

Dated 29 October 2017

AGREEMENT

relating to BaseballSoftballUK Limited

Between

(1) **British Baseball Federation**

and

(2) **British Softball Federation Limited**

and

(3) **BaseballSoftballUK Limited**

CONTENTS

| CLAUSE | PAGE |
|---|------|
| 1 DEFINITIONS AND INTERPRETATION | 1 |
| 2 THE BUSINESS | 3 |
| 3 THE BOARD..... | 5 |
| 4 CONDUCT OF BUSINESS | 5 |
| 5 ACCOUNTING MATTERS AND REPORTING | 6 |
| 6 SAFEGUARDING OF MINORS AND VULNERABLE ADULTS..... | 7 |
| 7 TERM AND TERMINATION | 7 |
| 8 CONFLICT | 8 |
| 9 NO PARTNERSHIP | 8 |
| 10 CONFIDENTIALITY AND GOOD FAITH | 9 |
| 11 NOTICES..... | 9 |
| 12 FURTHER ASSURANCE..... | 9 |
| 13 PROPER LAW AND DISPUTE RESOLUTION..... | 9 |
| 14 ENTIRE AGREEMENT | 10 |
| SCHEDULE 1 | 11 |
| SCHEDULE 2 | 14 |

THIS AGREEMENT is made on 29 October 2017.

BETWEEN:

- (1) **BRITISH BASEBALL FEDERATION** of Marathon House, 4th Floor, 190 Great Dover Street, London, SE1 4YB, United Kingdom (**BBF**);
- (2) **BRITISH SOFTBALL FEDERATION LIMITED** (Company Number 06823144) with a registered office at of Marathon House, 4th Floor, 190 Great Dover Street, London, SE1 4YB, United Kingdom (**BSF**);
and
- (3) **BASEBALLSOFTBALUK LIMITED** (Company Number 6258953) with a registered office at Marathon House, 4th Floor, 190 Great Dover Street, London, SE1 4YB, United Kingdom (the **Company**).

BACKGROUND

- (A) The Company is a company limited by guarantee of which BBF and BSF are the only Members.
- (B) The BBF is the governing body of the sport of baseball in the United Kingdom. The BSF is the governing body of the sport of softball in the United Kingdom.
- (C) Each of the Members have agreed to appoint the Company to promote and develop the playing of baseball and softball in the UK and to provide certain administrative and management functions on their behalf for the Term and, accordingly, the parties hereto have agreed to enter into this Agreement with a view to placing on record their agreement as to how the affairs of the Company (in so far as they are controlled by the Members) shall be regulated.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the provisions of this Clause shall apply unless the context otherwise requires.
- 1.2 The following words and expressions shall bear the meanings set opposite them:

the **Act** means the Companies Act 2006;

the **Agreement** means this agreement and the documents attached hereto;

the **Articles** means the Articles of Association of the Company in the form attached to this Agreement at Appendix A;

the **Auditors** means the auditors for the time being of the Company;

the **Board** means the Board of Directors for the time being of the Company;

the **Business** means the business to be carried on by the Company is to promote and develop the playing of baseball and softball in the UK and to perform and fulfil such managerial, administrative and other functions for and on behalf of each of the Members as are delegated to the Company from time to time in accordance with Clause 2;

the **BBF Directors** means the Nominated Directors of the Company appointed to the Board pursuant to Clause 3.1 or any person appointed in their place;

the **BSF Directors** means the Nominated Directors of the Company appointed to the Board pursuant to Clause 3.1 or any person appointed in their place;

the **Chair** means the Chair of the Board appointed from time to time pursuant to the Articles;

the **Directors** means the directors of the Company from time to time appointed in accordance with the Articles;

Executive Director means an Executive Officer of the Company appointed as an Executive Director pursuant to the Articles;

the **Independent Directors** means the Independent Directors of the Company appointed from time to time pursuant to the Articles;

the **Members** means BBF and BSF;

the **Nominated Directors** means candidates nominated by either the BBF or BSF Boards;

the **Services** means the services and functions to be performed by the Company on behalf of the Members in accordance with this Agreement as set out in more detail in Schedule 1 and as amended from time to time in accordance with Clause 2 but excluding the services set out in paragraph 5 of Schedule 1 (the **Excluded Services**); and

the **Termination Date** means 31 March 2021.

- 1.3 References to statutory provisions shall be construed as references to any statutory modification or re-enactment thereof (whether before on or after the date hereof) for the time being in force and to any former statutory provision replaced (with or without modification) by the provisions referred to and shall include all statutory instruments or orders from time to time made pursuant thereto.

