**Dated 2016**

1. **THE MAYOR AND BURGESSES OF THE   
   LONDON BOROUGH OF SOUTHWARK**

**AND**

1. **[name of Contractor]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

## CONTRACT FOR THE PROVISION

**OF LEISURE SERVICES**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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| --- |
| **Drafting Note:**   * + - 1. This draft Contract dated 24th June 2015 is being issued with the OJEU Notice and PQQ. The Authority reserve the right to add to or amend this draft Contract prior to publishing the Invitation to Tender. These changes may emerge, by way of example, from the Authority’s further and on-going consultations and approvals processes. The Authority will not amend the documentation or strategy with the intention of favouring or disfavouring any Supplier. |

**Ref: SHARPE PRITCHARD SPS/RS/**

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**This Agreement** is made on 2016

**Between**

1. THE **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF** **SOUTHWARK** of 160 Tooley Street, London SE1 2QH (the “Authority”); and
2. [Contractor’s name**]** (company registered number ) whose registered office is at (the “Contractor”).

together “the Parties”

**Background**

* 1. The Authority is seeking the provision of leisure services at certain Facilities within the area of the London Borough of Southwark (the ‘Services’).
  2. The Contractor offered to provide the Services and the Authority accepted the Contractor’s offer on [ ].
  3. The Contractor shall provide the Services for a period of XXXXX years as further set out in the Conditions below.

**Now it is agreed as follows:**

**PART 1 – PRELIMINARY**

1. INTERPRETATION

General

* 1. In this Agreement except where the context otherwise requires:
     1. the masculine includes the feminine and vice-versa;
     2. the singular includes the plural and vice versa;
     3. a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
     4. save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
     5. any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
     6. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
     7. words and phrases with a first capital letter or any derivation thereof shall (as the context so requires) have the meanings set out in Schedule 1;
     8. headings are for convenience of reference only; and
     9. words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words.

**Schedules**

* 1. The Schedules to this Agreement form part of this Agreement. The provisions of Schedule 1 (Definitions) shall have effect.

**Precedence of Documentation**

* 1. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, or between the Schedules, the inconsistency shall be resolved according to the following descending order of priority;
     1. this Agreement and Schedule 1 (Definitions)
     2. Schedule 2 (Services Specification);
     3. the Schedules (excluding Schedule 1 (Definitions), Schedule 2 (Services Specification) and Schedule 3 (Contractor's Proposals);
     4. Schedule 3 (Contractor's Proposals).

For the avoidance of doubt, the Services Specification shall at all times have priority over the Contractor’s Proposals and the Contractor shall be obliged to comply with the Services Specification and provide the Services in accordance with the Services Specification.

* 1. Any changes to the Contractor’s Proposals may only be made in accordance with the Change Control Procedure.

**Responsibility for Related Parties**

* 1. Subject to the provisions of this Agreement, the Contractor shall be responsible as against the Authority for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible as against the Contractor for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

**Approval**

* 1. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve the Contractor of any of its obligations under the Contract Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

**Succession**

* 1. References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

1. third party rights to enforce the agreement

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement with the exception of clause 19 (Pensions) which may be enforced by the Eligible Employees.

1. COMMENCEMENT AND DURATION
   1. This Agreement and the rights and obligations of the parties shall take effect on the Commencement Date and shall continue until the Expiry Date unless the Agreement is terminated sooner in accordance with these conditions or in accordance with common law or statute or extended in accordance with clause 3.2.
   2. The Authority shall be entitled at its absolute discretion to extend the Contract Period by any number of periods up to an aggregate of seven years. In the event that the Authority decides to so extend the Contract Period it shall serve written notice to the Contractor not less than six (6) months before the Expiry Date (or if applicable the Expiry Date as previously extended). In such circumstances the definition of Expiry Date shall be deemed amended accordingly and the Contractor shall continue to provide the Services in accordance with this Contract. The Management Fee payable in the seventh Contract Year shall apply for the extension period subject to adjustment in line with the Index for each Contract Year of the extension period.
2. GENERAL WARRANTIES AND INDEMNITIES

**Contractor Warranties**

* 1. The Contractor warrants and represents to the Authority that on the date hereof:
     1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
     2. it has the corporate power to enter into and to exercise its rights and perform its obligations under the Agreement;
     3. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Contract Documents has been taken or, in the case of any Contract Document executed after the date of this Agreement, will be taken before such execution;
     4. the obligations expressed to be assumed by the Contractor under the Contract Documents are, or in the case of any Contract Document executed after the date of this Agreement will be, legal, valid, binding and enforceable to the extent permitted by law and each Contract Document is or will be in the proper form for enforcement in England;
     5. the execution, delivery and performance by it of the Contract Documents does not contravene any provision of:
        1. any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
        2. the Memorandum and Articles of Association of the Contractor;
        3. any order or decree of any court or arbitrator which is binding on the Contractor; or
        4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
     6. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Contract Document;
     7. it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Contract Document;
     8. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
     9. the copies of the Contract Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Contract Documents which would materially affect the interpretation or application of any of the Contract Documents;

and the Authority relies upon such warranties and representations.

**Contractor Undertakings**

* 1. The Contractor undertakes with the Authority that for so long as this Agreement remains in full force:
     1. it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Authorised Officer notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Agreement;
     2. it will not without the prior written consent of the Authorised Officer (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Agreement;
     3. it will not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a Sub-Contractor;
     4. it shall not without the written consent of the Authorised Officer (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Contract Documents;
     5. it has conducted its own analysis and review of the Disclosed Data and will not bring any action against the Authority as to the accuracy completeness and fitness for purpose of any Disclosed Data on which it places reliance; and
     6. it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Agreement.

**Contractor's Due Diligence**

* 1. Without prejudice to any other obligation of the Contractor under this Agreement, the Contractor shall, be deemed to have gathered all information necessary to perform its obligations under this Agreement.
  2. Save as otherwise provided in this Agreement the Contractor shall be deemed to have:-
     1. Satisfied itself before entering into this Agreement as to the accuracy and efficiency of the Management Fee and other financial information stated by the Contractor in its Proposals;
     2. Taken its own advice and carried out its own investigations regarding the likely usage of Facilities and any projected income relating to the Facilities;
     3. Obtained for itself all necessary information as to risk contingencies, due diligence and any other circumstances which might influence or affect its obligations under this Agreement.
  3. To avoid doubt the Contractor accepts full responsibility for all matters referred to in Clause 4.4 and the Contractor shall not be entitled to make any claim against the Authority whatsoever save, if applicable, as provided in Clause 5.3 on any grounds including (without limitation) the fact that incorrect or insufficient information on any matter was given to it by any person whether or not the Authority or a Authority Related Party.
  4. Save as expressly provided in this Agreement the Contractor shall in no circumstances be entitled to any additional payment for its encountering and/or dealing with any such circumstances described in Clause 4.4 whether unforeseen or otherwise.

**Status of Warranties**

* 1. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

1. AUTHORITY WARRANTIES

**No Warranty by Authority**

* 1. The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

**No Liability to Contractor**

* 1. Neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
     1. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data
     2. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

**Fraudulent Statements**

* 1. Nothing in this Clause 5 (Authority Warranties) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Agreement.

PART 2 - LAND ISSUES

1. NATURE OF LAND INTERESTS

**Grant of Lease for the Facilities**

* 1. The Authority shall grant to the Contractor and the Contractor shall accept on the Commencement Date Leases in respect of each of the Facilities listed at Schedule 7.

**Exclusion of Security for the Lease**

* 1. The Contractor hereby confirms that before it became contractually bound to enter into the tenancy created by each Lease pursuant to this Agreement:
     1. The Authority served on the Contractor a notice in relation to the tenancy created by each Lease listed at Schedule 7 (“the Lease Notice”) in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (“the Order”).
     2. The Contractor, or a person duly authorised by the Contractor, in relation to each Lease Notice made a statutory declaration (“the Lease Declaration”) in a form complying with the requirements of Schedule 2 of the Order.
     3. The Contractor further confirms that, where Lease Declarations were made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declarations on the Contractor's behalf.
     4. The Authority and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by each Lease listed at Schedule 7.

**Grant of the Lease**

* 1. The grant of the Leases shall take place at the offices of the Authority's solicitors. The term of the Leases relating to the Facilities shall commence on the Commencement Date.

**Delivery of Engrossments**

* 1. Within ten (10) Business Days after the Commencement Date, the Authority shall deliver engrossments of the counterpart Lease for the Facilities to the Contractor. The Contractor shall execute and deliver each Lease as a deed to the Authority within a further five (5) Business Days of receipt. The Authority shall then execute the original Leases as deeds and send the original Leases to the Contractor.

**Registration**

* 1. The Contractor shall apply for, and procure, registration of the Leases at the Land Registry as soon as reasonably practicable after the Leases are completed. The Authority shall use all reasonable endeavours to assist the Contractor in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request.

**Early Termination**

* 1. If this Agreement is terminated in whole or in part or varied for any reason prior to the Expiry Date, the relevant Lease shall automatically cease and determine with effect from the date of termination or variation of this Agreement (or, if not granted at the time, the obligation to grant the Leases shall automatically cease to apply). Where the Leases have been entered into, the Contractor shall forthwith deliver to the Authority the Leases together with all relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the Leases. The Contractor shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry and the Land Charges Registry in relation to the Leases.

**No Compensation**

* 1. The Contractor shall not be entitled to any compensation in respect of any variation of the terms of the Leases or the unexpired part of its interest as tenant/licensee under the Leases on assignment or surrender or automatic determination in accordance with this clause.

**Compliance with the Title Deeds**

* 1. The Contractor shall procure that:
     1. the provision of the Services at the Facilities by or on behalf of the Contractor shall be carried out in a manner which does not breach any provisions of the Title Deeds relating to the Facilities; and
     2. in providing the Services at the Facilities, there shall be no action, or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Facilities or any part of it (save in accordance with the terms of this Agreement).

**Third Party Interests**

* 1. In its occupation of any of the Facilities, the Contractor shall recognise the rights of those persons who hold Third Party Interests, which may give such persons the rights to exclusive use of any part of the Facilities concerned without having a formal licence to do so. This is subject to the requirement that the Contractor shall only recognise those Third Party Interests of which it has been notified. The Contractor shall also be entitled to vary the terms of any Third Party Interests by negotiation with the party concerned.
  2. **The Authority's right of entry**
     1. The Contractor shall at all times permit the Authority on written notice to enter the Facilities:
        1. to examine the condition of the Facilities;
        2. in order for the Authority to comply with its obligations under this Agreement;
        3. to take schedules of repairs and the like, and inventories of fixtures and fittings, plant and machinery;
        4. to inspect and carry out works of construction, replacement, addition, alteration, maintenance or repair to:
           1. the Facilities; and
           2. any adjacent property; and
           3. conduits serving the Facilities or any such adjacent property;
        5. for the purpose of valuing or disposing of any interest of the Authority or any superior landlord;
        6. to exercise any of the rights excepted and reserved by this Agreement and the Head Lease;
        7. for any other purpose connected with the interest of the Authority in the Facilities;
        8. to establish if the provisions of this Agreement have been observed by the Contractor.
     2. Provided always that the Authority shall not be required to give prior notice of such entry or inspection where it believes (acting reasonably) that the Contractor has breached the provisions of this Agreement or in an emergency.
     3. The Authority shall be entitled to carry out its own market research at the Facilities no more frequently than four times in any Contract Year. The Contractor shall afford to the Authority all reasonable assistance and cooperation in carrying out such research.
     4. The Authority shall, in exercising its rights under this clause 6.10 use all reasonable endeavours not to disrupt the Services and shall make good any damage caused by the Authority in the exercise of those rights.
     5. The Authorised Officer or his nominated representative may carry out an inspection at the Facilities at any time during the Contract Period. No prior notice of such inspections need be given to the Contractor or its employees. However, it is acknowledged that the Authorised Officer cannot unreasonably request the Contractor's Representative to accompany him on an inspection if this would affect the carrying out of the Contractor's business at the Facilities.

PART 3 - THE SERVICES

1. service STANDARD
   1. With effect from the Commencement Date the Contractor shall deliver the Services. The Contractor shall at its own cost be solely responsible for procuring that the Services are performed to the following standards (the “Service Standard”):
      1. the Services at each Facility are provided in accordance with all the requirements of this Agreement, the Services Specification, the Contractor’s Proposals, Good Industry Practice, any Quality Management Accreditation schemes such as Quest, Sport England Guidance, Inclusive Fitness Initiative (IFI) Mark and all the Authority’s Policies and Legislation with effect from the Commencement Date;
      2. the Services are at all times performed:
         1. in accordance with and so as to meet the Authority’s Outcomes, Participation Targets and Performance Standards;
         2. using all reasonable skill care and diligence;
         3. in a manner that is not reasonably likely to be injurious to health or to cause damage to property;
         4. in a manner consistent with the Authority discharging its statutory duties to the extent that these may have an effect on the Services;
         5. in a manner consistent with and to ensure compliance with any applicable Byelaws;
         6. by appropriately qualified, supervised and trained personnel;
         7. in full co-operation with the Authority and its contractors and all other Users and other persons employed at the Premises;
         8. in compliance with all instructions issued in accordance with this Agreement by or on behalf of the Authority by the Authorised Officer and which the Authorised Officer is empowered to issue under this Agreement;
         9. so as not to cause nuisance to or interference with the rights of quiet enjoyment otherwise enjoyed by persons on neighbouring land or land adjacent to the Facilities including the Authority’s property;
         10. so as to promote the health and wellbeing of Users and the community;
      3. the Contractor obtains and maintains all Necessary Consents which are required for the provision of the Services and shall provide the Authority with a copy of all such Necessary Consents if requested to so do by the Authority;
      4. the Facilities are open, operable, well maintained, accessible and available to Users during all the agreed hours appropriate to any particular Facilities as set out in the Services Specification;
      5. the Facilities are clean and hygienic at all times and that if the Contractor itself becomes aware or is notified by a User that any area is not clean, it shall ensure that action is taken to remedy the matter if any action is required upon inspection of the area as soon as reasonably practicable;
      6. it has sufficient staff at all times to meet its obligations under the Agreement and that such staff are of a suitable level of seniority and are sufficiently trained and qualified in the range of skills required;
      7. all Staff are courteous and polite and helpful to Users and officers of the Authority at all times;
      8. nothing by the Contractor or any User is done to prejudice or breach any licence or certificate which is required in respect of the management of the Facilities in accordance with Legislation;
      9. in such a manner that does not conflict with the Third Party Interests; and

PROVIDED THAT the obligations contained in Clauses 7.1.1 to 7.1.9 shall not apply where:-

* + 1. it may be reasonably necessary to close all or any of the Facilities or any part thereof or to cease the operation of any of the Services or any part thereof while Planned Maintenance or Enhancement Works are being carried out for which the Authorised Officer's consent has been obtained (such consent not to be unreasonably withheld or delayed) or in an Emergency; and
    2. the Contractor is prevented from complying with such provisions or any part of them by reason of destruction or damage to any Facilities or any part of any Facilities by reason of Force Majeure as set out in Clause 32 or by reason of an Excusing Cause.
  1. The Contractor's performance of the Services and compliance with the Service Standard shall be monitored in accordance with the agreed procedure in Clause 15.
  2. The Parties shall, at all times, act in and with complete honesty towards each other and their respective staff and employees. The Contractor and the Authority recognises that the success of the Services requires co-operation between them and representatives of each Party and shall discuss and deal with the Services in good faith and shall use their respective reasonable endeavours to resolve any disagreement arising between them relating to the Services.
  3. The Contractor shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment by the Contractor of any Sub-Contractor. The Contractor shall, as between itself and the Authority, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all its Sub-Contractors, employees and agents. All references in this Agreement to any act, default, omission, breach or negligence of the Contractor shall be construed accordingly to include any such act, default, omission, breach or negligence of any such employees, agents or Sub-Contractors of any tier.
  4. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, shall unless otherwise expressly stated in this Agreement, relieve the Contractor of any of its obligations under the Contract Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.
  5. The Contractor shall attend meetings at the Authority’s request, including meetings of the Authority’s Cabinet or Overview and Scrutiny committee to respond to questions regarding the Services.

1. CONFLICT OF INTEREST

**Conflict**

* 1. The Contractor shall not voluntarily enter into any arrangement which results in a conflict between any duty or obligation imposed by the arrangement and its obligations under this Agreement. However this Clause 8 shall not be interpreted to mean that the Contractor may not purchase, acquire or maintain other facilities but rather that it shall not do so to the detriment of this Agreement or the Services.

**Prejudice**

* 1. The Contractor shall not voluntarily enter into any arrangement which shall prejudice its ability to perform the Services under this Agreement.

**Resolution**

* 1. In the event of conflict under Clause 8.1 or prejudice under Clause 8.2 the Contractor shall use all reasonable endeavours to resolve the conflict or eliminate the prejudice so far as is possible.
  2. Notwithstanding this Clause 8, in the event that conflict or prejudice of a type referred to in Clauses 8.1 and 8.2 does arise (voluntarily or not) the Contractor shall (upon becoming aware of the same) notify the Authorised Officer of the conflict or prejudice as soon as reasonably practicable.

1. MARKETING, PUBLICITY and sponsorship

**Marketing Plan**

* 1. The Contractor shall prepare and thereafter implement a thorough and comprehensive marketing, advertising and sponsorship strategy to promote the Facilities and Services generally (the “Marketing Plan”). The strategy shall be submitted to the Authorised Officer for approval prior to implementation and revised with the Authorised Officer’s approval on an annual basis such approval not to be unreasonably withheld or delayed.

**Policies**

* 1. Except where the Contractor is promoting its business generally and except in any publicity or marketing material which is not exclusive to the Facilities, the Contractor shall ensure that all marketing and advertising material complies with:
     1. the agreed Marketing Plan;
     2. the Authority’s branding policies;
     3. the agreed design principles;
     4. the usage of the Authority’s name and logo;

and shall for the avoidance of doubt not promote the sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons or any other matter which is likely to bring the Authority into disrepute.

* 1. All publicity and marketing material which is specific to the Facilities shall acknowledge the Authority and all advertising and membership material including all newspaper advertisements, site advertisements and signs and leaflets shall comply with the Authority’s style guide in force from time to time.

**Sponsorship**

* 1. The Contractor shall ensure that it submits details of any sponsorship deal brokered to the Authorised Officer for approval. The Contractor shall not enter into any sponsorship deals with the sponsor but shall provide the Authority with all relevant details to enable the Authority to assess the sponsorship offered and either approve the sponsorship and enter into an agreement with the sponsor or reject the sponsorship with reasons.

**Acknowledgement**

* 1. The Contractor shall not submit any press release or speak to any member of the media specifically about the Facilities or the Services without the prior and express consent of the Authorised Officer whether such contact with the media or press release is in relation to the promotion or marketing of the Facilities or the Services or is in relation to media interest of other kinds such as the production of a documentary of or incident at the Facilities.

**Authority to publish**

* 1. The Authority may publish information about the Facilities and/or the Services as they may deem appropriate from time to time and may provide copies and details of the Agreement to any government department or other body having the purpose of compiling precedents.

1. CONTRACTOR’S PROPOSALS

**Priority**

* 1. For the avoidance of doubt, the Services Specification shall at all times have priority over the Contractor’s Proposals and the Contractor shall be obliged to comply with the Services Specification and provide the Services in accordance with the Services Specification.

**Amendments**

* 1. The Contractor may not make any material amendment to any of the Contractor’s Proposals without the prior consent of the Authority.

