 Trainers shall adhere to and always comply with the Authority's Code of Conduct whilst conducting training sessions within the Park.

5.7 Every Trainer shall comply with Twyford Parish Council rules as stated on the main Park entrance signboard and at locations around the Park. 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 Trainers from parking in any car park space 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 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. Trainers are permitted to wear branded clothing as part of a uniform if they so wish.

5.10 Trainers must not play any amplified music whilst in the Park.

5.11 Trainers must not collect monies/fees from clients whilst in the Park.

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 practical after they become aware of the hazard.

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 Authority's Property and if requested by the Authority shall provide a copy of the incident investigation report.

6. Independent operator

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 not less than two million pounds (£2,000,000) however 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 Authority 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 the Authority's discretion may consider reasonable and it may in the Authority's 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 Trainer:

8.1.1 Is in breach of their 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 by 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 Where the Authority terminates this Licence under condition 8.2, the Authority shall refund the Licence fee on a pro-rata basis for the remaining duration of the Licence Period but without paying any compensation for any outlay made by the Licensee in connection with this Licence.

8.5 The Licensee must give not less than one week'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/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).

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 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 Park for approval by The Authority. Use of The Authority's logo is by permission only and can only be used in connection with licensed fitness activities in Park. The Authority retains all Intellectual Property Rights in its name and brand mark.