- 1.4 References to persons shall include references to bodies corporate and to unincorporated associations, to the singular shall include references to the plural and to the masculine shall include references to the feminine and vice versa.
- 1.5 References to Clauses are to Clauses of this Agreement.
- 1.6 Headings and underlining are included for convenience only and shall not affect the interpretation or construction of the terms of this Agreement.
- 1.7 A reference to a **subsidiary** shall include a reference to a **subsidiary** and a **subsidiary undertaking** (each as defined in the Act) and a reference to a **holding company** shall include a reference to a **holding company** and a **parent undertaking** (each as defined in the Act).
- 1.8 The terms defined in the Articles shall apply to this Agreement unless the context requires otherwise.

2 THE BUSINESS

- 2.1 The business of the Company shall be to promote on behalf of its Members the development of the Sport within the Territory and to perform and fulfil administrative and other functions from time to time in accordance with clauses 2.2 and 2.3 below.
- 2.2 Each of the Members hereby:
- 2.2.1 appoints the Company for the Term to promote and develop the playing of baseball and softball in the UK and to perform and fulfil the Services on their respective behalf; and
- 2.2.2 agrees to provide the Company (whether by way of licence, grant, transfer, loan or otherwise) with the benefit of such rights (including funding in the manner set out in Schedule 2) and assets (including intellectual property) as may be reasonably requested by the Company from time to time and for whatever period(s) of time agreed between the Members and the Company, to enable the Company to perform the Services on behalf of the Members.
- 2.3 The Company is not bound to provide all of the Services at all times.
- 2.4 The Members are not precluded from working in the areas covered by the Services set out in paragraph 1 in Schedule 1, but recognises that the Company is primarily responsible for these areas and will consult with the Company before any additional work is carried out.

- 2.5 The Members retain the rights set out in paragraph 2 of Schedule 1, but provide the Company with these rights to the extent required for it to carry out the Business and the Services.
- 2.6 The Services set out in paragraph 3 of Schedule 1 are the responsibility of the Members. The Company may, at the request of the relevant Member, provide support in these areas and may seek to be involved in any strategic discussions relating to them.
- 2.7 Each of the Members may, from time to time by notice in writing to the Company (with a copy of such notice sent to the other Member), request that the Company either performs reasonable additional functions or services, including the Services set out in paragraph 4 of Schedule 1 (**Additional Services**) but excluding the Excluded Services set out in paragraph 5 of Schedule 1, or ceases (whether temporarily or permanently) to perform any of the Additional Services on its behalf.
- 2.8 Subject to clause 2.9 below, no later than 21 days from the date of the notice set out in Clause 2.7, the Company shall notify the relevant Member whether it agrees to or declines the request set out in that Clause. If the Company:
- 2.8.1 agrees to the request, the relevant Services shall be deemed to be amended accordingly from the date of the notice by the Company; or
- 2.8.2 declines the request, the Company shall at the same time put in writing its reasons for declining such request.
- 2.9 The Company shall use all reasonable endeavours to comply with any request under clause 2.7 for it to perform Additional Services which is supported in writing by both Members, provided that the Members shall provide such resources as may be requested by the Company in order to enable the Company to perform such Additional Services.
- 2.10 The Services performed by the Company for each Member and the corresponding funding requirements shall be subject to annual review to be completed and agreed between each Member and the Company by 1 December in each calendar year and taking effect for the following financial year commencing 1 April. On completion of the review, the Services set out the schedule to this letter shall be deemed to be amended accordingly. Failing agreement, the Services then prevailing shall be deemed to apply without prejudice to the Parties' rights under clause 2.7.
- 2.11 The Company hereby agrees to:
- 2.11.1 in good faith and to an agreed standard, perform the Services and to represent the interests of the Members;

- 2.11.2 provide each of the Members within a reasonable time after a request for the same with such information as they may reasonably require in relation to the performance of the Company's obligations under this Agreement; and
- 2.11.3 keep proper records and books of account on all matters relating to the fulfilment of its obligations under this Agreement and to ensure that such records accurately separate all matters related to the Members, in particular in relation to the Services and all related assets and liabilities. The Company shall on request from either of the Members allow that Member's professional advisors to examine such books and records and to take copies and extracts of such books and records.

