

Dated:

20[]

DRAFT []:[] 20[]

Resource Sharing Agreement

[Name of Charitable Rugby Club]

and

[Name of Subsidiary]

DRAFT

THIS AGREEMENT is dated

20[]

BETWEEN:

(1) **[NAME OF CHARITABLE RUGBY CLUB]**
[Registered office/Address]: []
[Company/Other registration number: []]
("the Club")

(2) **[NAME OF SUBSIDIARY]** Limited
Registered office: []
Company registration number: []
("the Subsidiary")

BACKGROUND

- (A) The Subsidiary is wholly owned by the Club and exists to raise funds for the Club to use for its charitable purposes.
- (B) The Subsidiary and the Club wish to define and agree the framework within which dealings between them shall be carried on including the use of property belonging to the Club and the sharing of resources between the Club and the Subsidiary.¹

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

In this agreement the following words and phrases shall have the following meanings (unless the context otherwise requires):

"Activity/ies" means all activities of the Subsidiary including but not limited to generating bar income, property income, equipment sales, advertising and sponsorship, fundraising income (where appropriate and subject to fundraising income derived from one-off fundraisers) and any other income;

"Best Use" means a use of the Name, Logo(s), and Data and Rights which:

- (a) does not damage or conflict with, or threaten to damage or conflict with, the good name and reputation of the Club;
- (b) does not cause or threaten reasonable objection by a significant number or group of supporters or

¹ This document is drafted on the basis that non playing members are members of the charitable club (i.e. volunteers, parents or individuals still wishing to be associated with the club but who are unable to play for reasons of health or old age). If they are social members who need to be members of the trading subsidiary instead the agreement should be amended to reflect this.

beneficiaries of the Club or by its trustees;

(c) does not conflict with or threaten to conflict with the objects and/or policies of the Club from time to time; and

(d) (within the above constraints) maximises the direct and indirect benefits to the Club;

“Data” means all data (including Personal Data) owned by the Club and/or the Subsidiary relating supporters/customers of the Club and/or the Subsidiary;

“Data Protection Legislation” means the Data Protection Act 2018, the retained EU law version of the General Data Protection Regulation (EU) 2016/679 (UK GDPR), the Privacy (Electronic Communications) Regulations 2003 and all applicable laws and regulations relating to processing of Personal Data and privacy (including marketing communications), including where applicable, the guidance and codes of practice issued by the Information Commissioner (and “Controller”, “Data Subject”, “Personal Data”, “processing” and “Processor” each have the meanings given to them in the Data Protection Legislation);

“Logo” means any logo(s) of the Club from time to time (as they may from time to time be amended or changed or supplanted);

“Name” means **[insert name]**; and

“Rights” means all intellectual property rights, including without limitation copyright, trademark and database rights and any other intellectual property rights whether registered or not, which are owned or used by the Club from time to time and which the Club is entitled to license to the Subsidiary, other than rights to in relation to the Name, Logo and Data granted pursuant to this agreement; and

“Shared Resources” means all staff, premises, facilities, equipment, and other resources which are shared by the Club and the Subsidiary from time to time.

2. **ACTIVITIES**

2.1 Every Activity shall be within the scope of this agreement and shall (so far as capable of so doing) be subject to its terms and conditions save only to the extent the Club and the Subsidiary expressly agree in writing to the contrary.

2.2 The Subsidiary shall obtain the prior written approval of the Club for:

- (a) the employment of any new staff by the Subsidiary;
- (b) any material change to the Activities of the Subsidiary;
- (c) any material change to the goods or services provided by the Subsidiary;
- (d) any material changes to the suppliers or contractors used by the Subsidiary; and/or
- (e) any material change, where the Subsidiary operates a bar or shop, to the opening hours of the bar or shop.

2.3 The Subsidiary shall ensure that all Activities, including the production and procurement of goods and services, shall comply with all applicable laws and regulatory requirements and standards (including for the avoidance of doubt the Licensing Act 2003),² and with all ethical and other policies of the Club as notified to the Subsidiary from time to time (or of which the Subsidiary should reasonably be aware). For the avoidance of doubt all such policies which are in place as at the date of this agreement shall be deemed to have been notified to the Subsidiary.

2.4 The Club agrees to allow the Subsidiary to use part of its premises to carry on the Activities when those premises are not required for the Club's own purposes. The Subsidiary acknowledges that the Club has overall control of its premises and has the ultimate decision on the use of any such part.