1. EQUIPMENT
   1. Authority’s Equipment
      1. The Authority shall, at no cost to the Contractor, make available to the Contractor from the Commencement Date the items of Authority Equipment as set out in the Inventory.
      2. The Authority Equipment together with all fixtures and fittings at the Facilities shall vest in and remain the property of the Authority and shall be delivered up at the end of the Contract Period or earlier termination for any reason in good and substantial repair and condition. The Contractor shall be responsible for the maintenance, and replacement where necessary (as set out in clause 11.3) of the Authority Equipment at its own expense.
      3. Where an item of Authority Equipment has been replaced in accordance with Clause 11.9 below, the replacement item shall become Authority Equipment and ownership of it shall pass to the Authority as soon as title passes to the Contractor in accordance with the conditions of purchase of the relevant items. Such item of Authority Equipment shall be delivered up to the Authority at the end of the Contract Period in accordance with this Clause 11. The Contractor shall update the Inventory with the replacement item.
      4. The Authority does not guarantee, warrant or give any assurances as to the sufficiency, age, condition or state of repair of any item of Authority Equipment and the Contractor shall be deemed to have carried out its own inspections and made its own assessment of the Authority Equipment prior to the Commencement Date and to accept the Authority Equipment as seen.
      5. In no circumstances may any Authority Equipment be moved to premises other than the Facilities without the prior written consent of the Authorised Officer.
   2. Contractor Equipment
      1. The Contractor shall ensure that each Facility is fully stocked with sufficient Equipment for all activities at the Facilities. The Contractor shall, at its own cost, provide and maintain in good and substantial repair and condition all items of Equipment.
      2. All Contractor Equipment employed by the Contractor in the performance of the Services at any time must be either owned by or leased to the Contractor or hired by the Contractor pursuant to a contract of simple hire and not hire-purchase which contract must contain a condition permitting the Contractor to assign the benefit of such contract to the Authority.
      3. The Contractor shall maintain for three years all service, inspection, safety records, etc. of all Equipment employed on the Agreement and such records shall include all formal certificates and other documentation required under applicable legislation. The Contractor shall at all times permit the Authorised Officer access to all such records and shall provide copies on a monthly basis, or as reasonably required by the Authorised Officer, of such records as the Authorised Officer shall specify.
   3. Repair and Replacement of Equipment
      1. The Contractor shall, at its own cost, repair (including replace where necessary) all Equipment as is necessary for the provision of the Services to the Service Standard. For the purposes of this clause the expression "as necessary" means that the Contractor shall repair or replace the item of Equipment:-
         1. when it is damaged or broken, however caused;
         2. when it is in poor condition due to wear and tear and its appearance reflects detrimentally on the quality of Services required to be provided under this Contract;
         3. when it is used up;
         4. when it is no longer safe or when a manufacturer’s recommendation, legislation, code of practice or guidance provides that it is no longer likely to be safe;
         5. when it is no longer reliable or effective;
         6. when it is no longer fit for the purpose for which it was provided or intended; and/or
         7. when it is commonly considered to be outdated.
      2. The tests set out above at Clause 11.3.1 shall be agreed and applied reasonably by both Parties.
      3. The Contractor shall be responsible for the security of all Equipment and consumables used by the Contractor in connection with the provision of the Services and the Authority shall be under no liability in respect thereof.
      4. The Contractor shall keep the Inventory up to date with the Equipment at the Facilities at all times and shall provide the Authority with an updated copy of the Inventory on the 1st April each year of the Contract Period. The Inventory shall include details of all the Authority Equipment and the Contractor Equipment together with details of the Net Book Value of all items of Contractor Equipment.
   4. End of Contract Period
      1. The Authority Equipment including all fixtures and fittings at the Facilities shall be delivered up at the end of the Contract Period or earlier termination for any reason in good and substantial repair and condition. Every item of Authority Equipment as at the end of the Contract Period shall be on the Final Inventory.
      2. At the end of the Contract Period the Contractor shall offer to the Authority for sale any item of Contractor Equipment which is not Authority Equipment, which shall for the avoidance of doubt remain the property of the Authority, on a first refusal basis and at Net Book Value. If any of the Contractor Equipment is encumbered by a lease/hire, the Contractor shall ensure that the benefit and burden of such arrangements can be assigned to the Authority or to any New Contractor at the Authority's request and on terms no less favourable than enjoyed by the Contractor
      3. The Contractor shall provide the Authority with a final copy of the Inventory three (3) months prior to the end of the Contract Period (“the Final Inventory”). The Final Inventory (like other versions of the Inventory) shall list every item of Contractor Equipment including details of the Net Book Value of all items of Contractor Equipment.
      4. Within five (5) weeks of receipt of the Final Inventory, the Authority shall notify the Contractor of the items of Contractor Equipment it wishes to purchase and if no such notification is received by the Contractor in respect of any item of Contractor Equipment the Contractor may treat that item of Contractor Equipment as released from the obligation to sell it to the Authority. The Contractor shall ensure that at the end of the Contract Period, it removes such items that the Authority does not wish to purchase from the Facilities.
      5. In the event of dispute as to the Net Book Value of any item the matter shall be referred to the Dispute Resolution Procedure set out in Clause 44 and if necessary the Expert and during such process the item of Contractor Equipment in question shall remain subject to the Authority's right of first refusal and remain at the Facilities until the dispute is resolved..
2. CONDITION OF THE FACILITIES
   1. **Contractor’s Responsibilities**
      1. The Contractor shall have the responsibility for maintaining the Facilities to the extent set out in the Services Specification. The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures set out in the Maintenance Method Statement are and remain sufficient to ensure that:
         1. it complies with its repair and replacement obligations and Planned Preventative Maintenance obligations as set out in this clause 12, the Services Specification, the Asset Management Responsibilities Matrix and the Schedule of Programmed Maintenance, including reactive repairs;
         2. the Facilities are available for use by the Users as required by this Contract and the Services Specification;
         3. the Facilities are kept in good structural and decorative order and repair in accordance with the Services Specification, the Schedule of Programmed Maintenance and the Maintenance Method Statement;
         4. the Contractor can continuously deliver the Services in accordance with and at all times required by this Contract and the Services Specification; and
         5. the Facilities are handed back to the Authority on the Expiry or Termination Date in a condition complying with the terms of the Services Specification and the Leases;

save that the Contractor shall have no responsibility for works in relation to asbestos or latent defects.

* + 1. From time to time the Contractor shall review and implement its Maintenance Method Statement to ensure that the requirements of Clause 12.1.1 above are met.
    2. Without prejudice to the generality of Clause 12.1.1 above, and subject to the Authority’s obligations below, the Contractor shall ensure that at all times during the Contract Period the Facilities are kept:
       1. safe, secure and well lit;
       2. in working order, properly serviced by utilities, drainage, heat and light, in accordance with the terms of this Contract;
       3. properly and sufficiently equipped; and
       4. reasonably accessible to all Users, including those with impaired mobility and other disabilities.
  1. **Surveys**
     1. If the Authority reasonably believes that the Contractor is in breach of its obligations under Clause 12.1 then it may carry out or procure the carrying out of a survey of the Facilities to assess whether the Facilities have been and are being maintained by the Contractor in accordance with its obligations under Clause 12.1.
     2. The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date it wishes to carry out the survey or in the event of a Health and Safety breach or a potential hazard at any Facility, such shorter period as determined by the Authority. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.
     3. When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the survey, except where Clause 12.2.4 applies, shall be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.
     4. If a survey shows that the Contractor has not complied or is not complying with its obligations under Clause 12.1 the Authority shall:
        1. notify the Contractor of the standard that the condition of the Facilities should be in to comply with its obligations under Clause 12.1 and this Contract generally;
        2. specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
        3. be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to the survey.
     5. The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.
     6. In the event of any failure by the Contractor to comply with Clause 12.1 then the Authority shall be entitled to exercise its right of access and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred in so doing from the Contractor as a debt.
  2. **Schedule of Programmed Maintenance and Property Database**
     1. Two (2) months prior to the Commencement Date the Contractor shall prepare and thereafter maintain a thorough and adequate programme of planned and preventative maintenance and repair for all the Facilities in accordance with the Services Specification. Such programme shall be known as the Schedule of Programmed Maintenance. The Contractor shall update the Schedule of Programmed Maintenance and submit it to the Authority every year for discussion and approval.
     2. The Contractor shall review and prepare a Property Database one (1) month prior to the Commencement Date. The Contractor shall keep the Property Database up to date and provide the Authority with continuous electronic access to it. The Contractor acknowledges that if it is provided with the property database prepared by the Incumbent then it shall place no reliance on this but shall carry out its own checks of the Incumbent’s information before incorporating the same into its own Property Database.
     3. It is acknowledged that the Schedule of Programmed Maintenance and the Property Database are being prepared and maintained on the Authority’s behalf and accordingly all rights in the Schedule of Programmed Maintenance and the Property Database shall be owned by the Authority and all copies of the Schedule of Programmed Maintenance and the Property Database shall be given to the Authority at the Expiry or Termination, if earlier, of this Agreement.
  3. **Carrying out Planned Preventative Maintenance**
     1. The Contractor shall carry out Planned Maintenance at the relevant Facilities or part thereof in accordance with the Schedule of Programmed Maintenance. The Schedule of Programmed Maintenance shall contain the following information where applicable (the "Planned Maintenance Information"):
        1. details of the proposed start and end dates for each period of Planned Maintenance; and
        2. the works to be carried out; and
        3. the proposed hours of work; and
        4. an estimate of costs where any are required together with a breakdown of those;
        5. details of any effect of the Planned Preventative Maintenance on the delivery of any of the Services; and
        6. a proposed Lifecycle Schedule, including details of when Contractor Lifecycle Items and Authority Lifecycle Items are proposed to be replaced (including the proposed costs of replacement of the Authority Lifecycle Items)
     2. The Contractor shall not carry out or permit any Planned Preventative Maintenance save in accordance with the Schedule of Programmed Maintenance approved by the Authority.
  4. **Reactive Maintenance**
     1. If during the Minimum Opening Hours, the need arises for Maintenance Works which are not scheduled to be carried out as part of Planned Maintenance (“Reactive Maintenance Works”), the Contractor may carry out such Reactive Maintenance Works or see the performance of such Reactive Maintenance Works provided that the Contractor shall notify the Authorised Officer as soon as reasonably possible (and in any event, within 24 hours of the occurrence) of the extent of the necessary Reactive Maintenance Works and the reasons for them. The Contractor shall take all reasonable steps to minimise the duration of Reactive Maintenance Works carried out by the Contractor.
     2. For the avoidance of doubt, there shall be no restrictions on the performance of Reactive Maintenance Works carried out outside of the Minimum Opening Hours.
     3. Nothing in this Clause 12.5 (Reactive Maintenance) shall prevent the Authority from making any adjustments to the Management Fee in accordance with this Agreement.
  5. **Programmed Replacement of Contractor Lifecycle Items**
     1. The Contractor shall or shall procure the replacement of and project management of the Contractor Lifecycle Items in accordance with the Schedule of Programmed Maintenance and the Lifecycle Schedule (or if Contractor Lifecycle Items require replacing earlier than anticipated in the Schedule of Programmed Maintenance, at the time required by applying Good Industry Practice).
     2. Without prejudice to clause 12.6.1 the Contractor shall replace any items listed in the Lifecycle Schedule (both Contractor Lifecycle Items and Authority Lifecycle Items) with parts of at least equivalent standard to those at the Commencement Date so that as a minimum any replacement part should have an equivalent or greater anticipated lifespan at the same quality as the original part.
     3. In the event that the Contractor fails to either:
        1. replace any Contractor Lifecycle Item by the date that it is due for replacement (as identified in the r Lifecycle Schedule, or earlier, applying Good Industry Practice); or
        2. comply with clause 12.6.2,

and such failure is not remedied within one (1) month of receipt of written notice of such failure from the Authority, the Authority may remedy such failure itself and recover the cost from the Contractor.

* + 1. For the avoidance of doubt, the Contractor is responsible for all costs of replacing the Contractor Lifecycle Items.
  1. **Programmed Replacement of Authority Lifecycle Items**
     1. The Contractor shall notify the Authority in writing as and when any Authority Lifecycle Items listed in the Lifecycle Schedule become due for replacement:
        1. giving at least forty (40) Business Days' notice of any Authority Lifecycle Items due for replacement pursuant to the Lifecycle Schedule; and
        2. giving as much notice as is reasonably possible of any Authority Lifecycle Items listed in the Lifecycle Schedule which the Contractor considers are due for replacement earlier than shown in the Lifecycle Schedule applying Good Industry Practice,

(the **Authority Lifecycle Item Notice**).

* + 1. The Contractor shall include in any Authority Lifecycle Item Notice the following details:
       1. details of the Authority Lifecycle Item;
       2. evidence and confirmation that the Authority Lifecycle Item has been maintained by the Contractor in accordance with its obligations under this Agreement;
       3. when the Authority Lifecycle Item is due for replacement; and
       4. if the Authority Lifecycle Item is due for replacement pursuant to the Lifecycle Schedule, a confirmation of the costs for replacement of the Authority Lifecycle Item and a confirmation that these are the same as those set out in the relevant Lifecycle Schedule including without limitation the Contractor’s costs to carry out the replacement of the Authority Lifecycle Item should the Authority wish to instruct the Contractor to carry out the replacement; and
       5. if an Authority Lifecycle Item is due for replacement according to the Lifecycle Schedule, whether the Contractor, applying Good Industry Practice, considers that such replacement can be deferred with no adverse consequences for the Services.
    2. The Authority shall, within ten (10) Business Days of receipt of an Authority Lifecycle Item Notice confirm to the Contractor whether it requires any further information in order to assess the Authority Lifecycle Item Notice and/or for the parties to meet to discuss the content of the Authority Lifecycle Item Notice.
    3. Within sixty (60) Business Days of receipt of the Authority Lifecycle Item Notice and the information referred to in clause 12.7.3 (Authority Lifecycle Items) and the meeting referred to in clause 12.7.3 (Authority Lifecycle Items) (whichever is the later), the Authority shall confirm in writing to the Contractor:
       1. whether and/or when the Authority intends to replace the Authority Lifecycle Item; or
       2. whether the replacement should be deferred;
       3. or whether the Authority will instruct the Contractor to replace the Authority Lifecycle Item, at the Authority’s cost.
    4. The Contractor acknowledges that the Authority has an internal procurement process to undertake before any works or replacement is approved in accordance with this clause 12.7. The procurement and approval process may take some time and accordingly the Contractor shall provide as much notice as possible for any such works or replacement.
  1. **Building Condition Surveys**
     1. The Contractor has been supplied with the Building Condition Surveys prior to it submitting the Contractor’s Proposals, and shall not be entitled to claim that it is entitled to render a different performance of the Services or reduce the amount of the Management Fee by virtue of the condition of any of the Facilities as revealed in those Building Condition Surveys. Except for those items designated by the Authority prior to the Commencement Date as being works to be carried out by the Authority the Contractor shall be responsible for the Facilities and shall return the Facilities to the Authority in accordance with the Condition Surveys.
  2. **Enhancement Works**
     1. The Authority shall carry out the Enhancement Works in accordance with the outline proposals and draft programme of capital works set out at Schedule 14 attached. The Authority shall notify the Contractor prior to commencing any of the Enhancement Works.
     2. The Contractor has been supplied with the details of the Enhancement Works prior to submitting the Contractor’s Proposals together with details of any planned closures or disruption that is likely to be caused as a result of such Enhancement Works. Accordingly the Contractor shall not be entitled to claim any compensation or reduction in the Management Fee by virtue of the carrying out of the Enhancement Works or the date the Enhancement Works are carried out.
     3. The Contractor shall co-operate with the Authority in relation to the Enhancement Works.
  3. **Improvement Works**
     1. The Contractor shall carry out the Improvement Works in accordance with the outline proposals and draft programme of works set out in Schedule 17.
     2. Within one month of the Commencement Date the Contractor shall present detailed proposals up to at least RIBA Stage F1 for the Improvement Works scheduled to commence in the first Year for the Authority’s approval. The Contractor shall submit such detailed proposals for the Improvement Works in good time to allow for the completion of the works in accordance with the Contractor’s draft programme.
     3. The Contractor shall not commence or permit the commencement of any works until it is approved by the Authority.
     4. Subject to Schedule 17, the Contractor shall at its own cost be solely responsible for procuring that the Improvement Works are at all times performed so that they fully comply with and meet all the requirements of all applicable Legislation and guidance.
     5. The Contractor shall procure a collateral warranty from its design team and from its building contractor and any significant sub-contractors in favour of the Authority.

**CDM Regulations**

* + 1. The Contractor hereby elects that for the purposes of the Construction (Design and Management) Regulations 2015 (“the CDM Regulations”) the Contractor shall be treated as the only client in relation to the Enhancement Works pursuant to Regulation 9 of the CDM Regulations and the Authority hereby agrees to such election. The Contractor shall also ensure that any Sub-Contractor or Sub-Contractors are aware of such election and warrants to the Authority that it is competent to perform the duties imposed on a Client by the CDM Regulations and shall not at any time terminate, withdraw or derogate in any manner from its declaration or its acceptance of its responsibilities as Client. The Contractor shall within twenty (20 days) of the certification of completion of the Improvement Works deliver to the Authority the Health and Safety File.
    2. The Contractor shall observe, perform and discharge or shall procure the observance, performance and discharge of:
       1. All the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Improvement Works; and
       2. Any obligations incumbent on the Client under any Code of Practice for the time being approved by the Health and Safety Commission issued in connection with the CDM Regulations.
    3. Payment
       1. Any such Improvement Works carried out and any Authority’s contribution for such Improvement Works shall be “Capital works” and shall be treated as “capital works” for the purposes of local government accounting.
       2. Where the Authority has agreed to pay the Contractor for any Improvement Works the Contractor carries out at any of the Facilities, the Contractor shall submit an invoice in accordance with the agreed payment schedule following issue of a completion certificate for any of the Improvement Works or parts thereof. The invoice shall be accompanied by:
          1. a copy of the completion certificate; and/or
          2. where the Improvement Works include the provision of fixtures or fittings, evidence of ownership arrangements for the equipment; and/or
          3. a copy of the works contractor’s invoice.
       3. Payment shall be made within 20 Business Days of receipt of a proper VAT invoice for the works being provided by the Contractor.
       4. Unencumbered title and all beneficial interest in the Improvement Works shall pass to the Authority on payment of the respective invoice.
  1. **Unplanned Authority Works**
     1. If the need arises for the Authority to carry out any works which are not scheduled or agreed with the Contractor the Authority may carry out such unplanned works. The Authority shall notify the Contractor as soon as reasonably possible of the extent of the necessary unplanned works and any requirements in relation to closing the Facilities or part thereof as applicable.
     2. The Contractor shall work with the Authority to minimise the impact of such works on the provision of the Services.
     3. Any such works shall be treated as a Compensation Event and the Contractor shall be entitled to recover its costs and/or losses.

1. USE OF THE FACILITIES
   1. Hire of the Facilities by Users
      1. The Contractor may enter into one-off hire arrangements with third parties (a “Hirer”) for use of the Facilities provided that:
         1. any such use is in accordance with Legislation and is not in breach of the Leases;
         2. any such use does not involve over-crowding of the Facilities concerned;
         3. that adequate stewards are engaged by the Hirer to steward the event, or that the Contractor provides such stewards;
         4. that no nuisance or obstruction of access is caused to occupiers of neighbouring premises;
         5. the use is not one which the Authorised Officer (acting reasonably) has objected to;
         6. the use does not involve sponsorship, advertisement or other direct involvement by any organisation, entity or person engaged, or with substantial interest in the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons; or
         7. the use is not one which could be expected to lead to the commission of any criminal offence, particularly involving undue violence (provided that the provision of organised sport shall not be considered undue violence), incitement to racial hatred; or
         8. otherwise be incompatible with the ethos of the Authority.
      2. Named Third Parties
         1. The provisions of clause 6.9 above shall apply for Third Party Interests.
   2. Emergencies

If an Emergency arises during the Contract Period which cannot be dealt with by performance of the Services, the Authorised Officer may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Facilities resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to provide any service which it is neither qualified nor competent to provide. For the avoidance of doubt the Authority may require the Contractor to hand over all or part of the Facilities to the Authority for its use during the Emergency and without limitation to provide the Facilities or any part thereof as an emergency reception centre. The Contractor shall be compensated for such use in the event of an Emergency if it is unable to operate the full range of Services as a result (a Compensation Event).