3 THE BOARD

- 3.1 As per The Articles, each of the Members shall have the right to nominate people to fill up to two Nominated Director places on the Board. Such appointments are subject to the approval of the Board, based on a recommendation made by the Nominations Committee. Subject to clause 3.2, the person serving as President of each Member shall be nominated as one of that Member's Nominated Directors and shall continue as a Nominated Director for the duration of their presidency subject always to the Articles term limits for directors.
- 3.2 Where the President of either Member is unable or unwilling to serve as a Nominated Director for any reason, that Member shall nominate another person from its board as one of its Nominated Directors. Such a Director will serve until a succeeding President is appointed, at which time the incoming President shall be nominated as a Nominated Director in his place.
- 3.3 The Members shall make all reasonable effort to nominate directors who have the appropriate commitment, balance, skills, independence and knowledge to serve on the board.

4 CONDUCT OF BUSINESS

- 4.1 The parties shall procure that at all times during the continuance of this Agreement the business of the Company shall exclusively be the Business.
- 4.2 Each Member undertakes to the other Member that at all times during the continuance of this Agreement it shall:
 - 4.2.1 exercise all voting rights and powers of control available to it in relation to the Company so as to give full effect to the terms and conditions of this Agreement;

- 4.2.2 comply in all respects with the Articles; and
- 4.2.3 procure that its Nominated Directors and other representatives will support and implement all reasonable proposals put forward at Board and other meetings of the Company for the proper development and conduct of the Business as contemplated in this Agreement.

4.3 The Board shall have responsibility for the supervision and management of the Company and the Business and all policy and management decisions of the Company and/or the Business shall be referred to the Board.

5 ACCOUNTING MATTERS AND REPORTING

5.1 The accounting reference date of the Company shall be 31 March.

5.2 The Members and the Company shall each procure that, so far as the same is within their reasonable control, (except with the prior written agreement of each of the Members):

5.2.1 accounting periods of the Company shall end on 31 March in each year and for the purposes of financial administration each accounting period shall be divided into four quarterly periods ending on the last days of June, September, December and March respectively; and

5.2.2 the Members will be kept in close touch with the Business and will be furnished to such extent and in such form and detail as they may from time to time reasonably require with particulars of any matters concerned with and arising out of the activities of the Company and in particular but without prejudice to the generality of the foregoing furnished with:

5.2.2.1 annual trading and cash budgets in respect of each accounting period of the Company and so that such budgets shall be submitted to the Board not less than one month before the commencement of each accounting period;

5.2.2.2 copies of the audited accounts in respect of each accounting period of the Company forthwith upon the same becoming available; and

5.2.2.3 a financial statement for each quarter in a form to be agreed from time to time between the Members such statement to be supplied in any event not later than 45 days after the end of such quarter;

- 5.2.3 a meeting of the Board shall be held as soon as practicable after the end of each quarterly period for the purpose of:
- 5.2.3.1 reviewing all financial information and reports provided during or in respect of such quarterly period or in respect of any accounting period terminating at the end of that quarterly period;
 - 5.2.3.2 reviewing the cash flow position of the Business during such quarterly period and approving any measures necessary for easing any adverse situation in the ensuing quarterly period; and
 - 5.2.3.3 reviewing the budget for the accounting period then current.

6 SAFEGUARDING OF MINORS AND VULNERABLE ADULTS

- 6.1 The Members hereby appoint the Company to provide expertise, advice and policy direction in all matters relating to the safeguarding of minors and vulnerable adult participants in the Sports, and to act on behalf of either Member in reporting a safeguarding issue for their management and resolution.
- 6.2 The board of each Member shall appoint an officer whose function is to liaise with the Company on all safeguarding matters and who should refer any such issues arising within that Member to the Company for management and resolution.
- 6.3 Each Member shall be responsible for applying the advice, implementing the direction or imposing any sanctions or impositions required by the Company in this regard, in consultation with the Company and its advisers.

7 TERM AND TERMINATION

- 7.1 This Agreement shall take effect as from 1 April 2017 and shall continue in force until the Termination Date, unless terminated earlier by any party in accordance with clause 7.3.
- 7.2 This Agreement may be extended for such further periods of 4 years from the Termination Date as the parties shall agree and thereafter, subject to clause 7.2, the parties shall not terminate this Agreement other than on each fourth anniversary of the Termination Date. If any party intends not to extend such Agreement on the Termination Date (and on any fourth anniversary of the Termination Date) it shall give the other parties not less than 6 months prior written notice. In the absence of such notice all parties will work together in good faith to extend the Agreement.
- 7.3 Any party may terminate this Agreement by giving the other party (**the Recipients**) not less than 90 days' notice in writing if:

