

## Terms for the granting of permission to use part of the council's park premises

### 1. Definitions

Activity	means the activity set out in the Application Form
Application Form	means the form completed to apply for the Permission granted by these Terms
Byelaws	means Byelaws made by Bristol City Council in respect of the Site
Code of Conduct	means the document issued by the Council setting out behavioural expectations of the Operator and its Representatives when using the Site, as amended from time to time, as annexed to this agreement.
Commencement Date	means the date shown of the email to which these Terms are attached
Contract Manager	means the person notified under Clause 8, their replacement or nominated deputy
Contract Period	means the period of twelve months beginning on the Commencement Date (or any anniversary of the Commencement Date) and ending at midnight on the day before that anniversary.
Fee	means the fee shown in the email to which these Terms are attached
Force Majeure Event	war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Contractor's Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided;
Information Laws	means the Freedom of Information Act 2000 (FoIA), the Environmental Information Regulations 2004 (EIRs), and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time
Data Protection Legislation:	Means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003, as amended (and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party).
Operator	means the person named as such on the Application Form
Operator's Assets	means the equipment, vehicle, plant and materials referred to in Clause 8.1

Operator Default	Means any of the following events: (a) of a material breach of any of the Operators obligations under these Terms; (b) an assignment of this Agreement in breach of clause 21 (Assignment and Sub-Contracting); (c) breaches any of its obligations under clause 10 (Insurance); (d) commits a breach that results in material damage to the reputation of the Council;
Permission	means the permission granted on these Terms to use the Council's land in a way which would otherwise be a breach of the applicable Byelaws;
Prohibited Act	(a) corruptly offering, giving or agreeing to give to any person an inducement or reward in respect of this or any other Council contract (even if the Contractor does not know this has been done); (b) showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Council; (c) committing any offence under the Bribery Act 2010; or (d) committing an offence under sub-section (2) of Section 117 of the Local Government Act 1972
Representatives	means any employee, partner agent or any other person engaged with by or on behalf of the Operator to provide the activity
Site	means the area of the Council's property indicated on the email to which these Terms are attached
Termination Date	means the date twelve months after the Commencement Date or such later date as the Council may agree.

**1.1 In these Terms:**

- 1.1.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa
- 1.1.2. a reference to a clause, schedule, section, part or appendices is a reference to a clause, schedule, section, part or appendices within this Agreement unless expressly stated otherwise;
- 1.1.3. 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 amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.1.4. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees.

1.1.5. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and clause headings and notes are for ease of reference only and do not affect the interpretation of this Agreement.

## **2. Purpose**

- 2.1** The Council permits the Operator to carry out the Activity on the Site in consideration of the Fee.
- 2.2** The Operator shall carry out the Activity in accordance with the Terms of these Terms, including, where appropriate any guidance issued by the Council in respect of the Site. Failure to abide by these Terms may result in Termination of the Permission as set out in Clause 19 but may also result in Prosecution under the Byelaws applicable to the Site.
- 2.3** The Operator shall be responsible for the conduct and compliance of all personnel acting in its behalf at the Site(s). The Operator shall ensure that each such person has been made aware of the Terms of this agreement and the applicable Code of Conduct and complies fully with the same.
- 2.4** The Operator shall provide, on request, a list of individuals authorised to deliver the Activity at each Site covered by this agreement and notify the Council in writing of any changes.
- 2.5** The permission granted under this agreement does not confer any right of exclusive use or occupancy of any part of the Site. The Operator acknowledges that the Site is a public space and may be accessed and used by other individuals, groups or organisations at any time. The Council reserves the right to allow others to use the Site concurrently and to restrict access to where necessary for maintenance, events, or other operational reasons.
- 2.6** Only those individuals identified in the list provided under this agreement shall be permitted to deliver the Activity at the specified Site(s), and only for the purposes and at the locations authorised under this agreement.