* 1. Elections

Provided reasonable prior notice has been given to the Contractor, the Contractor will allow the Authority to use the Facilities for the purpose of Elections at no cost to the Authority.

1. HEALTH AND SAFETY
   1. Throughout the Contract Period the Contractor shall prepare a Health and Safety Manual which shall be available at all Facilities. The Contractor shall ensure the Health and Safety Manual:-
      1. is maintained and reviewed as often as may be necessary in the light of changing Legislation, working practices or any other factor, and shall notify the Authority in writing of such revisions; and
      2. is revised in response to any changes, amendments or further instructions reasonably requested or issued by the Authority in connection with the Contractor's health and safety procedures; and
      3. includes emergency operating procedures which are to be communicated to all Contractor Related Parties and periodically tested, including without limitation accident procedures, procedures for ensuring Police assistance is obtained where necessary and procedures in the event of threatening behaviour from the public.
   2. The Contractor shall, in performing the Services, ensure that it and all Contractor Related Parties comply with:-
      1. all applicable Health and Safety Legislation;
      2. all applicable health and safety precautions necessary include all safe methods of work in order to protect the health and safety of all staff, Authority Related Parties, and any other persons including (without limitation) members of the public and Users;
      3. all reasonable instructions given to it by the Authority and/or the police and/or fire officers concerning matters arising out of or connected to the Services and representing a danger to persons or property; and
      4. the Contractor’s Health and Safety Manual.
   3. For the avoidance of doubt the Authority shall not be obliged to make and the Contractor shall not be entitled to receive any additional payment by reason of:-
      1. any steps which the Authority requires the Contractor to take for health or safety reasons (including at the Authority's request, the appointment of an independent health and safety adviser to review the Contractor's working procedures); and/or
      2. any part of the Services being omitted because of a stoppage required by the Authority due to health or safety reasons.
   4. Reporting
      1. The Contractor shall:
         1. record and retain a record as required by the Health and Safety Legislation;
         2. ensure that all accidents to staff which ordinarily require reporting in accordance with the Health and Safety Legislation are recorded and shall also be reported, as soon as practicable to the Authority; and
         3. promptly, upon it becoming aware, provide the Authority with full details of any significant unsafe event which related in any way to the Services.
   5. Hazardous Materials
      1. In the event that the Contractor uses or stores, or intends to use or store any hazardous materials or equipment used in the provision of the Services the Contractor shall ensure that they are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at the Facilities and shall comply with any other reasonable requirement of the Authorised Officer in respect of such materials and equipment.
      2. As applicable and as relevant the Contractor shall maintain a COSHH register in relation to each Facilities and shall ensure that a copy of each register is held at the relevant Facilities, at the Contractor’s registered office and that a copy is given to the Authorised Officer.

PART 3 - EMPLOYEES

1. tupe
   1. The provisions of Schedule 6 shall apply.
2. pensions
   1. The provisions of Schedule 6 shall apply.
3. EMPLOYEES
   1. **Resources and Training**

The Contractor shall procure that:

* + 1. there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
    2. all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement.
  1. **Contractor’s Representative**
     1. The Contractor shall employ a representative the identity of whom will be subject to the prior approval of the Authorised Officer (not to be unreasonably withheld or delayed) to act as the Contractor’s Representative during the Contract Period.
     2. The Contractor’s Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. The Authority and the Authorised Officer shall be entitled to treat any act or omission of the Contractor’s Representative in connection with this Agreement as being expressly authorised by the Contractor (save where the Contractor has notified the Authorised Officer that such authority has been revoked) and the Authority shall not be required to determine whether any express authority has in fact been given.
     3. The Contractor may terminate the appointment of the Contractor’s Representative and appoint a substitute. Where the Contractor wishes to do so it shall by written notice to the Authority propose a suitable, equally qualified and experienced substitute for approval by the Authorised Officer (such approval not to be unreasonably withheld or delayed).
  2. **Authorised Officer**
     1. The Authority shall appoint an individual to be the Authorised Officer and deputy during the Contract Period and keep the Contractor informed of the identity from time to time of the Authorised Officer, deputy and any replacements.
     2. The Authorised Officer shall have full authority to act on behalf of the Authority for all purposes of this Contract. The Contractor shall be entitled to treat any act of the Authorised Officer in connection with this Agreement as being expressly authorised by the Authority (save where the Authority has notified the Contractor that such authority has been revoked) and the Contractor shall not be required to determine whether any express authority has in fact been given.
     3. No act or omission of the Authority, the Authorised Officer or any officer, employee or other person engaged by the Authority shall, except as otherwise expressly provided in this Contract:-
        1. in any way relieve or absolve the Contractor from, modify, or act as a waiver or estoppel of, any liability, responsibility, obligation or duty under this Contract; or
        2. in the absence of an express order or authorisation under Clause 37, constitute or authorise a Authority Change.
     4. The Authority shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person was the Authorised Officer.
  3. **Safeguarding Children and Vulnerable Adults**
     1. Where the Contractor is providing a Regulated Activity the Contractor shall be a Regulated Activity Provider (as defined by the SVGA 2006) with ultimate responsibility for the management and control of the Regulated Activity (as defined by the SVGA 2006) provided under this Agreement and for the purposes of the SVGA 2006, the Contractor shall
        1. comply with all of its obligations under the SVGA 2006 including without limitation information sharing, Disclosure and Barring Service (DBS, as defined by the SVGA 2006) referral obligations and checking that a person is subject to monitoring;
        2. comply with the Authority’s safeguarding policies;
        3. be appropriately registered in relation to all persons who are or will be employed or engaged by the Contractor in the provision of the Regulated Activity;
        4. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate;
        5. monitor the level and validity of the checks under Condition 17.4.1.2 for each member of staff;
        6. not employ or engage any person who discloses any Convictions or ASBOS, or who is found to have any Convictions or ASBOS following the results of a DBS check, without the Authority's prior written consent;
        7. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he would not be suitable to carry out the Regulated Activity or who may otherwise present a risk to a recipient of the Services;
        8. in accordance with the SVGA 2006, refer information about any person providing the Regulated Activity to the DBS where it removes permission for such person to provide the Services (or would have, if such person had not otherwise ceased to provide the Services) because, in its opinion, such person has harmed or poses a risk of harm to a recipient of the Services;
        9. immediately provide the Authority with all information that the Authority may reasonably require to enable the Authority to verify that the Contractor has satisfied its obligations under this Condition 17.4 and the SVGA 2006 and immediately inform the Authority if there is any reason to believe that any obligations under the SVGA 2006 are not being complied with in relation to the Services; and
        10. ensure that all personnel working with or alongside children have regard to the need to safeguard and promote the welfare of children.
     2. The Contractor acknowledges that the Authority may acting in accordance with the SVGA 2006 disclose information in relation to an Employee where required to do so by the Independent Safeguarding Authority without consultation with the Contractor.
  4. **Conduct of Staff**

Whilst engaged at the Facilities the Contractor shall and shall procure that any Sub-Contractor shall comply with the Authority's Policies relating to the conduct of staff and security arrangements. The Authorised Officer (acting reasonably) may:

* + 1. instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Authority shall co-operate with any disciplinary proceedings and the Authorised Officer shall be advised in writing of the outcome); or
    2. where the Authority has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).
  1. **Personnel Policies and Procedures**

The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Authority.

* 1. **London Living Wage**

The Contractor shall comply with the provisions of Schedule 9 (London Living Wage).

* 1. **Whistleblowing**

The Contractor shall prepare and maintain a whistleblowing policy which meets the requirements of the Public Interest Disclosure Act 1998, which permits its Staff to raise issues of concern in an appropriate manner and which meets any published guidance. The Contractor shall provide the Authority with copies of the policy upon request.

|  |
| --- |
| **Bidder to note:**  The drafting in italics below will be adapted in line with proposals submitted in the Method Statement in relation to the use of Zero Hour Contracts. |

* 1. **Casual Staff**
     1. It is acknowledged that the Contractor may employ casual staff from time to time.
     2. The Contractor shall ensure that it complies with the Small Business, Enterprise and Employment Act 2015 and all other relevant legislation in relation to the appointment of the its Staff. *The Contractor shall not appoint any Staff on a Zero Hour contract as defined in the Small Business, Enterprise and Employment Act 2015 without the Authority’s prior approval.*

Part 4 – Monitoring

1. OPerating Manual
   1. The Contractor shall throughout the Contract Period maintain and update an operating and maintenance manual setting out the Contractor’s procedures for providing the Services (the “Operating Manual”).
   2. The Contractor shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under clause 18.1.
   3. On termination of this Agreement (howsoever arising including expiry) the Contractor shall within ten (10) Business Days provide a copy of the Operating Manual to the Authority.
2. Quality Assurance
   1. The Contractor shall procure that all aspects of the Services are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in Clause 19.2 and 19.3 below.
   2. At least 30 Business Days prior to the Commencement Date the Contractor shall submit to the Authorised Officer a proposed quality management system for the services complying with QUEST and working towards the following quality standards regulating the Services:
      1. IIP (Investors in People);
      2. or such other quality standard as may replace or supersede the same or equivalent.
   3. The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable a quality manager who may either be appointed as a dedicated quality manager or as part of another role, following the date of this Agreement to:
      1. ensure the effective operation of and implementation of the aforementioned quality assurance system;
      2. audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority;
      3. review the aforementioned quality assurance system at intervals agreed with the Authorised Officer to ensure their continued suitability and effectiveness; and
      4. liaise with the Authorised Officer on all matters relating to quality assurance.
   4. The Authorised Officer may carry out periodic audits of the aforementioned quality assurance systems and Quest and may carry out other periodic monitoring, spot checks and auditing of the Contractor's quality systems.
3. PERFORMANCE MONITORING
   1. **Contractor Monitoring**
      1. The Contractor shall institute at the Commencement Date and maintain and keep under review throughout the Contract Period the Performance Monitoring System to ensure that the Services are performed in accordance with this Agreement. The Contractor shall provide the monitoring reports set out in the Services Specification, but shall also promptly bring to the Authorised Officer’s attention failure to perform the Services to this standard. The Contractor’s performance of the Services shall be measured against the obligations, standards, targets and benchmarks set out in the Contract Documents.
   2. **Authority Monitoring**
      1. The Authorised Officer may elect to undertake performance monitoring on behalf of the Authority at any stage during the Contract Period for any purpose, including in order to ensure that the Services are being provided in accordance with this Agreement. The Contractor will use its reasonable endeavours to assist the Authorised Officer in such an exercise. The Authorised Officer shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Authorised Officer's comments in relation to the future provision of the Services.
      2. Without prejudice to the Authority's rights under Clause 20.2.1 and to any other express rights under this Agreement, where the Contractor has been found to, or the Authorised Officer reasonably believes the Contractor to have:
         1. been fraudulent in the submission of monitoring reports and claims for payment (“monitoring reports”); or
         2. submitted at least two (2) erroneous monitoring reports, within a three (3) month period,

the Authorised Officer may by notice to the Contractor increase the level of his monitoring of the Contractor, and/or (at the Authorised Officer's option), of the Contractor's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Service or Services the subject of such fraudulent or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authorised Officer that it will perform (and is capable of performing) its obligations under this Agreement.

* + 1. For the purposes of Clause 20.2.2, if the Contractor has otherwise failed to have demonstrated to the reasonable satisfaction of the Authorised Officer as required by Clause 20.2.2 but:
       1. if the Contractor has removed the person or persons responsible for the fraudulent reporting; or
       2. (under Clause 20.2.2.2), if in the following three (3) month period following the Authorised Officer’s notice (if it has not already been established) there have been no further erroneous reports of any kind;

this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its obligations.

* + 1. If the Authorised Officer issues a notice under Clause 20.2.2, the Contractor shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under Clause 20.2.1.
  1. **Management Information**
     1. The Contractor acknowledges the Authority’s obligations under the Government’s transparency agenda principles. Where requested by the Authority, the Contractor shall supply the Management Information to the Authority monthly during the Contract Period.
     2. Upon receipt of the Management Information supplied by the Contractor, the Contractor hereby permits the Authority: 
        1. to publish on their website or in any alternative media the Management Information;
        2. to store and analyse the Management Information and produce statistics; and
        3. to share the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.
     3. The Authority may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) month’s written notice of any change.
  2. **Initial Review**
     1. Within 6 (six) months of the Commencement Date, the Contractor shall prepare and submit to the Authority a half-yearly review of the Services, to include the following matters:-
        1. a description and analysis of the handover process, where applicable; and
        2. the Contractor’s view of successes and failures within the first 6 (six) months following the Commencement Date , along with the reasons for any weaknesses and/or failures, and respective responsibilities for those weaknesses or failures, along with an action plan for rectifying any ongoing problems identified.
  3. **Monthly and Quarterly Review Meetings**
     1. The Authorised Officer and Contractor’s Representative shall meet monthly, or at such intervals as the Authorised Officer shall decide in his absolute discretion, to discuss performance of the Services in the previous month and service plans for the forthcoming month or months.
     2. The Contractor shall prepare and submit the Quarterly Performance Monitoring Report to the Authority every Quarter.
  4. **Annual Contract Review**
     1. The Contractor shall prepare and submit to the Authority the following annual reports in accordance with the Services Specification and in an agreed format:
        1. the Annual Service Plan which shall be submitted one (1) month before the Commencement Date and the beginning of each Contract Year thereafter; and
        2. the Annual Service Report which shall be submitted one (1) month following the beginning of each Contract Year commencing 1st April 2017.
     2. The Contractor and the Authority shall discuss the annual reports submitted in accordance with clause 20.6.1 above and the Authority may in its absolute discretion, and depending on the nature of the matters identified in the reports:
        1. issue instructions requiring the Contractor to implement any measure which otherwise might reasonably be considered necessary by the Authority to ensure value for money;
        2. propose any changes which may have an impact on the Management Fee or result in a Change in Revenue as an Authority Change in accordance with the Change Control Procedure

1. Complaints
   1. At the Commencement Date the Contractor shall set up a clearly defined complaints procedure (subject to approval by the Authorised Officer) with agreed performance measures and recording systems, including a complaints register, to enable the number and types of complaints to be checked and monitored. For each complaint the records should identify the complainant, the nature and category of the complaint, the action taken in response to the complaint, preventative action taken to stop similar occurrences and the relevant dates.
   2. The Contractor shall deal with all complaints received from whatever source in a prompt courteous and efficient manner.
   3. The Contractor shall notify the Authorised Officer forthwith in writing of all complaints received and the steps taken in response thereto and shall provide a copy of each written complaint (or register entry for verbal complaints) and the response thereto. A copy of the Complaints Register and statistics shall be incorporated within the Contractor’s monitoring reports submitted to the Authorised Officer in accordance with the Services Specification.
2. CO-OPERATION FOR INVESTIGATIONS
   1. The Contractor shall throughout the Contract Period and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or related to the Services. Such enquiry or investigation may include, inter alia:
      1. the Authority’s Cabinet and the Authority’s Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;
      2. an investigation by the Authority into a complaint about the acts or omissions of the Contractor, the Contractor’s Staff or agents made under the Equalities Legislation;
      3. the Authority’s auditors (whether internal or external);
      4. any investigation relating to a breach of security or fraud;
      5. the Local Government Ombudsman.
   2. Such co-operation shall include (but not be limited to the following):-
      1. providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
      2. providing access to the Contractor’s premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Contractor in the performance of the Services;
      3. providing access to the Contractor’s Staff (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
      4. maintaining the confidentiality of the enquiry or investigation when required to do so;
      5. making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Authority’s standing orders and financial regulations and statutory provisions relating to the agreement are being complied with;
      6. attending meetings at the Authority’s request, including meetings of the Authority’s Cabinet or Overview and Scrutiny Committee to respond to questions regarding the Service; and
      7. subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation. The Authority shall have the right to retain copies of any such material for use in connection with the investigation.
   3. The Authority shall, insofar as is practical, inform the Contractor of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Contractor Related Party or their property.
   4. The Contractor shall comply with the Authority’s reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.
3. EQUAL OPPORTUNITies and human rights
   1. The Authority and the Contractor shall comply with all Equalities Legislation which may be in force from time to time relating to treatment of and discrimination against people having the protected characteristics gender, sexual orientation, gender reassignment, age, disability, race, ethnic, or national origin, religion, marital status, part time or temporary status in employment or otherwise including, without limitation, the Equality Act 2010.
   2. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of Equalities Legislation in respect of its employees. The Contractor shall take all reasonable steps to secure that all of its employees, agents and Sub-Contractors of it do not unlawfully discriminate as set out in this Clause.
   3. Without prejudice to the generality of Clause 23.1, the Contractor shall ensure that the Services are provided in a manner consistent with the Authority’s obligations under section 149 of the Equality Act 2010.
   4. The Contractor shall:-
      1. monitor the representation among its employees of persons of different racial groups (which shall mean groups of persons classified as ‘ethnic groups’ in the most recent official census by the Office of National Statistics or successor body) and according to other protected characteristics as the Authority may specify; and
      2. where it appears to the Contractor that any racial group is under-represented amongst its workforce by comparison with the proportion of members of that racial group known or believed to be engaged in similar trade or trades in the areas of the Authority, the Contractor shall, so far as it is not prohibited from doing so by Legislation, undertake the following actions as may be appropriate:
         1. the placing of job advertisements designed to reach members of such racial groups and to encourage their applications;
         2. the use of employment agencies and careers offices in areas where members of such racial groups live and work.
   5. **Human Rights**

The Contractor shall (and shall procure that the Contractor’s Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Contractor shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

* 1. **Blacklist Regulations**

The Contractor shall comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations) and shall ensure that it will not during the Contract Period be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the Contractor in breach of the Blacklists Regulations.

1. CONTRACTOR’S RECORDS
   1. **Records and Open Book Accounting**

The Contractor shall (and shall procure that each Sub-Contractor shall):

* + 1. at all times maintain a full record of particulars of the Income from and costs of performing the Services;
    2. upon request by the Authority, provide a written summary of any of the costs and income referred to in Clause 24.1.1 including a breakdown per Facility and details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;
    3. provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause 24.1; and
    4. provide to the Authority copies of its annual report and accounts within twenty (2) Business Days of publication.
  1. **Books of Account**

Compliance with Clause 24.1 (Records and Open Book Accounting) shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract, showing in detail:

* + 1. administrative overheads;
    2. payments made to Sub-Contractors;
    3. capital and revenue, income and expenditure shown monthly against each Facility; and
    4. such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure or income received, for the purpose of this Contract.

And the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in Sub-clauses 24.2.1 to 24.2.4 inclusive available for inspection by the Authority (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Authority as and when requested from time to time. The Contractor shall no less than once a year have its books of account evidencing the items listed in sub-clauses 24.2.1 to 24.2.4 inclusive, independently audited and shall provide the Authority with a copy of the audited accounts.

* 1. **Maintenance of Records**
     1. The Contractor shall maintain or procure that detailed records relating to the delivery of the Services, in each case in accordance with Good Industry Practice, the requirements of Clause 20 (Quality Assurance) and any applicable Legislation.
     2. Without prejudice to Clause 24.3.1, the Contractor shall procure that the following are maintained:
        1. a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
        2. full records of all maintenance procedures carried out during the term of this Contract,

and the Contractor shall have the items referred to in Clauses 24.3.1 and 24.3.2 available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a report of them to the Authority as and when requested from time to time.

* 1. **Auditor**

The Contractor shall permit all records referred to in this Clause 24 (Contractor’s Records) to be examined and copied from time to time by the Authority’s auditor and their representatives and other representatives of the Authority who reasonably require access to the same.