7.3.1 any party commits a material breach or persistent breaches of this Agreement and (in the case of a breach capable of being remedied) shall have failed to remedy the same within thirty days after that party receives a written request from any other party requiring the breach to be remedied; or

7.3.2 any party is, in the reasonable opinion of another party, unable to pay its debts within the definition set out on sections.123(1) or (2) of the Insolvency Act 1986 (interpreted on the basis that the words "it is proved to the satisfaction of the court" in ss.123(1)(e) and 123(2) were deemed to be omitted) or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation with the prior written consent of the other parties) or compounds with or convenes a meeting of its creditors or has a provisional liquidator, receiver or manager or an administrative receiver or an administrator appointed over its assets or ceases for any reason to carry on business or the occurrence of any similar or analogous insolvency proceeding or event in a jurisdiction outside England and Wales.

7.4 Following the termination of this Agreement, the Company shall, after the payment of all liabilities of the Company (if any) and subject to the Articles of the Company, forthwith transfer:

7.4.1 any and all rights and assets whatsoever attributable to BBF and/or the sport of baseball to BBF;

7.4.2 any and all rights and assets whatsoever attributable to BSF and/or the sport of softball to BSF; and

8 **CONFLICT**

In the event of any conflict between this Agreement and the Articles then the provisions of this Agreement shall prevail. The provisions of this Agreement do not constitute an agreement to alter the Articles.

9 **NO PARTNERSHIP**

Nothing in this Agreement shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Members. Neither Member may pledge or purport to pledge the credit of the other Member or make or purport to make any representations, warranties or undertakings for the other Member.

10 CONFIDENTIALITY AND GOOD FAITH

- 10.1 Each of the parties to this Agreement shall maintain strict confidence and secrecy in respect of all information of a proprietary nature received by it directly or indirectly pursuant to this Agreement and each party shall use its best endeavours to procure that its respective officers and employees maintain strict confidence and secrecy in respect of such information. The covenants and obligations of this clause shall survive the termination of this Agreement and each party shall continue to observe them regardless of whether its rights hereunder should be terminated or it should cease to be a party hereto.
- 10.2 Clause 10.1 shall not apply to information of a non-proprietary nature which the Members are reasonably expected to communicate to their own members in the natural course of their business.

11 NOTICES

- 11.1 Any notice or other document to be given hereunder shall be delivered or sent by first class post, facsimile transmission or email to the party to be served at that party's address appearing in this Agreement or such other address as that party shall notify in accordance herewith.
- 11.2 Any such notice or document shall be deemed to have been served if delivered at the time of delivery or if posted at the expiration of forty-eight hours after the envelope containing the same shall have been put into the post and in proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notice or document was properly addressed and posted as a prepaid first class letter.

12 FURTHER ASSURANCE

- 12.1 Each of the parties shall take all reasonably necessary steps and co-operate with the other parties to perform their respective obligations under this Agreement and shall execute such documents and take such other steps as are reasonably necessary or appropriate for vesting in any other party all its rights and interests under this Agreement.

13 PROPER LAW AND DISPUTE RESOLUTION

- 13.1 In the event of any dispute between the Company, BBF and/or BSF (for the purposes of this Clause "the parties in dispute") whether in relation to the terms of this Agreement, the Articles or any other matter or, if applicable, dispute relating to their capacity as Members of the Company or the Nominated Directors (**a Dispute**), the provisions of Clauses 13.2 to 13.4 shall apply.

- 13.2 Where any party considers that a Dispute has arisen, that party shall promptly notify the others in writing of this fact and set out the matters in dispute. Duly appointed representatives of the parties in dispute shall meet to discuss the Dispute no more than 21 days from the date of service of the notice and shall use their reasonable endeavours to reach agreement in relation to the Dispute.
- 13.3 If the parties in dispute are not able to resolve a Dispute within 42 days of the date of service of the relevant notice in accordance with Clause 13.2, any of the parties in dispute may refer the matter to Sports Resolution (SR) for resolution in accordance with SR's mediation procedure (as amended from time to time) (the **Mediation Procedure**) and, in such circumstances, each of the parties in dispute hereby agree to such procedure.
- 13.4 In the event that the Mediation Procedure described in Clause 13.3 terminates without resolution, or with the agreement of the parties prior to the Mediation Procedure, either of the parties in dispute may refer the matter to SR for resolution in accordance with SR's Arbitration Rules (as amended from time to time) and, in such circumstances, each of the parties in dispute hereby agrees that decisions and/or awards of the Tribunal appointed by SR shall be final and binding on both parties and agrees to waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to any applicable statutory or other rights. The costs and expenses incurred by SR in connection with any dispute shall be borne by the parties in dispute in such proportions as SR shall direct and, in the absence of such direction, equally.
- 13.5 This Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

14 ENTIRE AGREEMENT

- 14.1 This Agreement and the Articles constitute the entire agreement between the parties in relation to their subject matter and supersede any previous members' agreement and all other previous representations, communications, negotiations, agreements and understandings between the parties relating to their subject matter which shall cease to have any further force or effect.