## **3. Capacity Limits**

### **3.1 “Outdoor Activity Providers”**

The Operator shall ensure that all outdoor group activities adhere to the following capacity limits:

- a) A maximum instructor-to-attendee ratio of 1:20 shall apply at all times;
- b) Activities involving more than 20 participants shall require the presence of additional licensed instructors to maintain the 1:20 ratio;
- c) The total number of participants (including instructors) must not exceed 49 persons at any time, in accordance with the Council’s event permission threshold.

### **3.2 “Dog Walkers”**

The Operator shall ensure that all dog walking activities adhere to the following capacity limits:

- a) A maximum walker-to-dog ratio of 1:4 shall apply;
- b) No group shall comprise more than four (4) dogs in total at any one time, regardless of the number of walkers present.

- c) The Council reserves the right to review and amend these limits by giving not less than [thirty] (30) days' written notice to the Operator where required to comply with public safety, park capacity or policy considerations.

#### **4. Payment**

- 4.1** The Operator shall pay to the Council the Fee in accordance with the provisions of this Clause 4 within 30 days of the receipt of an invoice for the Fee set out in the email to which these Terms are attached.
- 4.2** The Operator shall pay to the Council any applicable VAT at the prevailing rate, as shown on the tax invoice referred to in Clause 4.1.
- 4.3** Failure to pay the Fee in accordance with Clause 4.1 shall be an Operator Default.
- 4.4** Interest is due on any invoiced sums not paid in accordance with Clause 4.1 at the annual rate of 2% over the daily base lender rate from time to time of Barclays Bank plc applicable in England.

#### **5. Necessary Consents**

- 5.1** The Operator shall ensure that all Necessary Consents are in place to provide the Activity, and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same. The Council grants this permission in respect of the Site and Activity only. No other licence, permission or authority is granted to the Operator by these Terms.
- 5.2** Permission under these Terms only applies to the use of the Site. Where any licence consent or other authority is required from the Council then that must be obtained separately and any appropriate fee paid.

#### **6. Liaison**

- 6.1** Each Party shall nominate one or more individuals as points of contact for all matters relating to this Agreement. The initial details of those individuals are set out in the email to which these Terms are attached. Each Party may notify the other of a change in the details of the individual nominated under this Clause in writing as soon as any change is made.

#### **7. Variations to these Terms**

- 7.1** The Council may vary these Terms at any time after giving no less than thirty (30) days' written notice to the Operator. No variation shall vitiate these Terms.

#### **8. Health & Safety**

- 8.1** The Operator and its Representatives shall comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work Regulations 1999, and all other health, safety and welfare requirements applicable to the Activity.
- 8.2** As soon as practicable following a request by the Council's Contract Manager, the Operator shall provide substance data sheets setting out as a minimum details of any hazards associated with products used in providing the Activity.
- 8.3** The Operator shall have overall responsibility for ensuring that all health and safety matters concerning the Agreement are dealt with in accordance with its own health and safety policies and will provide a copy of those policies to the Council.
- 8.4** Without prejudice to Clause 22 (Termination), the Council shall be entitled to suspend the provision of the Activity where the Operator fails to comply with this clause 8.