* 1. **Retention**

The records referred to in this Clause 24 (Contractor’s Records) shall be retained for a period of at least five (5) years after the Contractor’s obligations under this Agreement have come to an end.

* 1. **Termination or Expiry**

Eighteen (18) months prior to the termination or expiry of this Contract, and in the event that the Authority wishes to enter into another agreement for the operation and management of services the same as or similar to the Services, the Contractor shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Authority to provide information relating to the Contractor’s costs of operating and maintaining the Services and Income received as a result of the Services.

* 1. **Confidentiality**

All information referred to in this Clause 24 (Contractor’s Records) is subject to the obligations set out in Clauses 41 and 42 (Freedom of Information and Confidentiality).

PART 5 - PAYMENT

1. PAYMENT PROVISIONS
   1. The Contractor shall pay the Authority the Management Fee. The Management Fee shall be payable in 12 instalments accruing daily and payable monthly by BACS in arrears. The Management Fee shall be subject to any adjustments or variations in accordance with the provisions of the Agreement and without prejudice to clause 25.2 below.
   2. Statement

Within 10 Business Days of the end of each calendar month from the Commencement Date the Contractor shall submit a statement to the Authority stating at least the following information:

* + 1. the gross monthly Management Fee;
    2. any Adjustments to the gross monthly Management Fee as a result of the application of the Performance Monitoring System which shall be made in accordance with this Agreement;
    3. any amounts owed by one Party to the other in accordance with the Agreement including, without limitation, any Income share in accordance with Clauses 26 below; and
    4. a summary and reconciliation setting out the net effect of the foregoing.

The statement submitted in accordance with Clause 25.2 shall be fully supported by background information or documentation.

* 1. Invoices

Provided that the Authorised Officer is satisfied acting properly and reasonably that the statement submitted in accordance with Clause 25.2 above is accurate and complete, and this is communicated to the Contractor, an invoice for the amount set out in the statement shall be raised on behalf of the Authority and the Contractor shall pay the sum set out in the invoice within 10 Business Days.

* 1. Disputed Amounts

In the event that the Authorised Officer is not satisfied that a sum or sums in the statement submitted in accordance with Clause 25.2 is accurate or complete, the Authorised Officer shall notify the Contractor.

* 1. Response to Authority Notice

Within 15 Business Days of the Contractor having received notification from the Authorised Officer in accordance with clause 25.4 above, the Contractor shall respond setting out how the disputed amount was calculated.

* 1. Dispute

The Parties shall meet as soon as reasonably practicable after the receipt of the Contractor’s response and shall attempt to resolve the dispute amicably between them. If the Parties are unable to reach agreement the matter shall be referred to the Dispute Resolution Procedure.

* 1. Determination of Dispute

Once the dispute is resolved, the Authority shall issue an invoice as set out in clause 25.3. In the event that the outcome of the Dispute Resolution Procedure, Expert determination or an agreement between the Parties is that any additional sums is due from the Contractor, then this shall be included in the invoice from the Authority together with interest thereon at the Prescribed Rate from the date on which such payment was due.

* 1. **Indexation**
     1. The Management Fee shall be revised on 1st April 2017 and on each anniversary thereof (“Review Date”) in accordance with this Clause 25.8.
     2. On the first Review Date the Management Fee shall (subject to Clause 25.8.4 below) be adjusted by the percentage increase or decrease in the Index calculated from the Commencement Date to the first Review Date.
     3. From the second Review Date onwards, the Management Fee shall (subject to Clause 25.8.4 below) be adjusted by the percentage increase or decrease in the Index calculated from the Review Date in the previous Contract Year to the Review Date in the Contract Year just ended. The adjustment shall apply to the Management Fee for the Contract Year commencing on the relevant Review Date.
     4. If the bases of computation of the Index change, any official reconciliation between the two bases of computation published by the body charged with the compilation and maintenance of the Index (currently the Central Statistical Office) shall be binding upon the Authority and the Contractor and shall be applied in adjusting the application of the Index thereto provided that in the absence of such official reconciliation such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments such dispute may be referred by either Party to the Dispute Resolution Procedure.
  2. **NNDR and Rateable Value**
  3. The Contractor shall be responsible for paying all the national non-domestic rates (NNDR) in relation to all the Facilities. For the avoidance of doubt where there are any changes to NNDR including without limitation:
     1. the Contractor applies for and is not granted any relief from NNDR payments; or
     2. the percentage of relief changes; or
     3. the Contractor loses any relief from NNDR payments; or
     4. the law in relation to NNDR relief changes; or

the Contractor shall be responsible for any such changes to the NNDR.

* 1. The rateable value of the Facilities shall change from time to time during the Contract Period. The Contractor shall be responsible for any increases in rateable value of the Facilities.
  2. Without prejudice to the generality of Clause 25.11 above the Parties acknowledge that the rateable value of the Castle Facility is not known at the Commencement Date. The Contractor has included an indicative value for the NNDR due on the Castle Facility in its Management Fee (the “Notional Rateable Value”). If the actual rateable value of the Castle Facility (“Actual Rateable Value”) differs from the Notional Rateable Value the following shall apply:
     1. If the Actual Rateable Value is greater than the Notional Rateable Value then the Contractor shall be entitled to decrease the Management Fee by a sum equal to the difference between the Actual Rateable Value and the Notional Rateable Value; or
     2. If the Actual Rateable Value is less than the Notional Rateable Value then the Contractor shall be entitled to increase the Management Fee by a sum equal to the difference between Notional Rateable Value and Actual Rateable Value.
  3. **Sub-Contractors**

Where the Contractor enters into a Sub-Contract, the Contractor, shall include in that Sub-Contract a provision that:

* + 1. Payment shall be made no later than a period of 30 days from the date on which the Contractor receives a valid an undisputed invoice from the Sub-Contractor;
    2. The Contractor shall consider and verify any invoice submitted in a timely fashion;
    3. Provides a procedure for the resolution of disputed invoices; and
    4. requires the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as this clause 25.10.1.
  1. For the purposes of this clause 25.10 a “Sub-Contract” means any contract between two or more suppliers at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Services under this Agreement.
  2. **Payments from the Authority to the Contractor**

If any payments are due from the Authority to the Contractor under this Agreement, the Authority shall pay the Contractor within 30 days of receipt of a correctly submitted and valid invoice or as otherwise agreed between the Parties.

VAT

* 1. Unless the context otherwise requires, all sums payable or other consideration to be provided pursuant to this Agreement are stated to be exclusive of any VAT payable (including for the avoidance of doubt any VAT payable as a consequence of any election under paragraph 2 of Schedule 10 to the Value Added Taxes Act 1994 or any similar statute or provision to waive the exemption applicable to the Facilities) and when any such sums shall become payable or other consideration shall be provided or due the payer shall pay in addition to such sums or consideration all the VAT so chargeable within 5 Business Days of the date on which a valid VAT receipt is issued to it.
  2. If as a result of any Party performing or observing any of its obligations under this Agreement it provides or is deemed for Vat purposes to provide any goods or services in respect of which VAT is chargeable, the recipient of the goods or services shall within 25 Business Days of the date on which a valid VAT invoice is issued to it from the recipient of the goods and services, pay all the VAT so payable.

1. Income

**Authority Pricing Requirements**

* 1. The Contractor shall be entitled to charge and retain all receipts from Users of the Facilities including receipts from any ancillary services. The Contractor shall bear all risks in relation to such receipts, including the volume of Users and any bad debts.
  2. The Contractor shall not charge any User in excess of the Core Prices except by written agreement of the Authority, whose decision shall be final.
  3. Subject to Clause 26.2 above and in accordance with the Services Specification, the Contractor shall be entitled to charge Users for activities not included in the Authority Pricing Requirements provided such charges are agreed with the Authority in advance in accordance with the Services Specification.
  4. **Income Share**
  5. The provisions of Schedule 15 shall have effect.

1. UTILITIES
   1. Throughout the Contract Period the Contractor shall pay for and procure the provision of Utilities at all the Facilities. The Contractor shall be responsible for the usage levels at the Facilities and shall for the avoidance of doubt pay for any increase in cost arising from an increase in the usage or increase in tariff for any Utility at any of the Facilities.

PART 6 - TERMINATION

1. Defaults and remedies available to the Contractor
   1. **Excusing Causes**
      1. If and to the extent that an Excusing Cause adversely affects the ability of the Contractor to perform any of its obligations under this Agreement, then the Contractor shall be entitled to apply for relief from its obligations and from Adjustments being made to the Management Fee under the Agreement. In the event that the Contractor has contributed to the Excusing Cause then the Contractor’s entitlement to relief shall be reduced by an amount proportional to such contribution to the Excusing Cause
      2. To obtain relief, the Contractor must:
         1. as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Excusing Cause is likely to adversely affect the ability of the Contractor to perform its obligations give to the Authority a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Excusing Cause, the date of occurrence and its likely duration;
         2. within five (5) Business Days of receipt by the Authority of the notice referred to in clause 28.1.2.1, give full details of the relief claimed; and
         3. demonstrate to the reasonable satisfaction of the Authority that:
            1. the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
            2. the Excusing Cause directly caused the need for relief from obligations;
            3. the relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or dealt with by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
            4. the Contractor is using reasonable endeavours to perform its obligations under this Agreement.
      3. In the event that the Contractor has complied with its obligations under clause 28.1.2, then the Authority shall not be entitled to:
         1. exercise its right to terminate this Agreement under clause 30;
         2. make Adjustments to the Management Fee in relation to any Performance Failure resulting from the Excusing Cause for the period during which the Excusing Cause is subsisting.
      4. Nothing in clause 28.1.3 shall affect any entitlement to make Adjustments or award Failure Points under clause 29 during the period in which the Excusing Cause is subsisting in relation to any other Performance Failure which is not directly connected to the Excusing Cause
      5. In the event that information required by clause 28.1.2 is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.
      6. The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Excusing Cause, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
      7. If the parties cannot agree the extent of the relief required, or the Authority disagrees that an Excusing Cause has occurred or that the Contractor is entitled to relief from obligations under this Agreement, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
   2. **Compensation Events**
      1. If a direct result of the occurrence of a Compensation Event the Contractor will:
         1. be unable to comply with its obligations under this Agreement; and/or
         2. incur costs or lose Revenue,

then the Contractor is entitled to apply for relief from its obligations and/or to claim compensation under this Agreement.

**Procedure for Relief and Compensation**

* + 1. Subject to clause 28.5, to obtain relief and/or claim compensation the Contractor must as soon as practicable, and in any event within twenty (20) Business Days after it became aware that the Compensation Event has caused or is likely to cause breach of an obligation under this Agreement and/or the Contractor to incur costs or lose Revenue, give to the Authority a notice of its claim for payment of compensation and/or relief from its obligations under this Agreement. Such notice to include the following:
       1. full details of the Compensation Event and the relief from its obligations requested and/or any estimated costs incurred or Change in Revenue; and
       2. demonstrate to the reasonable satisfaction of the Authority that:
          1. the Compensation Event was the direct cause of:

the increased costs claimed; and/or

the Change in Revenue; and/or

breach of the Contractor’s obligations under this Agreement; and

* + - * 1. the Contractor could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; and
        2. the relief from the obligations under this Agreement claimed and/or the costs or Change in Revenue could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice; and
        3. the Contractor is using reasonable endeavours to perform its obligations under this Agreement.

**Giving of Relief and Compensation**

* + 1. In the event that the Contractor has complied with its obligations under clause 28.2.2, and the Contractor has used all reasonable endeavours to obtain the Authorised Officer’s consent prior to incurring such costs, then to the extent the relief or compensation could not reasonably have been mitigated and without double counting:
       1. in the case of an additional cost being incurred by the Contractor as a direct result of the Compensation Event the Authority shall compensate the Contractor for its actual reasonable costs and any Change in Revenue demonstrated as having been incurred in accordance with clause 28.2.2 above together with evidence of such actual costs; and /or
       2. the Authority shall give the Contractor such relief from its obligations under this Agreement as is reasonable for such a Compensation Event; and/or
       3. the Authority shall not be entitled to exercise its right to terminate this Agreement under Clause 30

and all compensation payable by the Authority shall be calculated taking into account any reduced costs of the Contractor relating to the Compensation Event.

**Information**

* + 1. In the event that information required by clause 28.2.2 is provided after the dates referred to in that clause, then the Contactor shall not be entitled to any relief or compensation during the period for which the information is delayed.

**Late Provision of Notice or Information**

* + 1. In the event that information is provided after the dates referred to in clause 28.2.2, then the Contractor shall not be entitled to any compensation or relief from its obligations under this Agreement in respect of the period for which the relevant information is delayed.

**Failure to Agree**

* + 1. If the parties cannot agree the extent of any compensation, relief from the Contractor’s obligations under this Agreement, or the Authority disagrees that the Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under clauses 28.2, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

1. Defaults and Remedies Available to the Authority

**Initial Period**

* 1. As part of a “bedding in period”, during the first three (3) months of the Contract Period the default mechanism set out in this Clause 29 shall apply with full force and effect except that the Authority will not apply the Adjustments. Following the end of the bedding in period on [ ] 2016 Adjustments will be made and the default mechanism as set out in this Clause 29 shall come into full force and effect for the remainder of the Contract Period.

**Performance Monitoring System**

* 1. The Authority shall apply the Performance Monitoring System (Schedule 12).
  2. The Authority shall be entitled to make Adjustments and apply Failure Points in respect of Performance Failures in accordance with the provisions of the Performance Monitoring System.
  3. **Remedy Notices**
     1. In accordance with the Performance Monitoring System if at the end of each [Month/Quarter] the combined value of the Failure Points allocated to Performance Failures is greater than [ ] and less than [ ] in any [Month/Quarter] the Authority shall issue a notice (a “Remedy Notice”) to the Contractor. The Remedy Notice shall:
        1. be signed by the Authorised Officer;
        2. state on its face that it is a Remedy Notice;
        3. state on its face the Failure Points allocated to the Performance Failure and if applicable Adjustments to be deducted in respect of the Performance Failure.
        4. set out in general terms the matter or matters giving rise to such Remedy Notice; and
        5. require that the Contractor (at its own cost and expense) to remedy such Performance Failure (and/or any damage directly or indirectly resulting from such failure) and/or take measures to prevent the recurrence of such Performance Failure within a reasonable period (in either case, the “Remedial Period”).
  4. Action Plan
     1. Unless the Remedial Period is less than two days, the Contractor shall, within 2 Working Days of receipt of a Remedy Notice, prepare a plan (an “Action Plan”) setting out the measures which the Contractor shall carry out or has carried out to ensure that the Performance Failure is remedied within the Remedial Period and to ensure that it does not occur again.
     2. The Contractor shall submit the Action Plan to the Authorised Officer for approval (which approval shall not be unreasonably withheld or delayed). The Authorised Officer shall be entitled to suggest reasonable amendments to the Action Plan which the Contractor shall incorporate.
     3. The Contractor shall implement the approved Action Plan within the timescale contained within the approved Action Plan.
  5. Escalation

If:-

* + 1. the Contractor fails to remedy a Performance Failure in accordance with the Remedy Notice and/or Action Plan;
    2. more than 2 (two) Remedy Notices in respect of a Performance Failures (in each case not necessarily relating to the same breach or failure) have been issued to the Contractor in any continuous 3 (three) month period; or
    3. the Contractor commits a Performance Failure which is incapable of remedy;
    4. the combined value of the Failure Points allocated to Performance Failures is greater than [100] in any [Month] ; or
    5. the combined value of the Failure Points allocated to Performance Failures is greater than [ ] points in any Quarter; or
    6. the combined value of the Failure Points allocated to Performance Failures is greater than [ ] points in any consecutive 6 month period;

then the Authority may (without prejudice to any other right or remedy available to it) serve a written notice (“Default Notice”) on the Contractor.

* 1. Default Notice
     1. The Default Notice shall:
        1. be signed by the Authorised Officer;
        2. state on its face that it is a Default Notice;
        3. state on its face the Failure Points allocated to the Performance Failure and the Default Sum to be deducted in respect of the Performance Failure;
        4. set out in general terms the matter or matters giving rise to such Default Notice; and
        5. set out the course of action (if any) which the Authority requires the Contractor to take in to ensure that the Performance Failure is remedied and/or does not occur again together with the date by which such action is to be taken.
     2. The Contractor shall comply with the terms of the Default Notice.
     3. If the Contractor considers that the time and/or measures stated in the Default Notice to remedy, make good or mitigate the Performance Failure are unreasonable or impossible to comply with, the Contractor’s Representative shall notify the Authorised Officer within 24 hours of receipt of the Default Notice and the Parties shall attend a meeting to discuss the matter and to agree a time period in which and measures by which the Performance Failure shall be remedied, made good or mitigated. Thereafter, if unresolved, the matter shall be discussed at Chief Officer and Director level and if still unresolved referred to the Dispute Resolution Procedure. For the avoidance of doubt referral to the Dispute Resolution Procedure in accordance with this clause shall not affect the validity of the Default Notice for the purposes of clause 30.
  2. Default Sums
     1. Without prejudice to any other rights or remedies the Authority shall be entitled to make adjustments to the Management Fee or recover as a debt as liquidated and ascertained damages the Adjustments as calculated as set out in Schedule 12.
     2. Such Adjustments are agreed to be a genuine pre-estimate of the Authority’s loss and damage in relation to the Authority’s administrative cost in serving Remedy and/or Default Notices, additional supervision and/or monitoring and inspection, including if necessary the procurement by the Authority of additional staff in dealing with complaints and letters from Users or members of the public, the production of reports and any other activities arising from the Performance Failure. Adjustments shall not include and are not in respect of any other head of loss or damage which shall be recoverable as non-liquidated damages.
     3. Where Adjustments are set out in a Remedy Notice or a Default Notice the Notice shall serve as a certificate of deduction and the Authority shall be entitled to apply the Adjustments to any payment due or to recover the same as a debt.
  3. Other Remedies

In addition to the matters set out above, in the event the Contractor commits a Performance Failure the Authority shall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute, to take all or any of the following measures:-

* + 1. Remedy the Performance Failure itself or engage others to do so and increase the Management Fee by the reasonable cost of so doing this may include without limitation carrying out services which are essential and charging the Contractor its costs for doing so;
    2. Require the Contractor to:
       1. identify and remove from the provision of the Services the member or members of staff who caused the Performance Failure; and/or
       2. appoint a new Contractor’s Representative; and/or
       3. replace or appoint a new (or change the identity of a) Sub-Contractor; and/or
       4. provide additional resources, staff and Equipment.
  1. The provisions of this Clause are without prejudice to any other right or remedy of the Authority.

1. TERMINATION
   1. Termination on Contractor Default

If any one or more of the matters in Clause 30.2 occurs the Authority shall be entitled to forthwith terminate the Agreement by issuing a written notice to the Contractor to that effect in accordance with Clause 30.3. The right of the Authority to terminate shall be a contractual right pursuant to this clause.