3. **BAR INCOME³**

3.1 The responsibility for the Club's alcohol committee will be delegated to the directors of the Subsidiary who will also be members of the Club. In compliance with the Licensing Act 2003, none of the members of the alcohol committee will derive any private benefit from the supply of alcohol in their capacity as members of the alcohol committee.

3.2 All bar income from full members of the Club, any other member (such as affiliates) and non-members (such as guests) will go to the Subsidiary provided that activities generating bar income meet the requirements of section 62-66 of the Licensing Act 2003.

4. **BEST USE OF THE NAME AND, LOGO(S) AND RIGHTS**

4.1 The Club authorises, licenses and appoints the Subsidiary as its non-exclusive licensee to make Best Use of the Name, and Logo(s) and Rights, subject to the terms of this agreement.

4.2 The Subsidiary may sub-license the benefit of the licence contained in this clause 3 without the consent of the Club [*consider whether to make subject to Club's consent*], provided that any such sub-licence shall contain an obligation on the sub-licensee not to do anything which would put the Subsidiary in breach of any of its obligations under this agreement.

4.3 The Subsidiary acknowledges that the Club has overall control of its premises and has the ultimate decision on the use of any such part.

5. **BEST USE OF THE DATA**

5.1 In so far as the Data is owned by the Club:

(a) the Club authorises, licences and appoints the Subsidiary to make Best Use of the Data in exploiting it commercially; and

(b) the Subsidiary undertakes to make Best Use of the Data.

5.2 The parties acknowledge that Personal Data (the "Relevant Personal Data") will be transferred between them in connection with the matters set out in this agreement and that

² Include this clause if you have a Club Premises Certificate.

³ Include this clause if you have a Club Premises Certificate.

this will happen during the term of this agreement (the “Term”). For the purposes of this clause, insofar as it receives Personal Data a party shall be the “Receiving Party” and the party transferring Personal Data shall be the “Transferring Party”. During the Term the parties shall co-operate to ensure that the transfer of the Relevant Personal Data from between them shall comply with Data Protection Legislation and in particular:

- (a) the Receiving Party shall receive from the Transferring Party information sufficient (in the Receiving Party’s reasonable opinion) to allow it to know the basis on which Personal Data will be transferred to it, the purpose for which the Relevant Personal Data were collected and whether such data are capable of being transferred without the consent of the relevant Data Subject;
- (b) Personal Data shall only be transferred between the parties where a lawful basis under the Data Protection Legislation has been identified to do so;
- (c) the parties shall take all risk mitigation steps reasonably required in relation to the transfer of Personal Data;
- (d) to the extent that the Subsidiary is a Controller in respect of the Data licensed to it by the Club, it shall comply with all obligations imposed on Controllers under the Data Protection Legislation;
- (e) to the extent that the Subsidiary is a Processor in respect of the Personal Data licensed to it by the Club, it shall:
 - (i) comply with the Data Protection Legislation as if it was a Controller and shall not do anything which could result in the Club breaching the Data Protection Legislation;
 - (ii) act only on the instructions of the Club which shall be the Controller in respect of any such Personal Data processed by the Subsidiary;
 - (iii) process such Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations under this agreement or any service agreement between the parties or as is required by law or by any regulatory body including but not limited to the Information Commissioner’s Office;
 - (iv) ensure that it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data, which shall be of a standard at least equivalent to those of the Club;
- (f) the Subsidiary will be responsible for accessing any Data it requires and shall bear all costs and expenses incurred in connection with the accessing of Data;
- (g) the Subsidiary shall not mail, e-mail, telephone or otherwise contact those persons whose Personal Data is contained in the Data unless it is lawful to do so; and
- (h) the Subsidiary shall to the fullest extent permitted by law permanently maintain confidentiality in respect of the Data.

- 5.3 The Subsidiary will not assign, license or otherwise part with the Data or any right to use the Data or any information included in the Data without the prior written consent of the Club.
- 5.4 The Subsidiary authorises the Club to exploit data it may provide to the Club for the purposes of the Club, and warrants that such use will not put the Club in breach of the Data Protection Legislation .
- 5.5 For the purposes of this agreement, “data controller”, “data processor”, “personal data”, and “processing” shall have the meanings ascribed to them in the DPA.