- 8.5** Where the Council has exercised its powers under clause 8.4 the Operator shall not resume provision of the Activity until the Council's Contract Manager is satisfied that such non-compliance has been rectified, and the Council shall not incur any liability for any such suspension of the Activity.
- 8.6** The Operator shall:
- 8.6.1. conduct the Activity so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Council's employees and its Representatives;
  - 8.6.2. accept primary responsibility for all aspects of health and safety at the Site, in relation to provision of the Activity at the Site.
- 8.7** The Operator shall be solely responsible for the proper supervision of the Activity and shall refuse to allow the Activity to be carried out if it reasonably considers that the provision of the Activity will expose any person to a serious risk of danger. The Operator may be required to demonstrate to the satisfaction of the Council's Contract Manager that it has taken all reasonable steps to undertake the Activity safely.
- 8.8** Whilst on the Site the Operator shall ensure that its Representatives observe any local arrangements for fire, hygiene, safety and security, and shall comply with the lawful requirements of the Council's Contract Manager. Failure to comply with such requirements shall be an Operator Default.
- 9. Compliance with Code of Conduct**
- 9.1** The Operator and its Representatives shall at all times comply with the Code of Conduct issued by the Council, as amended from time to time. The Council may update the Code of Conduct by providing not less than [thirty?] (30) days' written notice to the Operator. The updated Code of Conduct shall take effect from the date specified in the notice.
- 9.2** Breach of the Code of Conduct (as updated from time to time) shall constitute an Operator default for the purpose of this agreement.
- 10. The Site**
- 10.1** The Operator shall be responsible at its own cost for providing all equipment, vehicles, plant and materials necessary and/or used for the proper and efficient provision of the Activity at the Site.
- 10.2** The Operator shall maintain all Operator's Assets in a safe condition so that they are fit for the purpose of providing the Activity and as a minimum comply with any manufacturers' servicing and maintenance requirements.
- 10.3** The Operator shall keep, operate, prepare and use all Operator's Assets with due regard for fuel economy and energy saving, in a safe manner and under proper control, which shall include clearly and accurately labelling containers to indicate their contents and shall ensure that its Representatives are properly instructed in such matters.
- 10.4** The Operator shall:
- 10.4.1. be responsible for the security of all Operator's Assets used in connection with the Activity and the Council shall not (as far as permitted by law) be liable for loss, damage or injury in respect of the same;
  - 10.4.2. ensure that on the termination of this Agreement (for whatever cause) any of the Operator's Assets stored or remaining on the Site are removed from the same.
- 10.5** The Operator shall have access to and use of the Site only to the extent as set out in this Agreement.

- 10.6** The Operator shall comply with any reasonable directions of the Council's Contract Manager or any other representatives of the Council regarding security arrangements, vehicular access arrangements, parking instructions and/or procedures at the Site.
- 10.7** The Operator shall only make use of the available utilities at the Site to a reasonable extent; such level to be determined by the Council's Contract Manager. Any unreasonable or excessive use of utilities shall give rise to a right for the Council to estimate the costs incurred through the usage and charge the Operator accordingly.
- 10.8** The Operator shall make good any damage to the Site or any surrounding area caused by the Activity in excess of reasonable fair wear and tear.
- 10.9** The Council shall be responsible for any Environmental Liability arising from or in relation to the Site except to the extent that such liability arises from any act, omission, default or negligence of the Operator.
- 10.10** The Council or its representatives shall be entitled to refuse entry or evict from the Site any vehicle or persons where it reasonably considers that such vehicles and/or persons are unsafe or are likely to cause damage or injury to or constitute a breach of Law or the Council's health & safety policy.
- 10.11** The Operator shall ensure that:
- 10.11.1. where using the Site and any equipment provided by the Council that they are kept properly secure and will comply and cooperate with any reasonable directions from the Council regarding the security of the same;
  - 10.11.2. any materials, plant or equipment owned or held by the Council ("**Council Assets**") and used by the Operator are maintained (or restored at the end of the Contract Period) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Site unless expressly permitted under the Contract or by the Council' Contract Manager.
- 10.12** The Council shall maintain and repair the Council Assets, however where such maintenance or repair arises directly from the act, omission, default or negligence of the Operator or its Representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining/repairing the same shall be recoverable from the Operator as a debt.
- 10.13** The Operator shall immediately inform the Council of any defects, loss or damage appearing in or occurring to any Council Assets as a result of the provision of the Activity.
- 10.14** Where the Operator is provided with keys or security cards to access the Site ("**Keys**"), a designated person must retain the Keys, and contact details of such person must be provided to the Council.
- 10.15** The Operator shall be responsible for the safe custody of the Keys and ensure that they are returned to the Council at the end of the Contract Period or as reasonably requested.
- 10.16** The Operator shall immediately report the loss or misplacement of any Keys to the Council. Where the Operator loses or damages any Keys, the Council may replace such Keys and arrange for the replacement of locks, forcing and subsequent replacement of doors/gates (as appropriate), and the Council's costs in dealing with the same shall be recoverable from the Operator as a debt.
- 10.17** The Council shall be entitled to access the Site at all times during the Contract Period for the purpose of inspecting the Sites and systems and procedures used by the Operator to provide the Activity.