* 1. The matters referred to in Clause 30.1 above are:-
     1. the Contractor being served with written notice under clause 46.5; or
     2. the Contractor being served with written notice under clause 35.12; or
     3. the Contractor commits a breach of any of its obligations under Schedule 9; or
     4. the Contractor commits an act of fraud or bankruptcy; or
     5. the Contractor misuses Authority Equipment or uses the same other than in the provision of the Services; or
     6. the Contractor suffers an event of incapacity rendering the Contractor unable or potentially unable to carry out its obligations under the Agreement and/or to meet any liability which may arise through the Contractor’s negligence or breach of contract. An event of incapacity shall include the appointment of a liquidator, insolvency within the meaning of the relevant Legislation, having substantial distress attachment execution or other legal process levelled, enforced, sued or threatened upon any of its property, the appointment of an administrator or receiver, the suspension of any publicly offered equities or the freezing of substantial assets; or
     7. the Authorised Officer has served more than 2 Default Notices on the Contractor within any continuous 6 month period; and/or
     8. the Contractor commits a breach of any of its obligations under this Agreement which materially and adversely affects the performance of the Services; or
     9. the Contractor brings the Authority into disrepute; or
     10. if the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of The Public Contracts Regulations 2015; or
     11. if this Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Regulations 2015 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU; and/or
     12. the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of The Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure.
  2. Termination Notice
     1. The Termination Notice issued pursuant to Clause 30.1 shall:
        1. set out the matter or matters giving rise to such Termination Notice, giving reasonable details;
        2. state on its face that it is a Termination Notice;
        3. state the date on which the termination is to take effect;
        4. if the termination is in relation to part of the Contract; the part of the Services to be determined; and
        5. be signed by the Authority’s Solicitor.
  3. If the Agreement is determined in part, the Management Fee shall be adjusted to reflect fairly the Services which remain and if the parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Contractor shall not be entitled to recover through the adjusted Management Fee any profit that, but for the Termination, that would have accrued to the Contractor in respect of the terminated Services.
  4. The Authority, in its discretion but acting reasonably and taking into account the representations of the Contractor, shall be entitled to suspend all or part of the Services which it would otherwise be entitled to terminate pursuant to this Clause until such time as the Contractor is able to demonstrate that it is able to perform the Services to the Service Standard without default. During the period of such suspension (which shall be notified in writing by the Authority) the Authority shall be entitled to charge the Contractor such amount as is necessary for the Authority to perform the Services itself or to engage a third party to do so.
  5. Procurement Challenge
     1. In the event that this Agreement or any modification of the same is subject to a bona fide and substantive legal or procurement challenge of any nature and/or is deemed by a regulatory authority to be ineffective or to be in breach of any law or regulation (the “Procurement Challenge”), then the parties shall co-operate in good faith to determine the best way to mitigate the impact of the Procurement Challenge, which may include varying some or all of the Agreement and/or terminating the Agreement in whole or in part.
     2. In the event that:
        1. there is a credible and substantive legal or procurement challenge of any nature and the Authority considers that it is likely that a Court would declare that the Agreement is ineffective, the Agreement shall terminate forthwith; or
        2. this Agreement is declared ineffective by a court of competent jurisdiction, bringing this Agreement to an end,

the Authority shall, without prejudice to any other right or remedy that it may have, pay to the Contractor all sums lawfully due to the Contractor in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Authority shall pay such sums within 30 days of the receipt by it of a correct invoice for the same from the Contractor.

* + 1. Save as set out in Clause 30.6.2, the Authority shall have no further liability to the Contractor, including without limitation, in relation to any loss of profit of the Contractor.
    2. Upon the making of a declaration of ineffectiveness the Agreement shall be terminated on reasonable notice and the provisions of clause 15 and this clause shall apply.
    3. For the purposes of Regulation 101(5) of the Public Contracts Regulations 2015, the parties have agreed the inclusion of Clause 30.6 in order to regulate their mutual rights and obligations in the event of a procurement challenge and/or declaration of ineffectiveness being made. The parties also agree that the operation of those Conditions shall provide the Contractor with sufficient restitution and compensation.
  1. The rights of the Authority under this clause 30 are in addition and without prejudice to any right that either Party may have against the other for prior breach or to any right the Authority may have against the Contractor for the breach, default, negligence or event leading to the Termination Date.

1. FORCE MAJEURE
   1. The Parties shall not be liable for any loss of any kind whatsoever whether directly or indirectly caused by reason of any failure or delay in the performance of its obligations hereunder which is due to a Force Majeure Event, and for the avoidance of doubt, failure by either Party to comply with its contractual obligations by reason of a Force Majeure Event shall not constitute a breach of contract.
   2. On becoming aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part, the Party affected by it (“the Affected Party”) shall forthwith notify the other Party by the most expeditious method then available and such notice shall specify the period which it is estimated that such failure or delay shall continue.
   3. As soon as practicable following such notification the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Agreement.
   4. The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all reasonable steps to overcome or minimise the consequences of the Force Majeure Event.
   5. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
   6. It is expressly agreed that any failure by the Affected Party to perform or any delay by the Affected Party in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any Sub-Contractor or person, firm or company with which the Affected Party shall have entered into any such contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that that Sub-Contractor, person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of a Force Majeure Event.
   7. If on the expiry of six (6) months after the occurrence of a Force Majeure Event where the Force Majeure Event is continuing and continues to have a material adverse effect on the Affected Party’s performance of its obligations under the Agreement then either Party may terminate this Agreement in its entirety.
2. CONSEQUENCES OF TERMINATION
   1. On the Expiry Date or earlier termination pursuant to the Agreement the following provisions shall apply:-
      1. subject to Clauses 15 (TUPE), 16 (Pensions), 25 (Payment Provisions) 24 (Contractor’s Records), 48 (Audit Access), 32 (Consequences of Termination), 33 (Transition to Another Contractor), 34 (Indemnities Guarantees and Contractual ), 44 (Dispute Resolution), 41 (Freedom of Confidentiality) and 43 (Data Protection) the Agreement shall determine and cease to have effect and the Parties shall (save as aforesaid) be released from any further liability under this Agreement; and
      2. the Authority shall be entitled immediately or at any time subsequently to take and retain possession of the Facilities or any part of them; and
      3. the Contractor shall at the Authority’s request assign to the Authority (or to any person that the Authority may direct) the benefit rights and interest in any Sub-Contracts, such assignment providing that the burden under the Sub-Contracts be apportioned so that the Contractor remains liable for payment for work or services completed as of the date of the assignment;
      4. the Contractor and all Sub-Contractors shall vacate the Facilities immediately on the Expiry Date or on the date of termination; and
      5. the Contractor shall yield up the Authority Equipment to the Authority in good and substantial repair and condition and shall execute any instruments as are necessary to transfer title of the Equipment to the Authority in accordance with Clause 11;
      6. the extant Leases shall cease and determine;
      7. the Contractor shall offer for sale to the Authority at Net Book Value any item of Equipment which is not Authority Equipment;
      8. the Contractor shall hand over to the Authority in a form agreed with the Authority all Contract Data books, records, manuals, logs, data or other information (including work force information) relating to the Facilities and the Services and which the Authority reasonably requests;
      9. the Authority shall be entitled to withhold from any sums due to the Contractor or recover as a debt the costs, damages or expenses incurred by the Authority in putting the Facilities and the Authority Equipment back into the condition as at the Commencement Date save for fair wear and tear; and
      10. within six months the Parties shall carry out an accountancy reconciliation setting out any sums owed by one Party to the other and the Parties shall settle such amounts within 25 Business Days of the reconciliation being settled and agreed.
   2. The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination. The Clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
   3. Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this Agreement.
   4. Continued effect – no waiver

Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

* 1. Continued Performance

Subject to any exercise by the Authority of its rights to perform, or to procure a third Party to perform, the obligations of the Contractor, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement becomes effective in accordance with the provisions of this Clause.

1. TRANSITION TO ANOTHER CONTRACTOR

**Duty to Co-operate**

* 1. During the final 18 months of the Contract Period (where this expires by effluxion of time) or during the period of any notice of termination of this Agreement or of any of the Services, and in either case for a period of 3 months thereafter, the Contractor shall co–operate fully with the transfer of responsibility for the Services (or any of the Services) to any Replacement Contractor, and for the purposes of this Clause 33 the meaning of the term “co–operate” shall include:
     1. liaising with the Authority and/or any Replacement Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such New Contractor;
     2. allowing any such Replacement Contractor access (at reasonable times and on reasonable notice) to the Facilities but not so as to interfere with or impede the provision of the Services; and
     3. providing upon written request to the Authority and/or to any Replacement Contractor all and any information concerning the Facilities and the Services which is required for the efficient transfer of responsibility for their performance.

**Transfer of Responsibility**

* 1. The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a Replacement Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer. This shall include the provision of all such information to the Authority for the purpose of a retendering exercise in order to appoint a Replacement Contractor as the Authority may request.
  2. Without prejudice to the generality of the foregoing, the Contractor shall:
     1. Provide the following data to the Authority in such format as the Authority shall require and it is acknowledged that such data shall be used by the Authority in the re-tendering process:
        1. Attendance figures;
        2. The last three years of Income broken down into key income zones (for example swimming, health and fitness, sports halls);
        3. The last three years of expenditure broken down into key cost centres (for example staffing, utilities, repairs and maintenance, other premises costs, administration);
        4. The last three years of User throughput data;
        5. Utility consumption data;
        6. Membership data
        7. Regular hire and bookings data;
        8. staffing structures for each Facility
        9. The Inventory including the Final Inventory; and
        10. Property Database;
     2. Comply with the requirements of clause 16 and 17 concerning any Relevant Transfer to the Replacement Contractor;
     3. Except with the Authority’s prior approval, not take any bookings that extend beyond the end of the Contract Period;
     4. Provide details of all Third Party Interests;
     5. Remit a credit to the Replacement Contractor (pro-rata as applicable) for all bookings and memberships where payment has been made for events or membership in place after the end of the Contract Period, together with a complete reconciliation of this credit with a supporting statement;
     6. Before the end of the Contract Period remove all Contractor Equipment except the Contractor Equipment which has been sold to the Authority or which the Authority is to purchase in accordance with clause 32.1.7.

1. INDEMNITIES, GUARANTEES AND CONTRACTUAL CLAIMS
   1. Contractor’s Indemnity
      1. The Contractor shall be liable for and shall fully and promptly indemnify the Authority and any Authority Related Party, against all Losses whatsoever and howsoever arising, whether directly, indirectly or in relation to any third party liabilities, out of or in connection with:-
         1. the Contractor's failure to provide all or any part of the Services in accordance with the Service Standard or at all;
         2. any breach by the Contractor of any of the provisions of the Contract;
         3. the use or occupation by the Contractor of any of the Authority's Facilities including the Facilities for which the Authority has any legal responsibility;
         4. the use by the Contractor of any item of Authority Equipment;
         5. any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Contractor.
      2. For the purposes of Clause 34.1.1 above, references to the Contractor shall include any Contractor Related Party and for the purposes of Clause “third party liabilities” shall mean any demands made by third parties including without limitation Users against the Authority and all liabilities of the Authority to third parties.
   2. Authority’s Indemnity
      1. The Authority shall be liable for and shall fully and promptly indemnify the Contractor against all Losses whatsoever and howsoever arising whether directly, indirectly or in relation to any third party liabilities out of or in connection with:-
         1. any breach of contract of the Authority.
         2. the use or occupation by the Authority of any property or Facilities belonging to the Contractor.
   3. Limitation of Indemnity
      1. Without prejudice to the generality of this Clause 0 the parties' liability to the other in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse all costs and expenses reasonably incurred by the other in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.
      2. The Contractor's liability to the Authority pursuant to Clause 34.1 and the Authority's liability to the Contractor pursuant to Clause 34.2 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Agreement and in particular (but without limitation) shall not prejudice in any way the Authority's right to enforce at any time and in any manner whatsoever any guarantee or sub-Contractor warranty.
      3. In any event or notwithstanding anything contained in this Agreement, the Contractor's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this Agreement (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to:-
         1. where under the terms of Clause 35 the Contractor is obliged to hold insurance in respect of the matter from which the liability arises, the insurance levels set out in Clause ;
         2. in respect of matters for which the Contractor is not obliged to hold insurance under the provisions of Clause 35 £ 5 million.
      4. In any event or notwithstanding anything contained in this Agreement, the Authority's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this Agreement (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to £1 million.
      5. For the purposes of Clause 34.3 “in aggregate per year” shall mean that the limitation of liability referred to in those Clauses shall be the monetary limit of liability in respect of breaches, failures or negligence committed in any Contract Year.
   4. Notification of Claims

Where either Party (the “Indemnified Party”) wishes to make a claim under this Agreement against the other (the “Indemnifying Party”) in relation to a claim made against it by a third party (a “Third Party Claim”), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

* 1. Conduct of Claims

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

* 1. Costs of Claims

The Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

* 1. Parties Not Responsible to indemnify

Any requirement in this Clause 34 or elsewhere in these Clauses for one party to indemnify the other shall not apply to the extent that the claim in question arises from the negligence or breach of contract of the indemnified Party.

* 1. Mitigation

The Parties shall have a general duty to mitigate losses, damages, costs and expenses arising from the other Party’s breach of contract, breach of Lease terms or tort.

1. INSURANCE
   1. Requirement to Maintain

Without prejudice to the Authority's rights under the Agreement, the Contractor shall, during the Contract Period, take out with reputable insurers and maintain or procure the maintenance of such policies of insurance as may be necessary to insure the Contractor against all manner of risks which might arise in connection with the Contractor's performance of its obligations under the Agreement (except in relation to the risks to be insured by insurance maintained by the Authority in accordance with Clause 35.2) including (without limitation) in respect of the following risks:-

* + 1. employers’ liability including (without limitation) personal injury or death of any person arising under a contract of service with the Contractor and/or arising out of an incident occurring during the course of such person’s employment in compliance with the Employer’s Liability (Compulsory Insurance) Act 1969; such insurance cover shall be not less than £10,000,000 (ten million pounds) in respect of any one incident;
    2. public liability and occupiers’ liability; such insurance cover shall be not less than £20,000,000 (twenty million pounds) in respect of any one incident;
    3. contents insurance to cover without limitation loss or destruction by reason of accident, burglary, theft, fire or otherwise of all Equipment, Assets, software and other equipment owned or under the legal responsibility of the Contractor and such insurance shall be sufficient to cover the full replacement value;
    4. damage to the Facilities caused by the Contractor’s act, omission, default or negligence;
    5. such other risks as may from time to time be reasonably required by the Authority;

and such insurance cover above shall include:

* + 1. an indemnity to principal condition;
    2. contain a clause waiving the insurers' subrogation rights against the Authority and its employees and agents, acting properly in the course of such employment or agency; and
    3. the Authority's interest at all times during the Contract Period is and remains noted on the insurances.
  1. Building Insurance
     1. The Authority shall take out and maintain insurance, and/or self insure, as applicable, providing for the restoration and rebuilding of the Facilities or any of them in the event of damage by fire, aircraft, explosion, lightning, earthquake, storm and flood, escape of water, impact, sprinkler leakage and/or subsidence caused otherwise than by the Contractor’s acts or omissions and accidental damage provided the Contractor has not acted negligently insofar as such insurance can be obtained on reasonable commercial terms (the “Authority Insurances”). The Authority shall notify the Contractor of the type of insurance that has been obtained, including relevant deductibles and premia. Unless the Authority notifies the Contractor otherwise the Authority shall apply any insurance proceeds paid in relation to insured risks relating to the Facilities to the repair or reinstatement of Facilities.
     2. In relation to the Authority Insurances, the Contractor shall comply with all requirements of:
        1. the Authority and the Authority’s insurers; and
        2. the fire authority as to fire precautions relating to the Facilities

provided that the Authority has given the Contractor prior notification of such requirements and give notice to the Authority of any requirements and recommendations of the insurers and the fire authority as to fire precautions relating to the Facilities.;

* + 1. Upon the discovery of any damage to the Facilities (“Building Damage”):
       1. the Contractor shall (if the Contractor discovers the damage) or the Authority shall (if the Authority discovers the damage) record any relevant details of the damage (including photographs if necessary);
       2. the Contractor shall notify the Authorised Officer or suitable deputy or person of suitable authority within the Authority as soon as reasonably practicable after it becomes aware of the damage.
       3. the Contractor shall as soon as is reasonably practicable make safe the Building Damage.
  1. Obligation on Parties

No Party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or an additional insured person.

* 1. Evidence of Policies

The Contractor shall provide, to the Authority:

* + 1. copies on request of all insurance policies referred to in Clause 35.1 (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
    2. evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 35 (Insurance).
  1. Renewal Certificates

Renewal certificates in relation to any of the insurances required by Clause 35.1 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.

* 1. Breach

If the Contractor is in breach of Clause 35.1, either fully or at all, the Authority shall be entitled to:-

* + 1. as far as possible to provide the insurance itself in place of the Contractor; and
    2. to charge the cost of such substitute insurance together with an administration charge of 10% (ten per cent) of such cost, to the Contractor by way of (in the Authority's discretion) either:-
       1. adjusting the payment due from the Contractor to the Authority to include such sums; or
       2. recover the same as a debt due to the Authority from the Contractor.
  1. Notification of Claims

The Contractor shall within 24 hours of its becoming aware give the Authority notification after any claim in excess of twenty thousand pounds (£20,000) (indexed in line with CPI) on any of the Required Insurances or which, but for the application of the applicable insurance policy excess, would be made on any of the Required Insurances and (if required by the Authority) give full details of the incident giving rise to the claim.

* 1. Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Contractor of its other liabilities and obligations under this Agreement.

* 1. Premiums

Save where expressly set out in this Agreement, the insurance premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Contractor.

* 1. Authority Approval

The Required Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

* 1. Claims

The Contractor shall where it is obliged to effect insurance under this clause not bring any claim or action against the Authority (or any Authority Related Party) in respect of any loss or damage in circumstances where (a) the Authority and its employees and agents were acting properly in the course of such employment or agency; and (b) the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Contract) provided that, to avoid doubt, this sub-clause shall not by itself prevent the Contractor from claiming against the Authority (or any Authority Related Party) to the extent such loss or damage exceeds the maximum level of such insurance required by this Agreement.

* 1. Reinstatement and Change of Requirement after Insured Event

Where a claim is made or proceeds of insurance are received or are receivable under any physical damage policy in respect of a single event (or a series of related events) in respect of a Facility (the "Relevant Incident") in an amount in excess of £100,000 (one hundred thousand pounds) (indexed) then the Authority shall, within twenty (20) Business Days, notify the Contractor if it wants the Agreement to continue and the parties shall co-operate to agree a re-instatement plan, or the Authority shall within twenty (20) Business Days notify the Contractor that the Agreement will terminate or partially terminate in relation to the affected Facility (as the Authority may determine) and clauses 30 and 32 shall apply.

1. Risks That Become Uninsurable
   1. Uninsurable Risks

Nothing in Clause 35 or this Clause 36 shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is an acts(s) or omission(s) of the Contractor or a Contractor Related Party.

* 1. Risks Become Uninsurable

If a risk usually covered by material damage, third party liability, business interruption (but excluding loss of profits) or statutory insurances, in each case required under this Agreement, becomes Uninsurable then:

* + 1. the Contractor shall notify the Authorised Officer within five (5) Business Days of the risk becoming Uninsurable; and
    2. if both parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:
       1. the risk being Uninsurable is not caused by the actions, breaches, omissions or defaults of the Contractor or a Sub-Contractor of the Contractor; and
       2. in respect of the risks specified in Clause 36.2 above, the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the uninsurable risk occurring (if it has not already occurred) , the financial consequences for such company if such uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

then the parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by any party.

* 1. Consequences
     1. If the requirements of Clause 36.2 (Risks Become Uninsurable) are satisfied, but the parties cannot agree as to how to manage or share the risk, then:
        1. in respect of such material damage, third party liability (if relevant) business interruption (but not loss of profits) or delay in start up (but excluding loss of profits) or statutory insurances this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority’s option) pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Agreement will continue,
        2. Where pursuant to Clause 36.3.1.1 this Agreement continues then the Management Fee shall be reduced in each Contract Year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the Contract Year prior to it becoming Uninsurable (Indexed). Where the risk is Uninsurable for part of a Contract Year only the reduction in the Management Fee shall be pro rated to the number of months for which the risk was Uninsurable.
        3. Where pursuant to Clauses 36.3.1.1 this Agreement continues the Contractor shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain and procure the taking out and maintenance of insurance (to be incepted as soon as reasonably practicable) for such risk in accordance with this Agreement.
     2. If, pursuant to Clause 36.3.1.1, the Authority elects to make payment to the Contractor (such that the Agreement will terminate) (the "Relevant Payment") the Contractor shall have the option (exercisable within twenty (20) Business Days of the date of such election by the Authority (the "Option Period")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the risk not become Uninsurable, in which case this Agreement will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.
  2. Increase in Insured Amounts

The limit of indemnity and the maximum deductibles for each of the insurances required under clause 35.1 shall be indexed, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the limit that is indexed becomes equal to or exceeds the next whole insurable amount or deductible (as the case may be) available in the insurance market.

