

**LICENCE**  
**between**  
**ABERDEEN CITY COUNCIL**  
**and**  
**SPORT ABERDEEN**

**LICENCE TO USE MOVEABLE ASSETS**

**2010**

**Brodies LLP**  
**15 Atholi Crescent**  
**Edinburgh EH3 8HA**  
**T: 0131 228 3777**  
**F: 0131 228 3878**  
**(Ref: GSC.EJSB.ABE20.244)**

## LICENCE AGREEMENT

between

**ABERDEEN CITY COUNCIL**, a Local Authority, constituted in terms of the Local Government (Scotland) Act 1973 and the Local Government etc (Scotland) Act 1994 and having its principal office at St Nicholas House and Town House, Aberdeen, (hereinafter referred to as "**the Council**" and which term "the Council" shall also be deemed to include the statutory successors of the Council); and

**SPORT ABERDEEN**, a company limited by guarantee and incorporated under the Companies Acts in Scotland (Registered No SC350981) and having its registered office at 34 Albyn Place, Aberdeen AB10 1FW (hereinafter referred to as "**the Company**").

### WHEREAS

- 1 Pursuant to a Transfer Agreement between the parties dated as at the date of execution hereof (the "Transfer Agreement"), various assets relating to the provision of certain sporting and leisure activities to the public as carried on by the Council have been or are to be transferred to the Company.
- 2 Pursuant to the Transfer Agreement and for the purposes of providing sporting and leisure activities to the public, the Company wishes to use certain assets of the Council on the terms and conditions of this Licence.

### NOW THEREFORE IT IS AGREED AS FOLLOWS:-

#### 1 Licence

- 1.1 As of 9 July 2010 (or such later date as the parties may agree in writing) (the "**Transfer Date**") the Council shall grant to the Company an exclusive licence to use the Licensed Assets (as defined in the Transfer Agreement) on the terms set out in this Licence.

#### 2 Term

- 2.1 This Licence shall continue in full force and effect for the duration of the Funding and Service Provision Agreement entered into between the parties on or about the date of execution hereof ("**FSP Agreement**") and shall ipso facto terminate if the FSP Agreement is lawfully terminated (the the period during which the FSP Agreement subsists being "**the Term**"). For the avoidance of doubt, otherwise than as provided in the FSP Agreement, no consideration shall be paid in respect of this Licence.

#### 3 Maintenance

- 3.1 Throughout the Term, the Company undertakes to keep and maintain the Licensed Assets in the same state of repair and condition as they were in on the Transfer Date (fair wear and tear excepted) and shall where required, without prejudice to the foregoing generality, arrange for the

Licensed Assets to be maintained and regularly serviced in accordance with the requirements of applicable law from time to time and, subject to those requirements, to a similar standard as has been undertaken by the Council prior to the date hereof. For these purposes, in the context of New Moveable Assets (as defined in the Transfer Agreement), the Transfer Date is the date on which those assets were acquired by the Company and the Company shall maintain and service them in accordance with good industry practice.

3.2 If at any time during the Term

3.2.1 the Licensed Assets require to be repaired or replaced;

3.2.2 the Company wishes to sell or dispose of any of the Licensed Assets;

3.2.3 the Company wishes to purchase New Moveable Assets;

then the Company may repair, replace, sell, dispose or purchase them provided that

- (a) they do so in accordance with the provisions of, and subject to the restrictions contained in, the Transfer Agreement;
- (b) any proceeds of sale of any Licensed Asset will be used exclusively for the purposes of the Undertaking (as defined in the Transfer Agreement) and for no other purpose; and
- (c) any New Moveable Asset purchased will become a Licensed Asset for the purposes of this Licence and will become subject hereto.

3.3 At the termination of this Licence all Licensed Assets shall be returned by the Company in a satisfactory state of repair and condition (fair wear and tear excepted) and for the purposes of this clause the Licensed Assets will be deemed to be in a satisfactory state of repair and condition (fair wear and tear excepted) if they would be considered by a reasonable and reputable operator of an undertaking which is the same as or similar to that being operated by the Company to be fit for use in compliance with all relevant legislation for the purpose for which they are intended to be used in that undertaking. In the event that any of the Licensed Assets returned pursuant to this clause are not of a satisfactory state of repair and condition (fair wear and tear excepted) within the meaning of this clause, then the Company shall be liable for putting those Licensed Assets into that condition.

#### 4 Insurance

4.1 Throughout the Term the Company undertakes to keep the Licensed Assets insured for their full realisable value with a reputable insurer and shall, when required to do so by the Council, exhibit copies of valid insurance policies as evidence of them complying with their obligation hereunder.

## **5 Termination**

- 5.1 In addition to any other rights or remedies it may have, the Council shall have the right to terminate this Licence immediately at any time during the Term by serving written notice of its intention to do so to the Company, in the event that the Company is in breach of any of its undertakings or obligations hereunder and, after having received thirty days' written notice of such breach from the Council, has failed to remedy such breach (if capable of remedy) within the said thirty day notice period.

## **6 Notices**

- 6.1 All notices to be given hereunder must be in writing and delivered by hand or sent by First Class Recorded Delivery post to the party at its designated address and shall, if delivered by hand be deemed served at the time of delivery or if by post be deemed served on the third day after posting.

## **7 Assignment**

- 7.1 The terms of this Licence are personal to the Company. The Company shall not be entitled to assign or transfer its rights and/or obligations under this Licence without the prior written consent of the Council.

## **8 Amendment**

- 8.1 The terms of this Licence shall not be amended or altered except by mutual agreement in writing by the duly authorised representatives of the Council and the Company.

## **9 Costs**

- 9.1 The parties shall pay their own costs and expenses in connection with the preparation and execution of this Licence.

## **10 Transfer Agreement / FSP Agreement**


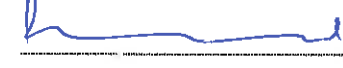
- 10.1 Where any of the provisions of this Licence conflict with any provision of the Transfer Agreement or FSP Agreement, the provisions of the Transfer Agreement or FSP Agreement, as relevant, shall take precedence and the terms of this Licence shall be deemed to be amended accordingly without any prejudice to the remaining terms of this Licence.

**11 Governing Law**



11.1 This Licence shall be governed by and construed in accordance with the law of Scotland and the parties hereto hereby prorogate the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents are executed as follows:-

Signed on behalf of **ABERDEEN CITY COUNCIL** by

 _____ (Signature)	in the presence of this witness
JANE GLAISTER MACEACHRAN _____ (Full Name)	 _____ (Witness' Signature)
HEAD OF LEGAL AND DEMOCRATIC SERVICES _____ (Position)	DAVID ALAN REWHIE _____ (Full Name)
ABERDEEN _____ (Place of Signature)	34 ALBYN PLACE _____ (Address)
9 JULY 2010 _____ (Date of Signature)	ABERDEEN _____ (Date of Signature)

Signed on behalf of **SPORT ABERDEEN** by

 _____ (Signature)	in the presence of this witness
GENERAL GEORGE SIMÉ DALGARNO _____ (Full Name)	 _____ (Witness' Signature)
DIRECTOR _____ (Position)	DAVID ALAN REWHIE _____ (Full Name)
ABERDEEN _____ (Place of Signature)	34 ALBYN PLACE _____ (Address)
9 JULY 2010 _____ (Date of Signature)	ABERDEEN _____ (Date of Signature)