6. **PROMOTIONAL LITERATURE AND COMMUNICATIONS**

- 6.1 The Subsidiary shall provide to the Club all promotional, advertising and sales literature and other material which uses the Name and/or Logo(s) not less than 14 days in advance of such use [and the Club shall have 14 days in which to raise objection to the same on grounds of breach of any of the provisions of this agreement/the use of such material shall be subject to the prior written consent of the Club].
- 6.2 Where reasonably practicable, the Subsidiary will provide the Club with not less than seven days’ advance notice of any forthcoming major mailings, communications or promotional campaigns.
- 6.3 The Club shall be permitted to insert such information and educational or promotional literature concerning its activities in the Subsidiary’s mailings and communications as it may from time to time require provided that if so requested by the Subsidiary it shall pay any reasonable additional expenses incurred in doing so.

7. **ASSIGNMENT OF OTHER RIGHTS**

All goodwill and intellectual property rights which are generated or created by the Subsidiary in the course of the Activities are hereby assigned to the Club. Insofar any such intellectual property rights are necessary for the Subsidiary to perform its obligations under this agreement, they are hereby licensed back to the Subsidiary for the duration of, and subject to the terms of, this agreement. The Subsidiary shall promptly provide to the Club, on its request, copies of material in which such rights subsist.

8. **USE OF SHARED RESOURCES**

Shared Resources shall be shared as follows:

- 8.1 the Subsidiary shall be liable to the Club in respect of its use of all Shared Resources which belong to, or are supplied to it by, the Club, unless the Subsidiary has expressly indicated to the Club in writing that it will not accept such liability;
- 8.2 the Club shall not be liable to the Subsidiary in respect of its use of any Shared Resources which belong to, or are supplied to it by, the Subsidiary unless and to the extent that it has expressly agreed with the Subsidiary that it will be liable for them;
- 8.3 subject to Clauses 8.1 and 8.2, the apportionment of liability for any Shared Resources between the Club and the Subsidiary shall be determined by reference to fair and common sense principles based on the respective use made and benefit obtained by the parties in

respect of the Shared Resources concerned (with due account being taken of any overheads or other related expenses);

8.4 any dispute as to the fair and proper apportionment of the liability for Shared Resources shall be resolved at the request of either party by the conclusive determination of a chartered accountant nominated by the auditors for the time being of the Club and such accountant may be employed by or be a partner of such auditors. The nominated accountant shall act as an expert and not as an arbitrator and may stipulate such arrangements and requirements with regard to the matter concerned as they may from time to time consider appropriate including the proportions in which the parties shall be liable for his or her proper fees and expenses;

8.5 in considering which as between the Club and the Subsidiary shall be the contracting party in relation to any Shared Resource the governing principle (unless there shall be good reason to the contrary in any case) shall be that the contracting party shall be the party which is likely to make greater use of the relevant Shared Resource.

9. PAYMENT⁴

9.1 The consideration payable by the Subsidiary to the Club for the use of the Name and/or Logo(s) under the terms of this agreement shall be 1% of the gross annual turnover of the Subsidiary, exclusive of gross annual turnover from exploitation of the Rights and the Data, when separately identifiable, based on the audited accounts for the Subsidiary for the previous financial year up to a maximum of £[500 – 5,000]. This payment shall be exclusive of VAT. Such payment shall be paid by two half yearly payments on [1st March] and [1st September] in each year and shall be an annual payment and/or a non-trading gain on an intangible fixed asset.

9.2 The consideration payable by the Subsidiary for use of the Rights shall be 1% of the gross annual turnover of the Subsidiary from exploitation of the Rights based on the audited accounts for the Subsidiary for the previous financial year, up to a maximum of [£500 – 5,000]. This payment shall be exclusive of VAT. Such payment shall be paid by two half yearly payments on [1st March] and [1st September] in each year and shall be an annual payment and/or a non-trading gain on an intangible fixed asset.

9.3 The consideration payable by the Subsidiary for use of the Data shall be £1,000 per annum exclusive of VAT payable on 1st March in each year.

9.4 The Club shall render to the Subsidiary the appropriate invoices for sums due under Clauses 8, 9.1, 9.2 and 9.3.

10. TERMINATION

10.1 The Club may terminate this agreement immediately by notice in writing if the Subsidiary does anything which in the reasonable opinion of the Club is contrary to Best Use or is otherwise inimical to the objects of the Club or brings or is reasonably likely to bring the Name, Logo(s) or reputation of the Club into disrepute.