* 1. Unavailability of Terms or Clauses
     1. If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Agreement:
        1. any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or
        2. the insurance premium payable for insurance incorporating such insurance term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions or omissions of the Contractor and/or any Sub-Contractors) then Clause 36.5.2 shall apply.

* + 1. If it is agreed or determined that Clause 36.5.1 applies then the Authority shall waive the Contractor's obligations in Clause 35 (Insurances) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 36.5.1 continue to apply to such insurance term.
    2. To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.
    3. Where the Authority has exercised the waiver pursuant to Clause 36.5.2, it shall be entitled to adjust the annual Management Fee by the "Adjusted Amount", such amount being an amount equal to the amount paid for the particular Insurance Term in the preceding Contract Year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by the Contractor to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such term or condition pursuant to Clause 36.5.3.
    4. While Clause 36.5.1 applies, the annual Management Fee shall be reduced each Contract Year by the Adjusted Amount, indexed from the date that the particular Insurance Term is no longer available.
    5. The Contractor shall notify the Authorised Officer as soon as reasonably practicable and in any event within five days of becoming aware that Clauses 36.5.1.1 and/or 36.5.1.2 are likely to apply (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authorised Officer with such information as he reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
    6. In the event that Clauses 36.5.1.1 and/or 36.5.1.2 apply in respect of an Insurance Term (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four months to establish whether Clause 36.5.1.1 and/or 36.5.1.2 remain applicable to the Insurance Term. As soon as the Contractor is aware that Clause 36.5.1.1 and/or 36.5.1.2 has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of the insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement.

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PART 7 – CHANGES

1. Authority Changes
   1. Authority Changes
      1. The Authority has the right to propose Authority Changes in accordance with this Clause 37. If the Authority requires an Authority Change, it must serve a notice (“**Authority Notice of Change**”) on the Contractor in accordance with Clause 37.1.2 (Authority Notice of Change). The Authority shall not be entitled to propose Authority Change which requires the Services to be performed in a way that infringes any law or is inconsistent with Good Industry Practice or would otherwise be unlawful.
      2. For the avoidance of doubt and without limitation, it is acknowledge that the Authority may introduce the following Authority Changes during the Contract Period:
         1. the Seven Islands Leisure Centre may be replaced with a new Facility within the Canada Water area at any time during the Contract Period and may be removed from this Agreement. If a new Facility is built the Authority may in its absolute discretion instruct the Contractor to provide the Services at the new facility;
         2. the additional or removal of parks and facilities;
         3. extension of the free swim and gym offering;

and the provisions set out in this Clause 37 shall apply.

* 1. Authority Notice of Change

The Authority Notice of Change shall:

* + 1. set out the change in the Services required in sufficient detail to enable the Contractor to calculate and provide the estimated change in the Management Fee in accordance with Clause 37.3.7 (the “**Estimate**”); and
    2. require the Contractor to provide to the Authority within fifteen (15) Business Days of receipt of the Authority Notice of Change or within such period as the Parties shall agree having regard to the nature and scale of the Authority Change an estimate of the likely effects of the proposed variation (“**Contractor’s Response**”).
  1. Contractor's Response

As soon as practicable and in any event within fifteen (15) Business Days after having received the Authority Notice of Change or such other period as agreed, the Contractor shall deliver to the Authority the Contractor’s Response or confirmation as to when the Contractor’s Response is to be provided to the Authority. The Contractor’s Response shall include the opinion of the Contractor on:

* + 1. whether relief from compliance with obligations is required, including the obligations of the Contractor to meet the requirements set out in the Services Specification during the implementation of the Authority Change;
    2. any impact on the provision of the Services including whether the proposed change is in contravention of Clause 37.1;
    3. any amendment required to this Agreement and/or any Contract Document as a result of the Authority Change;
    4. any impact on Income generation;
    5. any capital expenditure that is required as a result of the Change;
    6. any regulatory approvals which are required; and
    7. a draft business case where the Authority Change is in relation to the addition or the removal of a Facility which shall without limitation include details of how the Contractor is to provide the Services, the staffing proposals, estimated income; [ ]
    8. an Estimate which shall set out any adjustments required to the Management Fee. For the avoidance of doubt the Parties hereby acknowledge that the Estimate may result in an increase or decrease in the Management Fee (or, if applicable and agreed by the Party making the payment, a capital payment). The Estimate should be broken down clearly showing all the requisite elements of the adjustments and should be priced in accordance with the amounts set out in the Pricing Tables. Where there are no applicable prices and rates in the Pricing Tables any Estimate should be commensurate with the prices and rates contained within the Pricing Tables. The Estimate shall not include any amount by way of compensation for loss of projected profits.
  1. Discussion
     1. As soon as practicable after the Authority receives the Contractor’s Response, the Parties shall discuss and agree the issues set out in the Contractor’s Response, including:
        1. providing evidence that the Contractor has and as applicable has used reasonable endeavours to oblige its Sub-Contractors to, including where practicable the use of competitive quotes, minimise any increase in costs or decrease in income and maximise any reduction in costs or increase in income;
        2. demonstrating that any expenditure that has been avoided, has been taken into account in the amount which in its opinion has resulted or is required under Clause 37.3.4.
     2. In such discussions the Authority may modify the Authority Notice of Change, and if the estimated increase or decrease in expenditure in respect of the Authority Change is expected to exceed fifty thousand pounds (£50,000) (indexed in line with the CPI Index) and it is practical for the Contractor to do so, the Authority may require the Contractor to seek and evaluate competitive tenders for any capital works relevant to the Change. In each case the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, notify the Authority of any consequential changes to the Estimate.
  2. Value for Money

If the Contractor does not intend to use its own resources to implement any Authority Change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirements that the Contractor should not be worse off as a result of the implementation of the Authority Change) when procuring any work, services, supplies, materials or equipment required in relation to the Authority Change.

* 1. Disputes

If the Parties cannot agree on the contents of the Contractor’s Response, then the dispute will be determined in accordance with the Dispute Resolution Procedure.

* 1. Confirmation or Withdrawal of Authority Notice

As soon as practicable after the contents of the Contractor’s Response have been agreed or otherwise determined pursuant to the Dispute Resolution Procedure, the Authority shall:

* + 1. confirm in writing to the Contractor the Contractor’s Response (as modified); or
    2. withdraw the Authority Notice of Change.
  1. Failure to Confirm Authority Change

If the Authority does not confirm the Contractor’s Response (as modified) within twenty (20) Business Days of the contents of the Contractor’s Response having been agreed or determined, then the Authority Notice of Change shall be deemed to have been withdrawn.

* 1. Implementation of Change

In the event that the Contractor’s Response has been confirmed by the Authority, then the Parties shall implement the Change.

* 1. Method of implementing Adjustments

Where the Authority agrees to any adjustment set out in the Contractor’s Response the Authority and Contractor shall agree either a lump sum payment or an adjustment to the Management Fee.

1. Contractor Changes
   1. If the Contractor wishes to introduce a change in the Services (“a Contractor Change”), it must serve a notice (“Contractor Notice of Change”) on the Authority.
   2. The Contractor Notice of Change must:
      1. set out the proposed change to Services in sufficient detail to enable the Authority to evaluate it in full;
      2. specify the Contractor's reasons for proposing the change to the Services;
      3. request the Authority to consult with the Contractor with a view to deciding whether to agree to the change to the Services and, if so, what consequential changes the Authority requires as a result;
      4. indicate any implications of the change to the Services;
      5. indicate, in particular, whether a variation to the Management Fee is proposed (and, if so, give a detailed cost estimate of such proposed change); and
      6. indicate if there are any dates by which a decision by the Authority is critical;
   3. The Authority shall evaluate the Contractor Notice of Change in good faith, taking into account all relevant issues, including, without limitation, whether:
      1. a change in the Management Fee will occur;
      2. the change affects the quality of the Services or the likelihood of successful delivery of the Services;
      3. the change will interfere with the relationship of the Authority with third parties;
      4. the financial strength of the Contractor is sufficient to perform the changed Services;
      5. the residual value of the Equipment or Facilities is reduced; or
      6. the change materially affects the risk or costs to which the Authority is exposed.
   4. As soon as practicable after receiving the Contractor Notice of Change, the Parties shall meet and discuss the matters referred to in it. During their discussions the Authority may propose modifications or, subject to Clause 38.5, approve or reject the Contractor Notice of Change.
   5. If the Authority approves the Contractor Notice of Change (with or without modification), the implementation of the relevant change to the Services shall be commenced within five (5) Business Days of the Authority's acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement which are necessary to give effect to the change.
   6. If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.
   7. Unless the Authority's acceptance specifically agrees to a decrease in the Management Fee, there shall be no decrease in the Management Fee as a result of a change to the Services proposed by the Contractor.
   8. If the change to the Services set out in the Contractor Notice of Change causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease then there shall be a increase in the Management Fee such that the costs that the Contractor has incurred in implementing such a change shall be deducted for the benefit of the Contractor and any savings shall be shared equally between the Contractor and the Authority to reflect the sharing in the decrease in costs 50:50 as to the Authority and the Contractor respectively.
2. CHANGE IN LAW
   1. The Contractor shall comply with all and any Legislation, amended Legislation or re-enacted Legislation which comes into force at any time during the Contract Period and shall ensure that the Services are provided in accordance with the same.
   2. The provisions of Clause 25.9 to 25.12 shall apply in relation to NNDR to the exclusion of the provisions of this clause 39.
   3. If at any time during the Contract Period either Party becomes aware of a Qualifying Change of Law which in its reasonable opinion will result in:-
      1. a necessary change in the Services;
      2. a variation or amendment to the terms of this Agreement;
      3. the procurement of new or additional Equipment; and/or
      4. an amendment, revision, modification or refurbishment of the Facilities or any part of the Facilities

that Party shall issue a notice in writing to the other giving full details of the Qualifying Change of Law and the resulting effect.

* 1. As soon as practicable after receipt of any notice from either Party under Clause 38.3 above, the Parties shall discuss and agree the issues referred to in the notice and shall agree the way in which the Qualifying Change in Law should be effected and the steps which may be reasonably taken by the Contractor to mitigate the effect of the Qualifying Change in Law.
  2. Following agreement between the Parties as to the way in which the Qualifying Change in Law is to be effected:
     1. the Contractor shall bear the costs of effecting any General Changes in Law and there shall be no changes to the Management Fee as a result; or
     2. any Specific Changes of Law shall be put into effect as provided in Clause 37 and 38 as if the Authority had issued a Authority Notice of Change and any changes to the Management Fee (or, if applicable and agreed by the Authority, a capital payment) shall be reasonably agreed between the Parties.
  3. Both Parties shall consult with each other to agree the resultant changes required to the Services Specification or other Contract Documents to govern the performance of the Change in Law.

Part 8 - GENERAL

1. AUTHORITY STEP-IN
   1. Right to Step-In

If the Authority reasonably believes that it needs to take action in connection with the Services:

* + 1. because a serious risk exists to the health or safety of persons or property or to the environment;
    2. to discharge a statutory duty; and/or
    3. because an Emergency has arisen;

then the Authority shall be entitled to take action in accordance with Clauses 40.2 (Notice to the Contractor) to 40.5(Step-In on Contractor Breach).

* 1. Notice to the Contractor

If Clause 40.1(Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

* + 1. the action it wishes to take;
    2. the reason for such action;
    3. the date it wishes to commence such action;
    4. the time period which it believes will be necessary for such action; and
    5. to the extent practicable, the effect on the Contractor and its obligation to carry out the Works and/or provide the Services during the period such action is being taken.
  1. Action by Authority

Following service of such notice, the Authority shall take such action as notified under Clause 40.2 (Notice to the Contractor) and any consequential additional action as it reasonably believes is necessary (together, the “Required Action”) and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

* 1. Step-In without Contractor Breach

If the Contractor is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services the Contractor shall be relieved from its obligations to carry out the provide such part of the Services.

* 1. Step-In on Contractor Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services

* + 1. the Contractor shall be relieved of its obligations to carry out such part of the Services; and
    2. in respect of the period in which the Authority is taking the Required Action, the Management Fee due from the Contractor to the Authority shall equal the amount the Authority would receive if the Contractor were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, plus an amount equal to all the Authority's costs of operation in taking the Required Action.

1. CONFIDENTIALITY
   1. Duty of Confidentiality
      1. The parties agree that the terms of this Agreement including any supplement agreements to the same shall, subject to Clause 41.1.2 below, not be treated as Confidential Information and may be disclosed without restriction. The Contractor hereby gives his consent for the Authority to publish the Contract in its entirety, (but with any Commercially Sensitive Information redacted) including from time to time agreed changes to the contract, to the general public.
      2. Clause 41.1.1 above shall not apply to terms of this Agreement designated as Commercially Sensitive Information and listed in Schedule 4 (Confidential Information) to this Agreement, which shall, subject to Clause 41.2 below, be kept confidential for the relevant periods specified in that Part.
      3. The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement or the Services and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Confidential Information.
   2. Permitted Disclosure

Clauses 41.1.2 and 41.1.3 (Duty of Confidentiality) shall not apply to:

* + 1. any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
    2. any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 41 (Freedom of Information and Confidentiality);
    3. any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor or any of its Sub-Contractors;
    4. any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory Authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory Authority concerned;
    5. any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
    6. any provision of information to the parties' own professional advisers or insurance;
    7. any disclosure by the Authority of information relating to the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new Contractor, its advisers and lenders should the Authority decide to re-tender this Agreement;
    8. any registration or recording of the property registration required;
    9. any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisors or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Agreement; and
    10. any disclosure for the purpose of:
        1. the examination and certification of the Authority's or the Contractor's accounts; or
        2. any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources; or
        3. complying with a proper request from either party's insurance advisers or insurers on placing or renewing any insurance policies; or
        4. (without prejudice to the generality of Clause 41.2.4 above) compliance with the FOIA and/or the Environmental Information Regulations.

Provided that, for the avoidance of doubt, neither Clauses 41.2.10.4 nor 41.2.4 above shall permit disclosure of Confidential Information otherwise prohibited by clause 41.1.3 above where that information is exempt from disclosure under section 41 of the FOIA.

* 1. Obligations Preserved

Where disclosure is permitted under Clause 41.2 (other than Clauses 41.2.2, 41.2.3, 41.2.8 and 41.2.9) the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

* 1. Audit

For the purposes of

* + 1. the examination and certification of the Authority’s accounts;
    2. the Audit Commission Act 1998 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts); and
    3. an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness of which the Authority has performed its functions,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he or it considers necessary.

* 1. Exploitation of Information

The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the Authority.

* 1. Information about Users and Authority Related Parties

Where the Contractor, in carrying out its obligations under this Agreement, is provided with information relating to Users and Authority Related Parties, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that User or Authority Related Party and has obtained the prior written consent of the Authority.

* 1. Expiry

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any User or Authority Related Party including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.

* 1. Disclosure by Audit Commission
     1. The parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.
     2. The provisions of this Clause 401are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

1. Freedom of Information
   1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 42.2 to 42.4 (inclusive) below.
   2. Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf the Authority shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information and the Contractor shall:
      1. provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within five (5) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority’s request; and
      2. provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.
   3. Following notification under Clause 4122 and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 4122.1, the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:-
      1. whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
      2. whether the Information is to be disclosed in response to a Request for Information, and
      3. in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.
   4. The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least 6 years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
   5. The Contractor acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 4124.
   6. In the event of a request from the Authority pursuant to Clause 4122 above, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority’s own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
   7. The Contractor acknowledges that (notwithstanding the provisions of Clause 41) the Authority may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the “FOIA Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Agreement:-
      1. in certain circumstances without consulting with the Contractor, or
      2. following consultation with the Contractor and having taken their views into account.
      3. Provided always that where Clause 42.7.1 applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.
2. DATA PROTECTION
   1. General
      1. In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.
      2. The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
   2. No Disclosure
      1. The Contractor shall not disclose Personal Data to any third parties other than:
         1. to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Services; or
         2. to the extent required under a court order,

provided that disclosure under Clause 43.2.1.1 (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 43.2.1 (No Disclosure) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under Clause 43.2.1.2 (No Disclosure) immediately upon becoming aware of such a requirement.

* + 1. The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.
    2. The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in Clause 43.2.2 (No Disclosure). Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.
    3. The Contractor shall indemnify and keep indemnified the Authority against all Direct Losses, claims, damages, liabilities, costs and expense (including reasonable legal costs)incurred by it in respect of any breach of this Clause 43 by the Contractor and/or any act or omission of any Sub-Contractor which causes the Contractor to be in breach of this Clause 43.

1. INTELLECTUAL PROPERTY RIGHTS
   1. Licence granted by the Contractor
      1. The Contractor hereby grants to the Authority a licence of the Contractor Software and the Contractor’s Background IPRs on the Standard Licence Terms.
      2. The Contractor shall procure that the owners or the authorised licensors of any Third Party Software hereby grants a direct licence to the Authority on the Standard Licence Terms. If the Contractor cannot obtain for the Authority a licence materially in accordance with the Standard Licence Terms (for example, in the event that commercial off the shelf (“COTS”) software is proposed and there is no scope to negotiate the terms of the COTS software licence) the Contractor will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Contractor should seek to use an alternative provider of software.
      3. The Contractor shall, if requested by the Authority in accordance with the exit provisions in the Services Specification grant or procure the grant to the Replacement Contractor of a licence to Use any Contractor Software, Contractor's Background IPRs or Third Party Software on the Standard Licence Terms subject to the Replacement Contractor entering into reasonable confidentiality undertakings with the Contractor.
      4. The Contractor hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.
   2. Project Specific IPR
      1. The Contractor hereby assigns to the Authority with full title guarantee title to and all rights and interest in the Project Specific IPRs or shall procure that the first owner of the Project Specific IPRs assigns them to the Authority on the same basis.
      2. The assignment under clause 44.2.1 shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPR.
      3. The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Contract.
      4. If so requested to do so the Contractor shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under clause 44.2.1 or shall procure that the owner of the Project Specific IPR does so on the same basis.
      5. The Authority shall grant to the Contractor a licence of the Project Specific IPR to enable the Contractor to provide the Services.
   3. Authority Data
      1. The Contractor acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data.
      2. For the avoidance of doubt, the Contractor shall not acquire any right in, or title to, any part of the Authority Data, whether existing prior to the date of this Contract or created after such date.
      3. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
      4. The Contractor shall not and shall procure that the Sub-contractors and Employees shall not store, copy, disclose, or use the Authority Data except as strictly necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
      5. The Contractor shall take responsibility for preserving the integrity of that Authority Data and preventing the corruption or loss of that Authority Data.
      6. The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system.
      7. The Contractor shall ensure that, when disposing of any hardware during the course of performing the Services, it shall erase from any computers, storage devices and storage media any software containing all Authority Data.
      8. If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor’s Default so as to be unusable, the Authority may:
         1. require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than 24 hours from the occurrence of the corruption, loss or degradation; and/or
         2. itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
      9. If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason or has or may have been subject to unauthorised disclosure, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
   4. Databases
      1. The Contractor hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the information contained in or stored on the Database or shall procure that the first owner of the Database assigns it to the Authority on the same basis.
      2. The assignment under clause 44.3.1 shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.
      3. The Contractor shall waive or procure a waiver of any moral rights in the Database assigned to the Authority under this Contract.
      4. To the extent that it is necessary for the Authority to obtain the full benefits of ownership of the Database, the Contractor hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use the Database.
   5. Indemnity
      1. Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Services infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all such claims and proceedings and the provisions of clause 34 (Indemnities, Guarantees and Contractual Claims) shall apply.
2. DISPUTE RESOLUTION
   1. Disputes

Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 45.