## **11. Indemnities**

**11.1** The Operator shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:

11.1.1. any claim by a third party for damage occurring as a result of the Activity;

11.1.2. any breach of Law or Necessary Consents;

11.1.3. to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or Law by the Council or its Representatives (excluding the Operator).

## **12. Insurance**

**12.1** The Operator shall at its own cost take out and maintain the insurances listed at clause 10.2 (the “**Required Insurances**”) and any other insurances required by Law with reputable insurers who are authorised by the Financial Conduct Authority (FCA) to conduct insurance business or equivalent.

**12.2** The Required Insurances referred to above are:

12.2.1. public liability insurance that is adequate for the Operator’s business activities, with a limit of indemnity of not less than one million pounds (£1,000,000) in relation to any one claim arising from the Activity; and

12.2.2. where the Operator has any employees, employer’s liability insurance that is adequate for the Operator’s business activities, with a limit of indemnity of not less than one million pounds (£1,000,000) in relation to any one claim arising from the Activity;

**12.3** The Required Insurances must remain in place for the Contract Period and be effective in each case not later than the Commencement Date.

**12.4** As and when reasonably required in writing by the Council, the Operator shall provide the Council with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Council that the requirements of this clause 10 are being met.

**12.5** Neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.

## **13. Council Liability**

**13.1** Subject to clause 13.2, the Operator acknowledges that the Council and its Representatives shall not be liable to the Operator in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this Agreement or not).

**13.2** Clause 13.1 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under Law.

## **14. Limitation of Liability**

- 14.1** Neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with this Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
- 14.2** Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
- 14.3** Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- 14.3.1. fraud or fraudulent misrepresentation by it or its employees; or
  - 14.3.2. death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or
  - 14.3.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 ; or
  - 14.3.4. any other act or omission, liability for which may not be limited or excluded by Law.

## **15. Warranties and Representations**

- 15.1** The Operator warrants and represents that:
- 15.1.1. it has the full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and perform its obligations set out in these Terms;
  - 15.1.2. there are no material facts relating to the Activity which have not been disclosed to the Council might reasonably have been expected to affect the decision of the Council to permit the Activity on it land; and
  - 15.1.3. it has not committed any Prohibited Act in entering being granted this permission.
- 15.2** Each of the parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Contract save for any such representation, warranty or undertaking expressly set out in the Contract. This clause 15.2 shall not apply so as to restrict the liability of any party hereunder in respect of any fraud or fraudulent misrepresentation.

## **16. Confidentiality**

- 16.1** Subject to clause 16.2, each party shall treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written consent of the disclosing party and not use or exploit the disclosing parties Confidential Information in any way except for the purposes anticipated under the Agreement.
- 16.2** Clause 16.1 shall not apply to any disclosure of information:
- 16.2.1. required by Law, including the Information Laws;
  - 16.2.2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Contract;
  - 16.2.3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 16.1;

- 16.2.4. by the Council of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;
- 16.2.5. to enable a determination to be made under Clause 21 (Dispute resolution);
- 16.2.6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 16.2.7. by the Council, or any department, office or agency of the Government;
- 16.2.8. by the Council relating to this Agreement and in respect of which the Contractor has given its prior written consent to disclosure;
- 16.2.9. On a confidential basis, to its professional advisors;
- 16.2.10. On or before the Expiry Date the Operator shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of the Council's Representatives or the Premises including any documents in the possession, custody or control of any sub-contractor, are delivered up to the Council or securely destroyed.