⁴ If the Club considers it appropriate to charge higher amounts than those inserted in these payments clauses, the Club may wish to seek further tax advice regarding available tax exemptions and/or the small scale trading exemption for charities depending on the type of payment being received.

10.2 Either party may terminate this agreement immediately by notice in writing to the other in the event that:

- (a) the other party commits any other material breach of this agreement; or
- (b) a resolution is passed for the voluntary or compulsory liquidation of the other party or a receiver or administrator is appointed over all or part of the other party's business or assets or any analogous action or proceeding takes place in any jurisdiction.

10.3 This agreement may also be terminated by either party giving to the other not less than **[six]** calendar months' notice in writing to expire at any time.

10.4 Termination of this agreement shall be without prejudice:-

- (a) to any right or remedy of either party against the other subsisting at the time of termination and obligations as to confidentiality shall in any event continue; and
- (b) to any contract entered into by the Subsidiary with any third party in good faith, provided that on termination of this agreement the Subsidiary shall, if required to do so by the Club, take such steps as the Club may direct to terminate any relevant contract, or to facilitate the transfer of the rights and obligations under any relevant contract to the Club.

11. **NO AGENCY OR PARTNERSHIP**

11.1 The Subsidiary undertakes not to:-

- (a) act as agent of the Club,
- (b) contract with any person or entity on behalf of or in the name of the Club,
- (c) commit the Club,
- (d) in any other way make the Club liable,

unless it has obtained the prior written consent of the Club.

11.2 The Subsidiary shall not contract or hold itself out as a partner or joint venturer with the Club, unless it has obtained the prior written consent of the Club.

11.3 The Subsidiary undertakes at all times in its public relations, promotional materials, stationery, literature and correspondence with third parties to maintain a clear separate identity to that of the Club.

12. **ACCOUNTS AND RECORDS**

- 12.1 The Subsidiary shall provide the Club with details of its Activities fully and promptly and in such manner as the Club may from time to time reasonably require (and any dispute as to accounting and records shall be conclusively resolved by the auditors to the Club for the time being).
- 12.2 The Subsidiary will promptly following request make available to the Club or its agents all records, papers and information in relation to the matters covered by this agreement and will allow the Club and its agents to make copies of them.

13. **CONFIDENTIALITY**

- 13.1 The Club agrees with the Subsidiary and the Subsidiary with the Club to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or persons or otherwise make use of or permit to be made use of any information relating to the other party's business affairs or finances (as the case may be) where knowledge or details of the information was received during the period of or in connection with this agreement.
- 13.2 The obligations of confidence referred to in this clause shall not apply to any confidential information which:
- (a) is in the possession of and is at the free disposal of the disclosing party or is published or is otherwise in the public domain prior to the receipt of such information by the disclosing party; or
 - (b) is or becomes publicly available on a non-confidential basis through no fault of the disclosing party; or
 - (c) is received in good faith by the disclosing party from a third party who on reasonable enquiry by the disclosing party claims to have no obligations of confidence to the other party in respect of it and imposes no obligations of confidence upon the disclosing party.

14. **GENERAL**

- 14.1 This agreement is personal as between the parties and the Subsidiary can only assign its rights and/or obligations under this agreement with the Club's prior written consent.
- 14.2 No amendment or addition to this agreement shall be made unless made in writing and executed by the parties.
- 14.3 No delay, single or partial exercise or omission of either party in exercising any right under this agreement shall operate to impair such right or be construed as a waiver thereof.
- 14.4 In the event that any provision of this agreement is declared by any judicial or other competent authority to be void, voidable or illegal the remaining provisions shall continue to apply.
- 14.5 This agreement does not create any right enforceable by any person not a party to it.

- 14.6 The Club shall not be liable for any breach of any term of this agreement which is the result of any cause beyond its reasonable control.
- 14.7 Any demand, notice or other communication by either party to the other may be delivered personally to the recipient or sent to the recipient by post or email at its address specified above (or at such other address notified by the recipient in advance). Any such notice, demand or other communication shall be deemed to have been received 24 hours after posting (where sent by first class prepaid post), immediately upon such delivery (where delivered personally) and immediately on sending (where sent by email) provided no adverse answerback is received, whether or not it is actually received.

Signed for and on behalf of

[Name of the charitable sports club]

Name:

Signature:

Date:

Signed for and on behalf of

[Name of Subsidiary]

Name:

Signature:

Date: