



DATED

2014

MANAGEMENT AGREEMENT

relating to

**PITCHES, CHANGING ROOMS AND OTHER BUILDINGS AT KING GEORGE V
PLAYING FIELDS, OLD HALE WAY, HITCHIN**

between

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

HITCHIN RUGBY FOOTBALL CLUB LIMITED

THIS AGREEMENT is dated

2014

PARTIES

- (1) NORTH HERTFORDSHIRE DISTRICT COUNCIL of Council Offices, Gernon Road, Letchworth, SG6 4JF as trustee of the Trust (**Owner**).
- (2) HITCHIN RUGBY FOOTBALL CLUB LIMITED incorporated and registered in England and Wales with company number 07650666 whose registered office is c/o Bradshaw Johnson, Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire, SG5 1JQ (**Club**).

RECITALS

- (A) This agreement is ancillary to the Lease.
- (B) This Agreement refers to North Hertfordshire District Council by two different definitions in order to distinguish between NHDC acting in its capacity as land owner, and NHDC acting in any other capacity including its role as manager of parks and open spaces, its role as planning authority and its role as licensing authority.
- (C) References to the **Council** are references to North Hertfordshire District Council generally in its capacity as local authority.
- (D) References to the **Owner** are references to North Hertfordshire District Council acting as trustee of the Trust subject to the requirements of FIT and in its capacity as landowner of the Pitches and the Estate.
- (E) In dealing with the Pitches and the Estate the Owner is legally bound to report to and comply with the requirements of FIT as well as complying with the terms of the Trust.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Changing Rooms: the changing rooms located in the area defined by the Lease as the Blue Area which forms part of the Property demised to the Club by the Lease

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.

Estate: each and every part of the adjoining and neighbouring property in which the Owner has an interest known as King George V Playing Fields, Old Hale Way, Hitchin as is registered on the date of this agreement under title number HD493587

Facilities: the Pitches and Changing Rooms

FIT: Fields in Trust registered at the Charity Commission as the National Playing Fields Association with charity number 306070

Lease: a lease dated _____ and made between North Hertfordshire District Council (1) and Hitchin Rugby Football Club (2)

Management Agreement Period: the period from and including the date of this agreement until the date on which this agreement is determined in accordance with clause 10.

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.

Permitted Use: (a) use as sports pitches for public access including erection of a marquee for supporting sporting events and (b) with the prior written consent of the Owner use as a marquee area to host not more than ten Public Events per calendar year

Pitches: the area shaded green on the Plan

Pitch Management Costs: the amount expended by the Club in each calendar year in maintaining the Pitches.

Plan: the plan attached to this agreement

Property: the land and buildings on the Estate demised to the Club by virtue of the Lease

Public Event: non sporting events open to any person who is not a member of the Club

Relevant Income: the sum total of

(a) all payments made to the Club by third parties as consideration for use of the Pitches in the relevant financial year; and

(b) an annual fee of £3,000 (three thousand pounds) in consideration of the Club's use of the Pitches under the terms of this agreement; and

(c) the income from Public Events in the relevant financial year that the Club actually receives.

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.

Threshold: the amount of £10,000 per annum at the date of this agreement which is increased by the Retail Prices Index each year in accordance with Schedule

Trust: King George V Hitchin Trust registered at the Charity Commission with registration number 1087603

User Group: the group constituted in accordance with clause 6.2 of this agreement

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

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however, incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.8 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and to prevent such act or thing being done by a third party.
- 1.10 References to clauses are to the clauses of this agreement.
- 1.11 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. OPERATION AND MANAGEMENT OF THE PITCHES

2.1 The Owner appoints the Club to operate and manage use of the Pitches for the Management Agreement Period.

2.2 The Club acknowledges that:

- (a) the Club shall have no exclusive right of occupation of the Pitches and that no relationship of landlord and tenant is created between the Owner and the Club by this agreement;
- (b) the Owner retains control and possession of the Pitches and the Club has no right to exclude the Owner from the Pitches;
- (c) this agreement is personal to the Club and is not assignable and the rights given by this agreement may only be exercised by the Club, its officers, volunteers, employees and any group company.

2.3 The Owner acknowledges that Pitches are part of a public field to which members of the public have access and the Club accepts no liability for damage to the Pitches in respect of the actions or omissions of members of the public.