## **17. Data Protection**

- 17.1 The Operator shall (and shall procure that any of its Representatives involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

## **18. Freedom of Information**

- 18.1 The Operator acknowledges that the Council may be required under FoIA or EIRs to disclose information without consulting or obtaining consent from the Operator. The Council shall take reasonable steps to notify the Operator of a request for information to the extent that is permissible and reasonably practicable for it to do so but, notwithstanding any other provision in the agreement, the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with FoIA or the EIRs.

## **19. Personnel**

- 19.1 The Operator shall ensure that all individuals employed or engaged by it in connection with the Service:
  - 19.1.1. have an appropriate valid disclosure check undertaken through the Disclosure and Barring Service if they have contact with children or vulnerable adults in connection with the Activity; and
  - 19.1.2. are of suitable character and are appropriately qualified and experienced in the area of work which they are to perform and are not under the age of 16; and
  - 19.1.3. are adequately supervised and informed of the aspects of this Agreement applicable to them so that they can comply with it;
  - 19.1.4. possess such qualifications, skills and experience as are necessary for the proper conduct of the Activity;
  - 19.1.5. are appropriately attired for the duties they are undertaking including, (where necessary) wearing protective clothing and footwear;
  - 19.1.6. disclose their identity on request to the Council or any third party;

- 19.1.7. act in a courteous and considerate manner and do not use foul or offensive language, bring offensive materials onto or consume intoxicating liquor or illegal drugs or smoke whilst on the Site or conducting the Activity;
- 19.2** The Council may require the Operator, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of the Activity any of the Operator's Representatives specified by such notice. Where required the Operator shall forthwith remove such employees from the provision of the Activity. Any employee removed from work under the provisions of this clause 19.2 may not be employed subsequently in the provision of the Service without the written consent of the Council's Contract Manager.
- 19.3** The Council shall not be liable either to the Operator or to any Representatives in respect of any liability loss or damage occasioned by the operation of clause 19.2.
- 20. Equal Opportunities, Human Rights and Equality and Diversity**
- 20.1** The Operator shall have in place an equal opportunities policy. This policy must specify that the Operator will not treat anyone less favourably on the grounds of their colour, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, age or because they have a disability. The policy must also specify that the Operator will not tolerate behaviour, which is inconsistent with it, and detail the measures it will take if this occurs.
- 20.2** In the provision of the Activity and in its dealings with service users, Council employees and members of the general public, the Operator shall comply and shall ensure that its Representatives comply with the Human Rights Act 1998 as if the Operator were a public body, and all Laws relating to equal opportunities.
- 20.3** The Operator shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.
- 20.4** The Contractor shall perform its obligations under the Agreement in accordance with:
- 20.4.1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- 20.4.2. the Council's equality and diversity policy as provided to the Operator from time to time; and
- 20.4.3. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law; and
- 20.4.4. take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).
- 21. Dispute Resolution**
- 21.1** If any dispute arises out of or in connection with the Contract, the parties shall promptly notify each other of the matter in dispute ("Dispute"), which shall in the first instance be referred to the Contract's Managers who shall use all reasonable skill, care and diligence to ensure that they receive the views of all parties and considers all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.
- 21.2** Where the Contract's Managers do not achieve within 14 days of notification of a Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, then senior representatives of both parties shall meet promptly,

and in any event within 21 days of notification of the Dispute, in good faith to discuss and seek to resolve the Dispute.

**21.3** The payment of the Fee shall not be affected or suspended in the event of and during any Dispute, unless the Dispute directly relates to the Fee or invoiced amounts.

**21.4** Nothing in this clause 21 shall prevent either party from exercising their rights through the Courts in respect of any dispute.

## **22. Termination**

**22.1** Expiry:

22.1.1. This Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of these Terms. For the avoidance of doubt the Operator shall not be entitled to any compensation on expiry.

**22.2** Termination by the Council:

22.2.1. Termination without cause:

The Council shall have the right to terminate this Agreement at any time by giving three months' written notice (not to be terminated unreasonably) to the Operator.

22.2.2. Termination for cause:

The Council shall have the right to terminate this Agreement at any time by giving one months' written notice to the Operator;

22.2.2.1. if an Operator Default occurs; or

22.2.2.2. if a Force Majeure Event endures for a continuous period of more than 90 days.