SCHEDULE 1

THE SERVICES

1 **Functions delegated to the Company**

To promote and develop baseball and softball within the UK, including but not limited to:

- 1.1 Youth and schools development
- 1.2 New adult and youth teams
- 1.3 Further Education development
- 1.4 Higher Education development
- 1.5 Player pathways (LTAD) and Academies
- 1.6 Club accreditation and development
- 1.7 Coach development
- 1.8 Workforce development
- 1.9 Promotion of the sports to potential participants and dealing with public enquiries
- 1.10 Facilities development
- 1.11 National Training Centre
- 1.12 Safeguarding and equality policy, procedures and associated programmes

2 **Members' rights conferred to the Company**

- 2.1 Access to membership data for direct engagement with leagues/clubs/teams/players affiliated to the BBF and BSF relating to specific development activities
- 2.2 Relationships with external organisations
- 2.3 Press/PR activities
- 2.4 Website management
- 2.5 Supporting the BBF and BSF in ensuring each meet required governance standards

3 Members to seek input from the Company

3.1 Officials development

3.2 Competition structures

4 Services that the Members can purchase from the Company

4.1 Invoicing and collection of membership fees from affiliated bodies

4.2 Website services and other communication mechanisms, including:

4.2.1 Hot Corner

4.2.2 Website content

4.2.3 Direct and broadcast emails

4.2.4 Social media

4.2.5 Calendar of activities

4.3 Management of the provision of insurance

4.4 International support – representation and liaison with other agencies

4.5 National team support

4.6 Event support

4.7 National Championship support

4.8 Coverage of international competition featuring GB teams

4.9 Reporting on Federation activities, including Federation meetings

4.10 Any additional services which may be requested as required

5 Excluded Services

5.1 The operational management of competitive structures within which affiliated clubs and teams participate, including:

5.1.1 Management and supervision of BBF and BSF leagues

5.1.2 Rules and regulations

- 5.1.3 National team costs
- 5.1.4 Insurance costs
- 5.1.5 Storage costs
- 5.1.6 Purchase and management of Federation equipment
- 5.1.7 National awards and trophies costs
- 5.1.8 Federation audit
- 5.1.9 Federation expenses
- 5.1.10 Costs of welfare and disciplinary tribunals relating to Federation members
- 5.2 Matters relating to the governance of baseball and softball, including:
 - 5.2.1 Affiliation to international bodies
 - 5.2.2 Organisation and management of Federation meetings
 - 5.2.3 Discipline in relation to affiliated teams or clubs

SCHEDULE 2

THE FUNDING

From the Members

- 1 The right to attract and spend income from Sport England and other national sporting agencies primarily for the purposes of performing the functions delegated to BSUK set out in Schedule 1.
- 2 Income from grants, provided to the Company by local or regional organisations (including Local Authorities, County Sports Partnerships, Community Sports Networks) primarily for the purposes of performing the functions delegated to BSUK set out in Schedule 1 regionally or locally, where delivery is facilitated, run or controlled by the Company, and where reasonable consultation with regional and local constituents of the Members has been carried out and such constituents have expressed no objection to the activities proposed.
- 3 Other income from grants, sponsorship, advertising (on the BBF and BSF websites, direct email, audio, video, printed or other media) and other sources, will be provided as agreed by the Company from time to time with each Member.
- 4 Payment, the amount to be agreed by 1 December each year, for the services that the BBF and BSF can purchase set out in Schedule 1 for each forthcoming period 1 April to 31 March, to be paid in four equal instalments on or before 30 June, 30 September, 31 December and 31 March.


Signed by

 GERARD PEREZ

an authorised signatory for and on behalf of Director
BRITISH BASEBALL FEDERATION

Signed by

a director, for and on behalf of
BRITISH SOFTBALL FEDERATION LIMITED

 JENNIFER FROMER

Director

Signed by

 CATHERINE ATWATER.

a director, for and on behalf of
BASEBALLSOFTBALLUK LIMITED

Director