2.4 In managing bookings for use of the Pitches the club shall:

- (a) control bookings of the Pitches to prevent over usage
- (b) not make the Pitches available to the Club in preference to any third party and operate the booking system in a fair and just manner so as not to create an advantage to a particular group including the Club save that the Club shall be permitted to book the Pitches for Club use as required for the purpose of committing to Rugby Football Union fixtures
- (c) publish details of bookings for the Pitches on a publically available website.
- (d) set the fee for use of the Pitches no higher than the fee charged by the Council from time to time for use of commensurate sports pitches.
- (e) as required ensure that the Changing Rooms including showers and toilets within the Property are made available to the user of the Pitches at no additional cost together with such services as it would be reasonable to expect to be provided to enable use of the facilities
- (f) observe all reasonable and proper regulations made by the Owner from time to time.
- (g) observe all reasonable and proper regulations made by the Council or the User Group from time to time in so far as the same do not

conflict with the terms of this agreement, the terms of the Lease, or any regulations made by the Owner.

2.5 The Owner shall maintain public liability insurance in respect of the Pitches.

3. USE OF THE PITCHES

3.1 The Club shall use reasonable endeavours to:

- (a) ensure that members of the Club and all users of the Pitches that have booked via the Club keep the Pitches clean, tidy and clear of rubbish;
- (b) not use the Pitches other than for the Permitted Use;
- (c) not make any alteration or addition whatsoever to the Pitches without the prior consent of the Owner;
- (d) not do on the Pitches anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Owner or to tenants or occupiers of the Estate or any owner or occupier of neighbouring property;
- (e) not cause any damage to the Pitches, the Estate or any neighbouring property;
- (f) not do anything that will or might constitute a breach of any Necessary Consents affecting the Pitches
- (g) not to do anything which will or might vitiate in whole or in part any insurance effected by the Owner in respect of the Pitches or Estate from time to time provided that this shall only apply in circumstances where the Owner has made a copy of the insurance policy and any relevant terms and condition available to the Club;
- (h) observe any reasonable rules and regulations made by the Owner or the Council and notified to the Club from time to time governing the Club's management of the Pitches;
- (i) leave the Pitches in a clean and tidy condition at the end of the Management Agreement Period;
- (j) not to do anything on or in relation to the Pitches that would or might cause the Club to be in breach of the tenant's covenants and the conditions contained in the Lease.

4. MAINTENANCE OF THE PITCHES

4.1 The Council shall maintain the Pitches on behalf of the Owner to the standard and frequency applied to commensurate sports pitches owned by the Council

and which is included within the schedule of maintenance requirements agreed with the club which may (but need not) include:

- (a) cutting of the grass
- (b) litter pickings
- (c) marking our the pitches

4.2 Should the Club require any additional maintenance of the Pitches to be carried out that it shall be permitted to do so at it's own cost or supply funding to enable the Council to do so.

5. PUBLIC EVENTS

5.1 The Club shall not organise any Public Event on the Pitches without first giving the Owner 30 days prior notice and obtaining the written consent of the Owner which may be withheld for any reasonable reason including on advice of FIT or the Council.

5.2 The Owner may give it's consent subject to any reasonable conditions that it feels appropriate and subject to a fee commensurate with the public event hire charges published by the Council from time to time.

5.3 Where the Owner gives consent to hold a Public Event on the Pitches the consent shall be in the form of the Council's standard '*Licence for an Event on Land Owned by North Hertfordshire District Council*' and the Club shall comply with all terms and conditions contained within the licence.

5.4 The Licensee acknowledges that any consent given by the Owner pursuant to clause 5.3 is a consent from North Herefordshire District Council acting solely as land owner and where any other Necessary Consent is required from the Council for the purpose of holding a Public Event that must be obtained by the Licensee in addition to the Owner's consent.

6. USER GROUP

6.1 The Club shall ensure any decisions regarding the following issues are only made in consultation and with the majority agreement of the User Group:

- (a) maintenance of the Pitches
- (b) maintenance of Council owned property

6.2 The User Group shall comprise:

- (a) members of the Club;

- (b) members of the Council or Council members and Council officers;
and
- (c) members of any other groups making use of the Facilities

6.3 The User Group shall meet at least quarterly and for the avoidance of doubt its decisions shall not be valid if in contravention of the terms of this agreement, the terms of the Lease or any rules, regulations or consents imposed or given by the Owner.

7. INSTALLATIONS

7.1 The Club may at its own cost repair, maintain and, where necessary replace all installations on the Pitches which shall include, but shall not be limited to:

- (a) floodlights
- (b) irrigation systems
- (c) rugby posts
- (d) water tanks

7.2 Where any installation requires a supply of electricity, water or any other service to enable it to operate the Club may bear the cost of the supply of the service and the repair, maintenance and replacement of the Service Media.

7.3 The Council shall be under no obligation to the Club in respect of the repair, maintenance or replacement of any installation on the Pitches.

7.4 The Club shall ensure that no installation remains on the Pitches in a substantial state of disrepair and as soon as practicable after becoming aware that an installation is in a poor state of disrepair the Club shall either repair the installation or remove it from the Pitches.

8. FINANCIAL ARRANGEMENTS

8.1 The Club shall supply to the Owner by 31 May each calendar year:

- (a) a copy of its final accounts for the preceding financial year; and
- (b) a statement certified by the Club treasurer confirming the Pitch Management Costs and the Relevant Income for the preceding financial year.

8.2 Where the statement submitted in accordance with clause 8.1(b) shows that the Relevant Income is less than the Pitch Management Costs then the Club shall retain the Relevant Income for the year.

8.3 Where the statement submitted in accordance with clause 8.1 (b) shows that Relevant Income exceeds the Pitch Management Costs then the amount by which the Relevant Income exceeds the Pitch Management Costs (the Excess) shall be applied as follows:

Up to and including the Threshold	100% to the Club
£10,001 to £20,000 (“First Tier”)	25% to the Owner 75% to the Club
£20,001 and over (“Second Tier”)	50% to the Owner 50% to the Club

8.4 The Club shall provide the Owner with all reasonable assistance and information to enable the Owner to submit its annual return to the Charity Commission.

9. INDEMNITY

The Club shall indemnify the Owner and keep the Owner indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:

- (i) the rights granted to the Club under the terms of this agreement;
- (ii) any breach of the Club’s obligations contained in this agreement;
- (iii) the exercise of any right granted to the Club under the terms of this agreement;

10. TERMINATION

10.1 This agreement shall end on the earliest of:

- (a) 2034
- (b) the expiry of any notice given by the Owner to the Club at any time of breach of any of the Club’s obligations contained in this agreement.
- (c) the expiry of not less than 12 months notice given by the Owner to the Club or by the Club to the Owner.

10.2 Termination is without prejudice to the rights of either party in connection with any antecedent breach of any obligation subsisting under this agreement.

11. NOTICES AND CONSENTS

11.1 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

(a) to the Owner at: Council Offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF and marked for the attention of The Solicitor to the Cabinet Sub-Committee (Council Charities).

(b) to the Club at: Bradshaw Johnson, Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire, SG5 1JQ and marked for the attention of [POSITION].

or as otherwise specified by the relevant party by notice in writing to each other party.

11.2 Any notice or other communication shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause; or

(b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

11.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.4 Where the consent or approval of the Owner is required under this agreement, it shall only be valid if it is given by the Owner in writing signed by a duly authorised person acting in accordance with the Trust and having complied with its obligations to FIT.

12. NO WARRANTIES FOR USE OR CONDITION

12.1 The Owner gives no warranty that the Pitches possess the Necessary Consents for the Permitted Use.

12.2 The Owner gives no warranty that the Pitches are physically fit for the purposes specified in this agreement.

13. LIMITATION OF OWNER'S LIABILITY

13.1 Subject to clause 13.2, the Owner is not liable for:

- (a) the death of, or injury to the Club, its employees, customers or invitees to the Property; or
- (b) damage to any property of the Club or that of the Club'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 Club or the Club's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by this agreement.

13.2 Nothing in clause 13.1 shall limit or exclude the Owner's liability for:

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

14. RIGHTS OF THIRD PARTIES

A person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

15. GOVERNING LAW AND JURISDICTION

15.1 This agreement 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.

15.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

16. CHARITABLE TRUST

16.1 The Owner certifies that by [letter/order] dated [] FIT has confirmed that this agreement may be entered into on the terms herein.

16.2 The parties acknowledge that:

- (a) the Pitches are held by the Owner as trustee of the Trust in accordance with the terms of the Trust
- (b) the liability of the Owner under this agreement or otherwise in respect of the Trust is limited to the assets of the Trust from time to time.

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE

INCREASE IN THRESHOLD

Base RPI Month: [BASE MONTH FOR RPI CALCULATION].

Base Threshold: Threshold of £10,000 per annum.

RPI: the Retail Prices Index or any official index replacing it.

Review Date: [FIRST REVIEW DATE] and every anniversary of that date.

- 16.1 The Threshold shall be reviewed on each Review Date to equal £10,000 or, if greater, the indexed amount determined pursuant to this clause.
- 16.2 The indexed threshold for a Review Date shall be determined by multiplying the Base Threshold by the All Items index value of the RPI for the month before the month in which that Review Date falls, then dividing the product by the All Items index value of the RPI for the Base RPI Month (“the RPI Calculation”)
- 16.3 The RPI Calculation shall be applied to the First Tier and Second Tier at the same time as it is applied to the Threshold
- 16.4 If there is any change to the methods used to compile the RPI, including any change to the items from which the All Items index of the RPI is compiled, or if the reference base used to compile the RPI changes, the calculation of the indexed threshold shall be made taking into account the effect of this change.

Signed by a duly authorised officer
of the Owner

.....
Duly Authorised Officer

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
CLUB]

.....
Director