* 1. Consultation

If a dispute arises in relation to any aspect of this Agreement, the Contractor’s Representative and the Authorised Officer shall at first instance use their reasonable endeavours to resolve it. If the dispute is not resolved between the Contractor’s Representative and the Authorised Officer the matter shall be referred to senior levels in both organisations and subsequently to Director and Chief Executive level if necessary.

* 1. Mediation

If the Parties fail to reach agreement the dispute shall be referred to non-binding mediation in accordance with the rules of the Chartered Institute of Arbitrators Cost Controlled Procedure for the mediation of disputes. The mediation shall be non-binding unless agreement is reached and a document signed with contractual effect. The mediation shall be conducted within six weeks of a referral by either Party.

* 1. Expert

If the Contractor and the Authority fail to resolve the dispute through such mediation, either Party may refer the matter to an Expert selected in accordance with Clauses 45.5 and 45.6 below. For the avoidance of doubt, nothing shall compel a Party to refer a matter to an Expert before proceeding to litigation.

* 1. The Parties shall jointly appoint as Expert a person suitably qualified to determine such matter or dispute.
  2. If
     1. the Authority and the Contractor are unable to agree on the identity of the appointee, or
     2. the appointee declines to act
     3. the President for the time being of the Chartered Institute of Arbitrators shall appoint an Expert within twenty-five (25) Business Days of any application for such appointment by either Party.
  3. Within five (5) Business Days of appointment in relation to a particular dispute, the Expert shall require the Parties to submit in writing their respective arguments. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
  4. The Expert shall provide to both Parties his written decision on the dispute, within 25 Business Days of appointment (or such other period as the Parties may agree with the Expert). The Expert shall state reasons for his/her decision.
  5. The Expert’s decision shall be binding on both Parties who shall forthwith give effect to the decision, unless and until either Party refers the dispute to a court, in which event, the court shall be entitled to open up and review any decision of the Expert.
  6. The Expert’s costs of any reference shall be borne as the Expert shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
  7. The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reached his determination.
  8. All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential.
  9. The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith. Any employee or agent of the Expert is similarly protected from liability.
  10. Reference to the Courts

If, following determination by the Expert in accordance with this Clause or no referral in accordance in accordance with Clause 45.4 above, the dispute remains unresolved, either Party may refer the matter to the exclusive jurisdiction of the courts of England.

1. Prevention of bribery
   1. The Contractor:
      1. shall not, and shall procure that its Staff or Sub-Contractors shall not, in connection with this Agreement commit a Prohibited Act;
      2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Agreement.
   2. The Contractor shall:
      1. if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
      2. within fifteen (15) Business Days of the Commencement Date of the Contract, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 45 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request. The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Contractor’ Staff from committing a Prohibited Act and shall enforce it where appropriate.
   3. If any breach of clause 46.1 is suspected or known, the Contractor must notify the Authority immediately.
   4. If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause 46.1, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for six (6) years following the expiry or termination of the Contract.
   5. The Authority may terminate this Agreement by written notice with immediate effect (or such other period as the Authority determines) if the Contractor or its Staff (in all cases whether or not acting with the Contractor's knowledge) breaches clause 46.1. In determining whether to exercise the right of termination under this clause 46.5, the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:
      1. with the Authority; or
      2. with the actual knowledge;

of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or

* + 1. in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
  1. Any notice of termination under clause 46.5 must specify:
     1. the nature of the Prohibited Act;
     2. the identity of the party whom the Authority believes has committed the Prohibited Act; and
     3. the date on which this Agreement will terminate.

1. ASSIGNMENT AND SUB-CONTRACTING
   1. The Authority shall be entitled to assign, novate or otherwise transfer or dispose of its rights under this Agreement or any part thereof to any other body (including but not limited to any private sector body of suitable financial standing).
   2. Restriction on the Contractor
      1. The Contractor shall not assign, novate, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.
      2. The Authority may withhold or delay its consent where it considers that:
         1. the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority; and/or
         2. the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to either the Authority or any of its other customers; and/or
         3. the proposed Sub-contractor employs unfit persons; and/or
         4. the proposed Sub-contractor poses security concerns to the Authority; and/or
         5. the appointment of the proposed Sub-contractor would amount to the award of a new contract for the purposes of the EU Treaty, Directive 2015/23 EC or the Public Contracts Regulations 2015; and/or
         6. the proposed assignment or novation would constitute the award of a new contract for the purposes of the EU Treaty, Directive 2015/23 EC or the Public Contracts Regulations 2015.
   3. Contractor’s Obligations
      1. The Contractor shall perform its obligations under and observe all the terms of any sub–contract with a Sub-Contractor.
      2. In the event that the Contractor enters into any Sub-Contract in connection with this Agreement it shall:
         1. remain responsible to the Authority for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
         2. use its reasonable endeavours to procure collateral warranties from the Sub-Contractors in the form agreed within six (6) weeks of the date of appointment;
         3. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
         4. provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authorised Officer.
   4. Change in Control of the Contractor
      1. The Contractor shall immediately notify the Authority of any anticipated Change of Control of the Contractor.
      2. The Authority may terminate this Agreement immediately by written notice without penalty if there is a Change of Control of the Contractor to which the Authority objects except where the Authority:
         1. has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
         2. has not served its notice within 12 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control
2. AUDIT ACCESS

The Contractor shall provide to the Authorised Officer all information, documents, records and the like in the possession of, or available to, the Contractor (and to this end the Contractor shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor has included or shall include, relevant terms in all contracts with Sub-Contractors to this effect) as may be reasonably requested by the Authorised Officer for any purpose in connection with this Agreement.

1. NO AGENCY
   1. No Partnership or Employment

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

* 1. Power to Bind

Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

* 1. Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Services as is held (or ought reasonably to be held) by any Contractor Related Party.

1. ENTIRE AGREEMENT
   1. Prior Representations etc Superseded

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

* 1. Acknowledgements

Each of the parties acknowledges that:

* + 1. subject to Clause 4 (Contractor Warranties) it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and
    2. this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

1. NOTICES

**Form and Service of Notices**

* 1. All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served in accordance with the provisions of this clause 51.
  2. Subject to clause 51.4 below, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of service | Proof of service |
| Email | 9.00am on the first Business Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message. |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.30pm on a Business Dat. Otherwise, delivery will occur at 9.00am on the next Business Day | Properly addressed and delivered as evidenced by signature of a delivery receipt. |
| Prepaid, Royal Main signed for 1st Class post | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.30pm on a Business Day. Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if delivery after 5.30pm) | Properly addressed prepaid and delivered as evidences by signature of a delivery receipt |

* 1. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of services of notices under this Agreement:

|  |  |
| --- | --- |
| **Contractor** | **Authority** |
| [Insert Name] | [Insert Name] |
| [Insert Address] | [Insert Address] |
| [Email Address] | [Email Address] |

* 1. The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 51.2 above:
     1. A notice under clause 39 (Authority Step In)
     2. Notices under clause 31 (force Majeure);
     3. Termination notices under clause 30; and
     4. Notices of dispute.
  2. This Clause 51 does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any other method of dispute resolution.
  3. Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to the Authorised Officer or the Contractor’s Representative it shall be provided or submitted by sending the same by first class post, email or by hand, or leaving the same at:

|  |  |
| --- | --- |
| **Contractor’s Representative** | **Authorised Officer** |
| [INSERT NAME] | [INSERT NAME] |
| [INSERT ADDRESS] |  |
| [INSERT FAX NUMBER] | [INSERT FAX NUMBER] |

1. SEVERABILITY

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

1. WAIVER
   1. Waiver to be Written

No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.

* 1. Extent of Waiver

No waiver under Clause 52.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

1. INTEREST ON LATE PAYMENT

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid within 30 Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the parties that the Prescribed Rate provides the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

1. GOVERNING LAW AND JURISDICTION

The Agreement shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to Clause 45 (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

1. NO DOUBLE RECOVERY

Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

1. CAPACITY

Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Contractor.

1. ORDERING OF GOODS AND SERVICES

Neither party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other party or any representative of the other party.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

THE COMMON SEAL of )

THE MAYOR AND BURGESSES )

OF THE LONDON BOROUGH )

OF SOUTHWARK was affixed to this DEED )

in the presence of:

Authorised Signatory ……………………….

SIGNED as a deed by )

[name of CONTRACTOR] )

by [a Director and its Company Secretary]/

or [two Directors] ) .......................................................

Director

.......................................................

Director/Company Secretary

|  |
| --- |
| **SCHEDULE 1 DEFINITIONS** |

SCHEDULE 1  
DEFINITIONS AND INTERPRETATION

**Definitions**

In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

| **Word or Phrase** | **Meaning** |
| --- | --- |
| “1999 Act” | the Local Government Act 1999; |
| “Adjustments” | The adjustments as set out in paragraph 6 of Schedule 12; |
| “Administering Authority” | Means the Authority in its capacity as administering authority of the LGPS |
| “Affected Party” | has the meaning given to it in the definition of Force Majeure Event in this Schedule 1 (Definitions); |
| “Affiliate” | in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in Section 736 of the Companies Act 1985 provided that the Authority shall not be construed for any purposes as being an Affiliate of the Contractor; |
| “Agreement and Contract ” | this agreement (including its Schedules); |
| “Annual Service Plan” | The annual report submitted by the Contractor in accordance with the requirements set out in the Services Specification; |
| “Annual Service Report” | The annual report submitted by the Contractor in accordance with the requirements set out in the Services Specification; |
| “ASBO” | an anti-social behaviour order as defined in the Crime and Disorder Act 1998; |
| “Asset Management Responsibilities Matrix” | the responsibility matrix as set out in Appendix [ ] of the Services Specification; |
| “Assets” | all assets and rights to enable the Authority or a successor Contractor to own, operate and maintain each Facilities in accordance with this Agreement including:   * + 1. any land or buildings;     2. any equipment;     3. any books and records (including operating and maintenance manuals, health and safety manuals and other know how);     4. any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); and     5. any revenues and any other contractual rights;   but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner; |
| “Authorised Officer” | shall be the Director of Housing and Community Services or such other person appointed by the Authority pursuant to Clause 17; |
| “Authority Change” | a change in the Services, the Facilities, the number of Facilities or a change in the Authority's Policies requested by the Authority which the Contractor is obliged to implement under Clause 37; |
| “Authority Data” | 1. Any data (including metadata) record, document, drawing, images, or sounds, or information (together with any Database made up of any of these) howsoever stored (including without limitation any data stored on the CAFM System) which is either: 2. communicated by the Authority, its staff, sub-contractor and agents to the Contractor in writing, orally, electronically or by any other means; or 3. is obtained, gleaned, generated, stored, transmitted, compiled or processed by the Contractor pursuant to this Agreement; 4. any Personal Data for which the Authority is the Data Controller; |
| “Authority Equipment” | means the items listed in Appendix 4 the Services Specification including any additional equipment procured by the Contractor on the Authority’s behalf and at the Authority’s cost and all replacement Authority Equipment whether funded by the Authority or the Contractor in accordance with Clause 11.1.2; |
| “Authority Lifecycle Item” | an item of building fabric, plan, machinery, and fixtures and fittings (excluding Equipment) at the Facilities which is identified in the Services Specification as the Authority’s responsibility to replace and maintain; |
| “Authority Notice of Change” | has the meaning given to it in Clause 37.1 (Authority Changes); |
| “Authority Pricing Requirements” | The Authority prices for certain activities and Users; |
| “Authority Related Party” | an officer, agent, or employee of the Authority acting in the course of his office or employment; and any person (except a User) visiting any Facilities at the invitation (whether express or implied) of the Authority but excluding in each case the Contractor and any Contractor Related Parties; |
| “Authority’s Policies” | those policies of the Authority attached at Schedule 10; |
| “Background IPR” | 1. IPR owned by the Contractor before the date of this Agreement, for example those subsisting in the Contractor’s standard development tools, program components or standard code used in computer programming or in physical or electronic media ; 2. IPRs created by the Contractor independently of this Agreement; |
| “Barred List” | The barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012; |
| “Bribery Act” | the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| “Building Condition Surveys” | means the surveys of the Facilities set out at Schedule 13; |
| “Byelaws” | the Byelaws in force in relation to the Facilities in force from time to time as set out in [ ] of the Services Specification; |
| “CAFM System” | the electronic system to be provided and maintained by the Contractor for collecting, maintaining and reporting all data in relation to the Facilities. All the data on the CAFM Systems in relation to this Agreement shall be Authority Data; |
| “Canada Water Facility” | Means the new Facility to be opened in the Canada Water area in order to replace the Seven Islands Facility; |
| “Castle Facility” | means the new Facility at Elephant and Castle known as “the Castle”; |
| “Change in Law” | the coming into effect after the date of this Agreement of:   1. Legislation, other than any Legislation which on the date of this Agreement has been published: 2. in a draft Bill as part of a Government Departmental Consultation Paper; 3. in a Bill; 4. in a draft statutory instrument; or 5. as a proposal in the Official Journal of the European Communities; 6. any Guidance; or 7. any applicable judgment of a relevant court of law which changes a binding precedent; |
| “Change in Ownership” | 1. any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or 2. any other arrangements that have or may have or which result in the same effect as paragraph (a) above. |
| “Change in Revenue” | the decrease or increase in Revenue arising as a direct result of a Compensation Event which shall be calculated pursuant to Schedule 16 (Change in Revenue); |
| “Change Procedure” | means the procedure contained within Clauses 37 and 38; |
| “Commencement Date” | means 21st June 2016; |
| “Commercially Sensitive Information” | The information listed in Schedule 5; |
| “Compensation Event” | The occurrence of:   * 1. a breach by the Authority of any of its obligations under this Agreement; and   2. an Emergency (clause 13);   3. a Latent Defect which causes the Castle Facility or Southwark Athletics Centre or any material part thereof to be unavailable such that either Facility or a material part thereof cannot be used by Users. |
| “Condition Survey Works” | means the works identified in any Condition Survey; |
| “Confidential Information” | 1. information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and 2. Commercially Sensitive Information. |
| “Contract Data” | any materials, documents or data acquired, brought into existence or used in relation to the Services or this Agreement; |
| “Contract Documents” | the documents describing the contractual relationship between the Parties, consisting of this Agreement together with all Schedules and any other agreements entered into by the Contractor for the performance of its obligations under this Agreement; |
| “Contract Month” | any month in a Contract Year provided that:   1. the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and 2. the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day; |
| “Contract Period” | the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date; |
| “Contract Year” | a period of twelve (12) months commencing on 1st April, provided that:   1. the first Contract Year shall be the period commencing on the Commencement Date and ending on the immediately following 31st March and 2. the final Contract Year shall be the period commencing on 1st April immediately preceding the last day of the Contract Period and ending on that d. |
| “Contractor Change” | has the meaning set out in Clause 38; |
| “Contractor Equipment” | the items of Equipment provided by the Contractor in accordance with Clause 11; |
| “Contractor Lifecycle Item” | An item of building fabric, plan, machinery, and fixtures and fittings (excluding Equipment) at the Facilities which is identified in the Services Specification as the Contractor’s responsibility to replace and maintain and any other assets at the Facilities which are not Authority Lifecycle Items; |
| “Contractor Notice of Change” | has the meaning given to it in Clause 38.2; |
| “Contractor Related Party” | * + 1. an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;     2. any Sub-Contractor of any tier and any of their officers, servants or agents; and   any person on or at any of the Facilities at the express or implied invitation of the Contractor (other than an Authority Related Party or a User); |
| “Contractor Software” | The Contractor’s it system comprising the sports booking system; |
| “Contractor's Proposals” | the proposals of the Contractor to deliver the Services to satisfy the Services Specification, as set out in Schedule 3; |
| “Contractor's Representative” | shall be [ ] or such other person appointed by the Contractor pursuant to Clause 17; |
| “Control” | means that a person possesses, directly or indirectly the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting, shares, by contract or otherwise) and a “**Change of Control**” shall be interpreted as a Change in Control of the Contractor. |
| “Convictions” | other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order); |
| “Core Prices” | The maximum prices as set by the Authority for certain activities and Users; |
| “Database” | the data and rights held in all the data sets held by the Contractor for the provision of the Services including without limitation the CAFM System, the Asset Register, the Lifecycle Schedule, the Planned Maintenance Schedule, the Sports Booking system ; |
| “Direct Losses” | all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses; |
| “Disclosed Data” | information disclosed to the Contractor and/or its advisers before the date of this agreement |
| “Disclosure and Barring Scheme” | The disclosure and barring scheme operated by the Disclosure and Barring Service; |
| “Discriminatory Change in Law” | a Change in Law, the terms of which apply expressly to:   1. the Services and not to similar projects; and/or 2. the Contractor and not to other persons; |
| “Dispute Resolution Procedure” | the procedure for the resolution of disputes set out in Clause 44 (Dispute Resolution); |
| “DPA” | the Data Protection Act 1998; |
| “Emergency” | an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services; |
| “Enhancement Works” | means any works of improvement at any of the Facilities which are carried out by the Authority which are set out in to in Schedule 14; |
| “Environmental Information Regulations” | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations; |
| “Equalities Legislation” | all legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any preceding, successor or amending Legislation concerning the same. |
| “Equipment” | all items of IT equipment, fixtures, fittings, gym equipment, furniture, plant, materials, supplies, parts and goods used by and/or necessary for the Contractor to perform the Services in accordance with the Agreement including the Authority Equipment and the Contractor Equipment; |
| “Estimate” | has the meaning given to it in Clause 37.3.7; |
| “Excusing Cause” | any of the following:   1. where there is a failure by a Utilities supplier to supply Utilities to the relevant Facilities through no fault of the Contractor, the Excusing Case shall only be for the period up to the point the relevant Utilities supplies are fully reinstated; 2. the occurrence of a Force Majeure Event; 3. Where the Authority uses the Facilities (or any of them) for an Emergency; 4. To the extent that the Performance Failure arises from an act, omission or default of the Authority; or 5. To the extent the Performance Failure is a result of the proper implementation of the Schedule of Programmed Maintenance which has been approved under the Agreement. |
| “Expiry Date” | [ ] or such later date on which this Agreement expires in accordance with this Agreement; |
| “Facilities” | the Facilities listed in Part 1A of the Services Specification together with fixtures, fittings and to be maintained and serviced in accordance with this Agreement located on and consisting of the Facilities; |
| “Failure Points” | the points allocated for each Performance Failure that is not rectified within the relevant Rectification Period. |
| “Fees Regulations” | the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004; |
| “Final Inventory” | Means the final version of the Inventory as prepared by the Contractor in line with Clause 11 |
| “FOIA” | the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act; |
| “Force Majeure Event” | the occurrence after the date of this Agreement of:   1. war, civil war, armed conflict or terrorism; or 2. nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act by the Contractor or its Sub-Contractors or any breach by the Contractor of the terms of this Agreement; or 3. pressure waves caused by devices travelling at supersonic speeds,   which directly causes either party (the “Affected Party”) to be unable to comply with all or a material part of its obligations under this Agreement. |
| “General Change in Law” | a Change in Law which is not a Specific Change in Law. For the avoidance of doubt the Parties agree that a General Change in Law shall include without limitation any changes in the legislation relating to and and/or exemption from VAT as applicable to the Contractor; |
| “Good Industry Practice” | that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or Facilities management Contractor or building Contractor or leisure operator or any sub-Contractor under the same or similar circumstances; |
| “Guidance” | any applicable guidance or directions with which the Contractor is bound to comply; |
| “Health and Safety Regime” | the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time; |
| “Income” | means the income the Contractor receives from Users while delivering the Services; |
| “Incumbent” | means any provider of services at the facilities similar to the Services immediately prior to the Commencement Date; |
| “Indemnified Party” | has the meaning given to it in Clause 34.4 (Notification of Claims); |
| “Indemnifying Party” | has the meaning given to it in Clause 34.4 (Notification of Claims); |
| “Index” | the Consumer Price Index (CPI) issued by the Office of National Statistics or any body upon which such duties in connection with the compilation and maintenance of such index may have devolved as published on [ ] each year; |
| “Indirect Losses” | loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of Income; |
| “Information” | has the meaning given under Section 84 of the Freedom of Information Act 2000; |
| “Insurance Term” | means any terms and/or conditions required to be in a policy of insurance by Clause 35 but excluding any risk; |
| “Intellectual Property Rights” | any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Party for the purposes of providing the Services and/or otherwise for the purposes of this Agreement; |
| “Intellectual Property Rights” | any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Party for the purposes of providing the Services and/or otherwise for the purposes of this Agreement; |
| “Inventory” | means the document at Appendix 4 of the Services Specification as subsequently updated; |
| “Latent Defect” | any inherent defect in the Castle Facility or Southwark Athletic Centre or anything installed at either Facility attributable to:  (a) defective design;  (b) defective workmanship or defective materials (which, for the avoidance of doubt, shall exclude asbestos), plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of either Facility;  (c) the use of materials in the construction of either Facility which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of either Castle Facility;  (d) defective installation of anything in or on either Facility;  (e) defective preparation of the site on which either Facility is constructed; or  (f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;  but excluding:  (i) any defects;  (ii) any defects which are revealed in the Condition Surveys;  (iii) any defects which are or will be the subject of Programmed Maintenance;  and  (iv) to the extent such defect has been caused or exacerbated by the acts or omissions of the Contractor or a Contractor Related Party |
| “Lease” | the lease/underlease or licenses (as applicable) relating to the Facilities to be granted by the Authority to the Contractor in the form set out at Schedule 7; |
| “Legislation” | any one or more of the following:   1. any Act of Parliament; 2. any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; 3. any exercise of the Royal Prerogative; and 4. any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,   in each case in the United Kingdom; |
| “Lifecycle Schedule” | The plan developed by the Contractor in relation to the Lifecycle replacement works as referred to in the Services Specification; |
| “Losses” | all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands; |
| “Maintenance Method Statement” | means the Method Statement describing how the Contractor will maintain the Facilities entitled the “Asset Management & Environmental Sustainability Method Statement”, whether forming part of the Contractor’s Proposals or as subsequently updated; |
| “Management Fee” | the net fee payable by the Contractor to the Authority in consideration of the right for the Contractor to use the Facilities and provide the Services in accordance with this Agreement as such sum is calculated in accordance with Schedule 4 (Pricing Tables); |
| “Management Information” | means all or any of the following information as the Authority may specify from time to time during the Term:   * payment Date * Contract Date * Monthly instalment of the Management Fee;   The above list is not exhaustive and the Authority may from time to time change the items in the list provided that it has given the Contractor notice of such changes. |
| “Marketing Plan” | Means the strategy for marketing, advertising and sponsorship described in clause 9.2; |
| “Method Statement” | means that part of the Contractor’s Proposals indicating how the Contractor will deliver the Services |
| “Minimum Opening Hours” | the hours of required opening of the Facilities to Users as set out in Appendix 1 the Services Specification; |
| “Month” | A calendar month during the Contract Period; |
| “Necessary Consents” | All permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise which are required for the performance of any of the Contractor’s obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party; |
| “Operating Manual” | has the meaning given to it in Clause 18; |
| “Performance Failure” | a negligent act or omission, any breach of contract and/or any failure by the Contractor properly to perform any of the obligations, terms and conditions of the Agreement including (without limitation) any failure to perform the Services to the Performance Standards; |
| “Performance Monitoring System” | The default mechanism set out in Schedule 12; |
| “Performance Standards” | those Quarterly Performance Standards and the Annual Performance Standards, as appropriate and as set out in the Services Specification; |
| “Personal Data” | personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services; |
| “Planned Preventative Maintenance” | means works of planned maintenance identified in the Schedule of Programmed Maintenance and carried out by the Contractor; |
| “Prescribed Rate” | two per cent (2%) above the base rate from time to time of NatWest Bank plc; |
| “Pricing Tables” | means the tables set out in Schedule 4 (Pricing Tables); |
| “Prohibited Act” | 1. offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:    1. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or    2. for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority; 2. entering into this Agreement or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority; or 3. committing any offence:    1. under the Bribery Act 2010;    2. under Legislation creating offences in respect of fraudulent acts; or    3. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; 4. defrauding or attempting to defraud or conspiring to defraud the Authority; |
| “Project Specific IPR” | 1. IPRS in items created by the Contractor (or by a third Party on behalf of the Contractor) specifically for the purposes of this Agreement and updates and amendments of those items; and/or 2. IPRs arising as a result of the performance of the Contractor’s obligations under this Agreement;   but which shall not include the Contractor’s Background IPRs; |
| “Property Database” | means the database of the plant, all Equipment, materials, components and fittings located at each Facility prepared as applicable and maintained by the Contractor in accordance with this Contract at clause 12.3.2; |
| “Qualifying Change in Law” | 1. a Discriminatory Change in Law; 2. a Specific Change in Law; or 3. a General Change in Law, which comes into effect after the Commencement Date and which involves Capital Expenditure;   which was not foreseeable at the date of this Agreement; |
| “Quarter” | means a period of three months commencing on the Quarter days which for the purposes of this Agreement are  1st January,  1st April,  1st July and  1st October |
| “Quarterly Performance Standard” | those standards set out in Appendix A of Schedule 12 as recorded on a quarterly basis; |
| “Quest” | the UK Quality Scheme for Sport and Leisure of the same name (supported by, inter alia, Sport England) or any successor scheme thereto that is supported by Sport England (or its successors); |
| “Recipient” | has the meaning given to it in Clause 0 (VAT); |
| “Rectification Period” | means the time period, as detailed alongside each Performance Standard, for rectification of a Performance Failure. |
| “Rectification” | means making good a Performance Failure so that it complies with the levels of service required pursuant to this Agreement, including:  (a) restoring all functional capability necessary to meet the Performance Standard;  (b) ensuring that any area which has been affected by the relevant Performance Failure complies with the relevant Performance Standards; and  (c) complying with and making good the Performance Failure in accordance with Legislation and, where in relation to a matter there is no express obligation or standard imposed on the Contractor under this Agreement, in accordance with Good Industry Practice. |
| “Regulated Activity Provider” | As defined in section 6 of the Safeguarding Vulnerable Groups Act 2006 |
| “Regulated Activity” | In relation to children: as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;  In relation to vulnerable adults: as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; |
| “Relevant Authority” | any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union; |
| “Request for Information” | shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply); |
| “Required Action” | has the meaning given to it in Clause 40.3 (Action by Authority); |
| “Required Insurances” | the insurances specified in Clause 35; |
| “Revenue” | the revenue or income received by the Contractor (or where relevant would have been received but for the occurrence of a Compensation Event) from Users of the relevant Facility for the provision of the Services at that Facility; |
| “Schedule of Programmed Maintenance” | Means the programme of PPM, testing, redecoration and replacement that the Contractor is required to provide in accordance with clause 12.12; |
| “Service Standard” | has the meaning given to it in Clause 7.2 (Service Standard); |
| “Services Specification” | the requirements of the Authority in respect of the Services set out in Schedule 2 (Services Specification); |
| “Services” | the services required to satisfy the Services Specification of the Authority contained in Schedule 2 (Services Specification); |
| “Site Plans” | the plans of the Facilities; |
| “Southwark Athletic Centre” | the centre as detailed in the Services Specification |
| “Specific Change in Law” | any Change in Law which specifically refers to the provision of a service the same as or similar to the Services or to the holding of shares in companies whose main business is providing a service the same as or similar to the Services; |
| “Sport England Guidance” | means the guidance adopted and published by Sport England at the Commencement Date together with any changes in such guidance which were reasonably foreseeable at the Commencement Date ; |
| “Sport England” | means the English Sports Authority (or its successors) of 3rd Floor Victoria House, Bloomsbury Square, London WC1B 4SE; |
| “Staff” | Means any person engaged by the Contractor in the provision of the Services, whether an employee of the Contractor or of a third party of a self-employed Contractor; |
| “Standard Licence Terms” | the licence terms set out in [ ] |
| “Sub-Contractor” | a sub-contractor of the Contractor or a franchisee or Contractor occupying a part of any of the Facilities; |
| “Sub-Contracts” | the contracts entered into between the Contractor and the Sub-Contractors; |
| “Termination Date” | the date of early termination of this Agreement in accordance with its terms; |
| “Termination Notice” | a notice of termination issued in accordance with this Agreement; |
| “TFEU” | the Treaty on the Functioning of the European Union |
| “Third Party Interests” | Means any interest or entitlement of any third party to use the facilities at any centre, or to deliver Services other than the Services at any centre, including those listed at Schedule 11 (which is a non-exhaustive list); |
| “Title Deeds” | the registered title of the Authority in respect of each of the Facilities; |
| “Treaties” | the Treaty on European Union and TFEU |
| “TUPE” | the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246) as amended; |
| “Uninsurable Third Party” | means either:   1. any person who has a material interest in the production, distribution or sale of tobacco products or pornography 2. any person whose activities are, in the reasonable opinion of the Authority is compatible with the provisions of the Services in the area; or   any person whose activities in the reasonable opinion of the Authority pose or could pose a threat to national security; |
| “Uninsurable” | in relation to a risk, either that:   1. insurance is not available to the Contractor in respect of the Services in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or 2. the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by Contractors in the United Kingdom; |
| “Users” | Means any person using any of the activity at any Facility; |
| “Utilities” | gas, water, electricity, sewerage; |
| “Utility Rates” | the applicable rate for a Utility as charged to the Contractor by the Utility Contractor; |
| “VAT” | value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; |

