

Dated

2023

(1) THE KENT COUNTY COUNCIL

(2) CYCLOPARK

DEED OF VARIATION

relating to an agreement for **the provision and
maintenance of Cyclopark (The Operator Agreement)**

THIS DEED is dated

2023

BETWEEN:

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14, 1XQ (the "**Council**")
- (2) **CYCLOPARK** (under company number 07762463) a private company limited by guarantee whose address is situated at Watling Street, Gravesend, Kent, DA11 7NP (the "**Operator**").

each a "**Party**" and together the "**Parties**".

BACKGROUND

- (A) The Council and the Operator entered into the Agreement for the Provision and Maintenance of Cyclopark (the Operator Agreement) dated 26th May 2012 for the day to day management and operation of Cyclopark ("**Original Agreement**"). The Operator Agreement is attached at Schedule 1 of this deed.
- (B) Since the Original Agreement was signed, there has been a variation to incorporate Additional Funding, Additional Land and commuted sum linked to the Lease of the Additional Land resulting in the consequence that the Original Agreement needed to be varied to take into account these amendments. The parties agreed to vary the Original Agreement by signing a Deed of Variation Agreement on 25 January 2018 which is attached at Schedule 2 of this deed ("**First Variation Agreement**"). The Operator Agreement and the Deed of Variation Agreement shall be referred together as the "**Complete Agreement**".
- (C) The Council and the Operator have now agreed to extend the Original Agreement from 27 May 2022 ("**Effective Date**") by a further period of ten (10) years exercising its rights under Clause 31.2 of the Original Agreement.
- (D) The Council agreed to make available, solely upon its discretion, to the Operator funding of up to £125,000.00 (one hundred and twenty five thousand pounds) per annum for the new extended Contract Period referred to in Recital (C), which shall be made available at the sole discretion of the Council, who shall not be obligated to pay.
- (E) The Parties wish to amend the Original Agreement as set out in this deed with effect from the date of this deed ("**Variation Date**").
- (F) The Parties agree that in all other respects the Original Agreement (as varied by this Deed of Variation) and the First Variation Agreement shall remain in full force and effect.

AGREED TERMS

1. TERMS DEFINED IN THE AGREEMENT

In this deed, expressions defined in the Original Agreement and used in this deed shall have the meaning set out in the Original Agreement. The rules of interpretation set out in the Original Agreement apply to this deed.

2. VARIATION OF THE ORIGINAL AGREEMENT

2.1. The following variations have been agreed to:

2.1.1 The Original Agreement has been extended from the Effective Date for a further of 10 years on the terms and conditions of the Original Agreement;

2.1.2 Prior to the expiry of this extended period, the Council may, in its absolute discretion, offer the Operator an extension of the Contract for a further period of ten (10) years from the date of expiry of the period outlined in Clause 2.1.1. In the event the Operator notifies the Council of the acceptance of the extension under this clause the Contract shall continue during the extended period under this clause on the same terms and conditions of the Original Agreement and shall remain subject to termination by the Council pursuant to the terms in the Original Agreement;

2.1.3 The Council may, upon its own discretion and choice, make available a sum of £125,000.00 to the Operator each year for the period outlined in Clause 2.1.1;

2.1.4 The Council agrees that the Operator shall be allowed to sub-let partly and/or wholly the land referred to in the Lease (contained in Appendix 3) ("Lease"); and

2.1.5 The Council agrees to assist in the drafting and executing of a Licence, within a reasonable time, between the Operator and the Council so that the Operator may carry out the activities outlined in Clause 2.1.4.

3. CONFIDENTIALITY

3.1 The terms of this Deed of Variation are confidential and the Parties agree not to disclose them or any part of the contents to any other person (save for their respective professional advisors, the Council funders and as required by law).

3.2 Each of the Parties hereby undertakes to the other:

- 3.2.1 To keep confidential all information (written and oral) concerning the business and affairs of the other Party that it obtains or receives as a result of the funding and this Deed of Variation, First Variation Agreement and the Original Agreement (collectively the “Information”); and
 - 3.2.2 Not without the other Parties prior written consent to disclose the Information in whole or in part to any person save as required by law or by the Council’s funders.
- 3.3 The provisions of this Clause 3 shall not apply to whole or any part of the Information to the extent that such Information is in the public domain.

4. GENERAL

- 4.1 Each of the Parties shall sign, execute and complete all such documents and deeds as shall be necessary for the purpose of carrying out the terms of this Deed of Variation and/or bringing this Deed of Variation into effect.
- 4.2 This Deed of Variation is personal to the parties and the Operator shall not without the prior written consent of the Council assign, delegate or sub-contract any of its rights and/or obligations under or arising out of this Deed of variation (or any documents referred to in it), or purport to do any of the same.

5. TERMINATION

- 5.1 The termination provisions of the Original Agreement shall be amended to include reference to the Lease and the Council shall be entitled to terminate the Original Agreement in the event that the Operator breaches any terms of the Lease and, for the avoidance of doubt, the Lease shall terminate when the Original Agreement terminates.

6. ENTIRE AGREEMENT

- 6.1 The terms of this Deed of Variation together with the First Variation Agreement and Original Agreement, and the Lease constitute the entire agreement between the Parties and supersede all previous agreements between the Parties relating to its subject matter.
- 6.2 Each Party acknowledges that, in entering into this Deed of Variation, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, and shall no right or remedy in respect or, any statement, representation assurance or warranty (whether made negligently or innocently) other than expressly set out in this Deed of Variation, First Variation Agreement and/or the Original Agreement.

7. PREVAIL

- 7.1 In the event of any conflict and/or contradiction and/or inconsistency between the terms of this Deed of Variation, First Variation Agreement and the terms of the Original Agreement, the terms of this Deed of Variation shall prevail and/or the interpretation of the Council of the terms shall be upheld.

8. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Deed of variation shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

9. COUNTERPARTS

- 9.1 This deed may be executed in any number of counterparts or duplicates each of which will be an original and such counterparts or duplicates will together constitute one and the same agreement.

10. GOVERNING LAW

- 10.1 This deed 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 laws of England and Wales.

11. JURISDICTION

- 11.1 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 deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the parties have executed this agreement as a deed and it is hereby delivered on the day and year first before written.

APPENDIX 1 – ORIGINAL AGREEMENT

The parties acknowledge receipt of the Original Agreement which is incorporated by reference but not attached hereto.

APPENDIX 2 – FIRST VARIATION AGREEMENT

The parties acknowledge receipt of the Original Agreement which is incorporated by reference but not attached hereto.

APPENDIX 3 – LEASE

The parties acknowledge receipt of the Original Agreement which is incorporated by reference but not attached hereto.

THE SEAL of KENTY COUNTY COUNCIL)
and was hereunto affixed)
in the presence of:-)

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| AUTHORISED SIGNATORY | Signature |
| Name | |

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| AUTHORISED SIGNATORY | Signature |
| Name | |

SIGNED for and on behalf of)
CYCLOPARK)
in the presence of:-)

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| AUTHORISED SIGNATORY | Signature |
| Name | |

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| AUTHORISED SIGNATORY | Signature |
| Name | |