

**This CONTRACT ("the Contract")** is dated the                      day of                      2025 and is made **BETWEEN:**

- (1) **TENDRING DISTRICT COUNCIL** (contact officer Kieran Charles, Head of Sport and Leisure) of Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE ("the Council"); and
- (2) ("the Contractor").

## **1 Interpretation:**

**Application:** means the application form submitted by the Contractor as varied by any amendment agreed by the Contractor and the Council or any direction issued by the Council

**Approval and Approved:** means the written acceptance by the Contractor

**Centre:** all that land and buildings known as (insert Centre address) part of which is shown edged green on the Plan for identification purposes only or such reduced or extended area as the Contractor may from time to time designate as comprising the Centre.

**General Manager:** means appointed manager of the Centre and who is authorised to enter into this licence.

**Common Parts:** such roads, paths, entrance halls, corridors, lifts, staircases, landing and other means of access in or upon the Centre the use of which is necessary for obtaining access to and egress from the Property as designated from time to time by the Council.

**Competent Authority:** any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

**Contract:** means the Approved Application and the terms and conditions as set out in this agreement read together

**Contract Commencement Date:** INSERT DATE

**Contract Fee:** the amount of £                      per month inclusive of charges for the reasonable use of Service Media paid quarterly in advance on 1 April, 1 July, 1 October and 1 January during the Contract Term.

**Contract Term:** means the period running from the 1 April to the 31 March inclusive in any year

**Designated Hours:** opening hours to the customer or members of the Centre being 06:30 – 21:30 Mondays to Thursdays, 06:30 – 20:30 on Fridays and 07:30 – 17:30 on Saturdays and Sundays during the Contract Term strictly subject to operational hours of the Centre or such other days and times as the Council and the Contractor may agree in advance in writing.

**Equipment:** means fixed gym equipment within the fitness centre and equipment within the studio.

**Necessary Consents:** all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

**Parties:** the Council and the Contractor

**Peak Time:** means 06:30 – 09:00 hours and 17:00 – 20:30 hours during Monday to Friday

**Permitted Use:** to provide massage therapy services or such other services with the consent of the Council to be agreed in advance and in writing, including but not limited to rock taping.

**Plan:** the plan attached to this contract marked "Plan".

**Property:** Leisure Centre and shown edged red on the Plan for identification purposes only which shall include all fixtures and fittings.

**Service** is the provision of a personal trainer to the public in accordance with the Contract.

**Service Media:** all media for the supply or removal of heat, electricity, gas, water, sewage, air-conditioning, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

**Trainer:** means individuals employed or paid by the Contractor to carry out the training specified in the application form

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this contract.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Schedule forms part of this contract and shall have effect as if set out in full in the body of this contract. Any reference to this contract includes the Schedule.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.7 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.8 A reference to **writing** or **written** excludes fax and e-mail.

- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 Any words following the terms **including, include, in particular, for example**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A working day is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

## **BACKGROUND**

The Parties have agreed that the Contractor is to provide the Service with the agreement of the Council.

The Council grants the Contractor the right to operate the Service at the Property as described in the Schedule of Special Conditions attached hereto during the Contractual Term.

## **AGREEMENT**

1. The Contractor will pay the Contract Fee to the Council on or before the date of this Contract for the right to operate the Service.
2. The Equipment belongs to the Council and the Contractor gives the Contractor the right use it in accordance with the Contract only.
3. The Contractor agrees to operate the Service strictly in accordance with the provisions and obligations that are set out in the Schedule of Special Conditions attached hereto. In particular, the Contractor must ensure the Service is available for the benefit of the public on all the dates and at all times stated in the Schedule of Special Conditions.
4. The Council will monitor the Service to ensure compliance with the Schedule of Special Conditions and any breach may result in the Contract being immediately terminated by the Council.

**SIGNED** on behalf of the Council

by

in the presence of:

**SIGNED** on behalf of

in the presence of:

## **TENDRING DISTRICT COUNCIL**

### **Schedule of Special Conditions Relating to the Provision and Operation of a Personal Trainer**

#### **1. REGISTRATION**

- 1.1 The Contractor and any Trainer must be Approved by the Contractor in order to carry out training sessions at the Centre.
- 1.2 In order to be Approved, the Contractor must have completed the online application form in full and pay the Contract Fee. The Contractor must provide:
  - (i) Certificates for Level 3 Personal Trainer;
  - (ii) insurance as required under Clause 4.2(xiii) and Clause 5;
  - (iii) risk assessment for activity undertaken by the Contractor;
  - (iv) risk assessment for the area in which the Contract will be carrying out the training;
  - (v) risk assessment of the equipment the Contract intends to use for the training which equipment brought into the premises must be agreed with the Centre Manager prior to the signing of this licence; and
  - (vi) evidence relating to first aid provision and a process for accident reporting to the centre.
- 1.3 Failure to comply with clause 1.2 shall entitle to the Council to terminate this contract in accordance with clause 6.
- 1.4 The Council shall be under no obligation to Approve an Application.
- 1.5 The Council reserves the right to limit the Contractor's access at any time to the Centre with written notice with immediate effect.
- 1.6 Following Approval of the Application the Contractor may carry out training sessions at the Centre during the designated Hours.
- 1.7 The Contractor acknowledges that this contract does not guarantee that the Centre will be open or that there will be space at the Centre for the Contractor to carry out training sessions.
- 1.8 The Contractor acknowledges that this contract does not grant the Contractor priority over any other lawful user of the Centre and that any events or booked group activities

will take priority over training sessions and the Contractor is expected to relocate if a conflict of interest occurs.

## **2. CONTRACT FEE**

2.1 The Contractor agrees and undertakes to pay:

- (i) to the Council the Contractor Fee payable without any deduction in advance every 3 (three) calendar months and proportionately for any period of less than 3 (three) months the first such payment being for the period from and including the Contractor Fee Commencement Date to the [ADD DATE] to be made on the date hereof together with such VAT as may be payable on the Contract Fee; and
- (ii) any Additional Contractor Fee as applicable payable without any deduction following receipt of an invoice from the Council together with any such VAT as may be payable on the Additional Contract Fee.

2.2 Where the Application is Approved after the 1 April the Contractor Fee shall be reduced on a pro-rata basis. The Contractor shall contact the Centre to determine the amount of Contract Fee payable.

## **3. DURATION**

3.1 Subject to clause 6, this contract shall continue until the end of the Contract Period, upon expiry the Contractor may re-apply for a licence to be approved for a further year but nothing in this contract shall imply any obligation on the Council to approve a further application.

## **4. CONTRACTOR'S OBLIGATIONS**

4.1 The Contractor will ensure that it will at all times exercise the rights and duties under this contract in a proper and responsible way, having regard to the safety of users of the Centre, the Council's staff and other third parties.

4.2. **THE CONTRACTOR WILL:**

- (i) ensure that no equipment or rubbish is left in the Centre following a training session and ensure that the Centre is left in the same condition that it is found;
- (ii) not to do or permit to be done at the Centre anything which is illegal or which may be or become a nuisance (whether actionable or not), not cause an annoyance or nuisance or interfere with the reasonable enjoyment of other persons using the Centre or any owner or occupier of neighbouring property;
- (iii) not use the Centre other than for the Permitted Use;

- (iv) remove any equipment brought to the Centre at the end of each training session throughout the Contract Term specifically to ensure that the Centre is emptied of the Contractor's equipment or other items;
- (v) not make any alteration or addition whatsoever to the Centre;
- (vi) not display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Centre without the prior written consent of the Council. The primary contact for such consent is General Manager of the Centre. The Contractor is permitted to wear branded clothing part of a uniform if they so wish.
- (vii) not cause or permit to be caused any damage to:
  - (a) the Property, Centre or any neighbouring property; or
  - (b) any property of the owners or occupiers of the Property, Centre or any neighbouring property;
- (viii) not obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them;
- (ix) not do anything that will or might constitute a breach of any Necessary Consents affecting the Centre or which will or might vitiate in whole or in part any insurance effected by the Council in respect of the Centre from time to time;
- (x) observe any rules and regulations the Council makes and notifies to the Contractor from time to time governing the Contractor's use of the Centre and the Common Parts;
- (xi) ensure and informed the Council that the person completing the training is a member of the Centre.
- (xii) ensure to carry out the necessary risk assessments and provide copies of this to the Council.
- (xiii) insure any equipment brought onto the Property by the Contractor, their employees or agents, equipment brought onto the Property is removed after the training session and not stored at the Property
- (xiv) in respect of the insurance referred to in clause 2.2 to provide evidence to the Council when reasonably requested to include policy schedules and certificates and receipts for premiums paid;
- (xv) indemnify the Council and keep the Council indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
  - (a) this contract;
  - (b) any breach of the Contractor's obligations contained in this clause 4; and/or
  - (c) the exercise of any rights given in this clause 4;

- (xvi) pay to the Council interest on the Contract Fee, Additional Contract Fee or other payments due under this contract at the rate of 4 per cent per annum above the base rate of Barclays Bank PLC from time to time calculated on a daily basis from the due date until payment if the Contractor shall fail to pay the Contractor Fee or any other payments due under this contract within 28 days of the due date (whether formally demanded or not);
- (xvii) not play amplified music whilst using the Centre;
- (xviii) notify the Council of any health and safety hazards which may arise in connection with the performance of this contract as soon as the Contractor becomes aware of them;
- (xix) while using the Centre the Contractor shall comply with any health and safety measures implemented by the Council in respect of users of the Centre; and
- (xx) notify the Council immediately in the event of any incident occurring where that incident causes any personal injury or damage to property and if requested by the Council shall provide a copy of the incident investigation report if appropriate.