**22.3** The notice required under Clause 22.2.2 will specify:

22.3.1. the type and nature of the Operator Default that has occurred; and

22.3.2. that permission will terminate on the day falling 30 days after the date the Operator receives the notice unless, if the Operator Default is one which in the reasonable opinion of the Council is remediable the Operator remedies the Default within 14 days of the date of the receipt of that notice.

**22.4** If the Operator either remedies the Operator Default within the time period specified in the Notice or implements a remediation programme in accordance with its Terms, the Termination Notice will be deemed to be revoked, and the Contract will continue.

**22.5** if the Operator becomes Insolvent, then in any such circumstance the Council may, without prejudice to any accrued rights or remedies under this Agreement, terminate this Agreement forthwith by written notice with immediate effect.

**22.6** If a the Operator or any of its Representatives, commits a Prohibited Act not acting independently of the Operator, then the Council may without prejudice to any accrued rights or remedies under this Agreement, terminate it forthwith by written notice having immediate effect.

**22.7** If a Force Majeure Event prevents either party from performing its obligations under this Agreement in any material respect for a period of three (3) consecutive months then, either party may terminate this agreement by notice in writing to the other party having immediate effect.

- 22.8** Where this Agreement is terminated:
- 22.8.1. the permission to use the Site shall determine:
  - 22.8.2. the Operator shall remove any equipment it has brought onto the site and cease to provide the Activity on Council land;
  - 22.8.3. the Operator shall return any Council equipment provided under these Terms.
- 22.9** Notwithstanding that a party may have a right to terminate this Agreement, that party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under it.
- 23. Relationship of Parties**
- 23.1** Nothing in these Terms shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a contract of employment between the Operator and the Council.
- 24. Assignment and Sub-Contracting**
- 24.1** The permission granted under these Terms is personal to the Operator shall not assign, sub-contract or otherwise dispose of any of its rights or benefits under this Agreement.
- 25. Illegality**
- 25.1** In the event that any part of this Agreement shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law or any decision of any Court or Regulatory Body having jurisdiction over the parties or this Agreement the parties hereby expressly agree that the remaining parts and provisions of this Agreement shall continue in full force and effect with such amendments as are necessary to ensure that the balance of obligations remains so far as possible the same as under this Agreement or as may be agreed between the parties.
- 26. Survival**
- 26.1** Termination of the Contract for any reason shall not affect this clause 26 and the following clauses or Sections, which shall continue in force after such termination: clause 1 (Definitions and interpretation), Clause 11 (Indemnities), clause 16 (Confidentiality), clause 18 (Freedom of Information), clause 21 (Dispute Resolution), clause 22 (Termination), clause 24 (Assignment and Sub-contracting), clause 29 (Notices); clause 32 (Law of contract and jurisdiction).
- 27. Waiver**
- 27.1** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 28. Third Party Rights**
- 28.1** It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.
- 29. Notices**
- 29.1** Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

**29.2** Any demand, notice, or other communication shall be treated as validly served if served personally on the addressee or sent by pre-paid post to the address of the party referred to in this Agreement or to another address which has been notified expressly in writing by that party to the other under the provisions of this clause 29.

**29.3** Any notice that complies with clause 29.1 shall be deemed to have been received by the addressee on the date of delivery if delivered personally or in the case of delivery by post on the third working day after the date of posting.

### **30. Entire Agreement**

**30.1** These Terms constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter

### **31. Rights and duties reserved**

**31.1** Save as otherwise expressly provided, the obligations of the Council under this Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Operator.

### **32. Law of Contract and Jurisdiction**

**32.1** The Contract shall be governed by the Laws of England and Wales and subject to clause 21 (Dispute Resolution) the parties submit to the exclusive jurisdiction of the courts of England.

**Annexure: Code of Conduct**

Any reference to the 'Code of Conduct' within these Terms shall be deemed to refer to the version published on the Parks Business Licensing webpage.