## **5 INDEMNITY AND INSURANCE**

- 5.1 The Contractor shall throughout the Contract Term maintain public liability insurance of not less than £5million pounds. Copies of insurance documents must be submitted with the Application and a copy of the current policy must be available for inspection by the Council at any time during the Contract Term upon request.
- 5.2 The Contractor shall indemnify the Council 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 Contractor PROVIDED ALWAYS that the Council shall be at liberty to settle as it may think fit after consultation with the Contractor 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 his discretion after giving notice in writing to the Contractor cause any such damage to be made good and the expenses incurred by the Council in doing or in making any such payment shall be repaid by the Contractor to the Council on demand PROVIDED NEVERTHELESS that the Contractor 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.

## **6. LIMITATION OF COUNCIL'S LIABILITY**

- 6.1 Subject to Clause 6.2, the Council is not liable for:



- (a) the death of, or injury to the Contractor, its employees, customers or invitees to the Property; or
- (b) damage to any property of the Contractor or that of the Contractor's employees, customers or other invitees to the Property; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Contractor or the Contractor's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by Clause 2.

6.2 Nothing in Clause 6.1 shall limit or exclude the Council's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Contractor or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Contractor to exclude or restrict liability.

## **7 TERMINATION**

7.1 The Contractor may revoke this licence with immediate effect where the Contractor:

- (i) is in breach of its obligations under this contract and where such breach is capable of a remedy, fails to remedy the breach to the satisfaction of the Council within 7 calendar days of receipt of written notice to remedy the breach; or
- (ii) is in breach of the Centre, an activity space, gym or studio rules; or
- (iii) acts in a way that is likely to bring the Council into disrepute or damage its reputation or interests; or
- (iv) behaves in a manner causing resulting in complaints about his/her conduct or promotes acts of violence at Centre.

7.2 The Contractor may terminate this contract giving not less than 4 week's written notice.

7.3 Where the Council terminates this contract under clause 7.1 the Contractor shall not be entitled to receive any refund of the Contract Fee or any compensation for any outlay made by the Contractor in connection with this contract.

7.4 Where the Council terminates this licence under clause 7.2, the Council shall refund the Contract Fee on a pro-rata basis for the remaining duration of the Contract Term but without paying any compensation for any outlay made by the Contractor in connection with this contract.

- 7.5 The Contractor must give not less than 3 month's written notice to terminate this contract. No refund for termination of the contract will be given and any monies outstanding by the Contractor to the Council will be required to be paid in full.
- 7.6 Following termination of this contract by either party, the Contractor shall no longer be licenced and will therefore not be permitted to run training sessions at the Centre.
- 7.7 Termination of this contract shall not affect the rights of either party in connection with any breach of any obligation under this contract which existed at or before the date of termination.

## **8. GENERAL**

- 8.1 Any notice or other communication given under this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (i) to the Council at: Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE and marked for the attention of Head of Sport and Leisure; and
- (ii) to the Contractor at **ADD ADDRESS** and marked for the attention of **ADD NAME**  
or as otherwise specified by the relevant party by notice in writing to each other party.

- 8.2 Any notice or other communication will be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 10.00 am on the second working day after posting.

- 8.3 A notice or other communication given under this contract shall not be validly given if sent by fax or e-mail.

- 8.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **9. FREEDOM OF INFORMATION**

Pursuant to the Freedom of Information Act 2000 the Licensor is subject to certain legal obligations in relation to public disclosure of information. The Contractor shall co-operate 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 contract. The Contractor understands and agrees that the Contractor may be required to provide

information relating to this contract or the Contractor to a third party in order to comply with its legal obligations.

## **10. COSTS**

- 10.1 On completion of this contract, the Contra shall pay to the Council on a full indemnity basis all costs, fees, charges and expenses and disbursements of the Licensor and their professional advisors incurred in relation to the negotiation and completion of this contract in the sum of £200.00 (excluding VAT).
- 10.2 The Contractor shall pay to the Council on a full indemnity basis all costs, fees, charges and expenses (together with VAT and disbursements) of the Council (including such costs and expenses of their professional advisors) in relation to any breach of the terms of this contract.

## **11. NO WARRANTIES FOR USE OR CONDITION**

- 11.1 The Council gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.
- 11.2 The Council gives no warranty that the Property is physically fit for the purposes specified in clause **Error! Reference source not found..**
- 11.3 The Contractor acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Council before the date of this contract as to any of the matters mentioned in clause 0 or clause 0.
- 11.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **12. DISPUTES**

- 12.1 In the event that a dispute arises between the parties in connection with this licence, the parties shall use their reasonable endeavours to resolve it amicably between themselves in the first instance.
- 12.2 If a dispute remains unresolved, if the parties agree, it will be referred to non-binding mediation.
- 12.3 In the event that the parties do not agree to enter non-binding mediation or if the dispute remains unresolved following non-binding mediation, the dispute shall be referred to the exclusive jurisdiction of the Courts of England pursuant to clause 15.

## **13. THIRD PARTY RIGHTS**

A person who is not a party to this contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

**14. GOVERNING LAW**

This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**15. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).