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| **SCHEDULE 2**  **SERVICES SPECIFICATION** |

Schedule 2  
Services Specification

[see separate document]

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| **SCHEDULE 3**  **CONTRACTOR’S PROPOSALS** |

Schedule 3  
Contractor’s Proposals

[to be inserted on award]

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| **SCHEDULE 4**  **PRICING TABLES** |

Schedule 4  
Pricing Tables

**[to be inserted on award]**

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| **SCHEDULE 5**  **CONFIDENTIAL INFORMATION** |

Schedule 5  
Confidential Information

This Schedule sets out contractual provisions and additional information which the Contractor considers are commercially sensitive.

The lists are of an indicative value only and do not indicate that the Authority accepts all the information is exempt information. The Authority may nevertheless be obliged to discuss such information in accordance with the FOIA and/or the EIR. The Contractor shall provide all reasonable assistance in responding to requests for information under the FOIA and/or the EIR Regulations and shall provide as much information as possible and as applicable provide redacted versions of information upon request.

**Commercially Sensitive Information**

| **Column 1 - Commercially Sensitive Information** | **Column 2 - For period ending on date below** |
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| **SCHEDULE 6**  **TUPE AND PENSIONS** |

Schedule 6  
TUPE AND PENSIONS

**Part 1 Transfer of employees**

1. Definitions
   1. The definitions in this paragraph apply in this schedule:

| Word or Phrase | Meaning |
| --- | --- |
| Admission Agreement**:** | the agreement in the form set out in Part 3 of this Schedule 6 to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, by the Administering Authority, the Authority and the Contractor or Sub-Contractor, as appropriate. |
| Appropriate Pension Provision**:** | in respect of:   * + 1. Eligible Employees, either:        1. membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or   (ii) pension scheme, which is certified by the Government Actuary's Department (GAD) or an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary’s Department as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members. |
| **Cessation Date:** | the date on which the Contractor or the relevant Sub-Contractor ceases to be admitted to the LGPS other than as a result of the termination or expiry of this Agreement or because it ceases to employ any Eligible Employees. |
| **Compensation Regulations:** | the Local Government (Discretionary Payments) Regulations 1996 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. |
| Contractor's Final Staff List**:** | the list of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date. |
| Contractor's Provisional Staff List**:** | the list prepared and updated by the Contractor of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list. |
| **Directive:** | the EC Authority Directive 2001/23 as amended. |
| **Effective Date**: | the date(s) on which the Services (or any part of the Services) transfer from the Authority or any Third Party Employer to the Contractor or Sub-Contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Contractor or Sub-Contractor. |
| Eligible Employees**:** | the Third Party Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date. |
| Employee Liability Information**:** | the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:   * + 1. the identity and age of the employee; and     2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and     3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and     4. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Contractor arising out of the employee's employment with the transferor; and     5. information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE. |
| Employer Contribution Rate: | the maximum rate of employer contributions to be paid by the Contractor or any Sub-Contractor for the benefit of the LGPS as set out in Schedule 2 of the Admission Agreement. |
| Employment Liabilities**:** | all claims, including claims, without limitation, for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses. |
| LGPS Regulations**:** | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended and replaced from time to time). |
| LGPS**:** | Local Government Pension Scheme. |
| Relevant Employees**:** | those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Contractor by virtue of the application of TUPE. |
| Replacement Contractor: | any third party supplier of services which are identical or substantially similar to the Services appointed by the Authority following the termination or expiry of this agreement. |
| Service Transfer Date**:** | the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-contractor to the Authority or any Replacement Contractor. |
| Staffing Information**:** | in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services. |
| Third Party Agreement: | an Agreement between the Authority and a Third Party Employer |
| Third Party Employee**:** | employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Contractor or Sub-contractor by virtue of the application of TUPE as listed in Part 2 of this Schedule 6. |
| Third Party Employer**:** | a Contractor engaged by the Authority to provide all or some of the Services to the Authority and whose employees will transfer to the Contractor on the Effective Date. |
| Transferring Original Employee: | a Third Party Employee who was an employee of the Authority who became by application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE on one or more occasions an employee of someone other than the Authority who was engaged by the Authority to provide the Services. |

1. Transfer of employees to the Contractor
   1. The Authority and the Contractor agree that where the identity of the Contractor of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment (and any collective agreement) of any Third Party Employees shall transfer to the Contractor or Sub-Contractor. On the occasion of each Relevant Transfer the Contractor shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE and the Directive. The first Relevant Transfer shall occur on the Effective Date.
   2. The Contractor shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against Employment Liabilities arising from or as a consequence of:
      1. any proposed changes to terms and conditions of employment the Contractor or Sub-Contractor may consider taking on or after the Effective Date;
      2. any of the employees informing the Authority and any Third Party Employer they object to being employed by the Contractor or Sub-Contractor; and
      3. any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Contractor or Sub-Contractor may consider taking on or after the Effective Date.
   3. The Contractor shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
   4. The Contractor shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Contractor or any Sub-Contractor of the Contractor envisages it will take in relation to any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor shall give confirmation of that fact, and shall indemnify the Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
   5. The Contractor shall, and shall procure that any Sub-Contractor shall, in accordance with TUPE recognise the trade unions representing the Relevant Employees after the transfer to the same extent as they were recognised by the Authority, or Third Party Employer before the Effective Date.
   6. To the extent permitted by legislation from time to time in force and by any Third Party Agreement, the Authority agrees to assign on an equitable basis to the Contractor the benefit of indemnities given by the Third Party Employer under the relevant Third Party Agreement.
2. Employment exit provisions
   1. This Agreement envisages that subsequent to the Commencement Date, the identity of the Contractor of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
   2. The Contractor shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Contractor shall notify the Authority of any material changes to this information as and when they occur.
   3. At least 28 days prior to the Service Transfer Date, the Contractor shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Contractor:
      1. the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees,
      2. Pay slip data for the most recent month,
      3. cumulative pay for tax and pension purposes,
      4. cumulative tax paid,
      5. tax code,
      6. voluntary deductions from pay,
      7. bank or building society account details for payroll purposes.
   4. The Authority shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as (or any part of) the Services.
   5. The Contractor warrants to the Authority and the Replacement Contractor that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List.
   6. The Contractor shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
   7. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Contractor shall and shall procure that any Sub-Contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them. This will include any changes to the make up and number of employees on the Contractor’s Provisional Staff List. In relation to employees already listed on the Contractor’s Provisional Staff List changes to be notified will include:
      1. Any changes to make up and number of employees,
      2. Changes to terms and conditions of employment ,
      3. Increasing the proportion of working time spent on the Services,
      4. Introduction of any new contractual or customary practice concerning the making of a lump sum payment on termination of employment,
      5. Termination of employment.
   8. The Contractor shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Contractor against all Employment Liabilities relating to:
      1. any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services; or
      2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor),

arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

* 1. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
  2. If any person claims or it is determined that his contract of employment has been transferred from the Contractor or any Sub-Contractor to the Authority or the Replacement Contractor pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, the Authority or the Replacement Contractor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Contractor. The Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty-one (21) days of the notification by the Authority or the Replacement Contractor. If such offer is accepted, the Authority or the Replacement Contractor shall immediately release the person from his employment. If after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Employer or the Replacement Contractor may, within seven (7) days, give notice to terminate the employment of such person. Subject to the Authority or the Replacement Contractor acting in this way or in such other way as may be agreed between the Contractor and the Authority or the Replacement Contractor, the Contractor will indemnify the Authority against all Employment Liabilities arising out of such termination. If such person is neither reemployed by the Contractor or any Sub-Contractor within the time scales set out in this clause such person will be treated as a Relevant Employee.
  3. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
  4. Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
  5. In the event of a Subsequent Transfer to which TUPE does not apply, the following provisions shall apply:
     1. The Authority or the Replacement Contractor can, at its discretion, make an offer, in writing of employment under a new contract of employment to take effect at the earliest reasonable opportunity to any of the employees listed on the Contractor’s Provisional Staff List or to any Contractor’s or Sub-Contractor’s Personnel assigned to the Services,
     2. When the offer has been made by the Authority or the Replacement Contractor and accepted by any employee or worker, the Contractor shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave his employment, as soon as practicable depending on the business needs of the Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.
     3. If the employee does not accept an offer of employment made by the Authority or the Replacement Contractor, the employee shall remain employed by the Contractor (or Sub-Contractor as the case may be) and liability for all Employment Liabilities in relation to that employee shall remain with the Contractor or the relevant Sub-Contractor,
     4. If the Authority or the Replacement Contractor does not make an offer to an employee on the Contractor’s Provisional Staff List or any Contractor’s Personnel, then those employees and all Employment Liabilities in relation to those employees remain with the Contractor.
  6. The Authority regards compliance with this [clause](#a183032) as fundamental to the Agreement.

1. Pensions
   1. The Contractor shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this agreement and shall comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder.
   2. The provisions of paragraph 4 and paragraph 5 of this Schedule 6 shall be directly enforceable by an affected employee against the Contractor or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Contractor or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.
2. Admitted body status to the Local Government Pension Scheme
   1. Where the Contractor or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Contractor shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Contractor or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate [and Bond value] in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date and any other costs of the Authority necessarily and reasonably incurred in connection with the Admission Agreement.
   2. The Contractor shall indemnify and keep indemnified the Authority and/or any Replacement Contractor and, in each case, their Contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Contractor or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this agreement.
   3. **Not used**.
   4. The Contractor shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Contractor shall be responsible for meeting all costs associated with the award of such benefits.
   5. The Contractor shall not, and shall procure that any Sub-Contractor shall not, issue any announcements (whether in writing or not) to the Eligible Employees concerning matters stated in paragraph 5 of this Schedule without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed) until the Effective Date or other Transfer Date.
3. Funding – Admission Agreement
   1. The Authority shall procure that for the purposes of the Admission Agreement, the Eligible Employees’ benefits accrued under the LGPS prior to the Effective Date or other Transfer Date are fully funded as at that date, as determined by the actuary to the Authority’s section of the LGPS on a basis which is consistent with the LGPS’s ongoing basis.
   2. Notwithstanding and without prejudice to the Contractor or any Sub-Contractor’s obligation to make payments under the LGPS Regulations, the responsibilities for funding employer contributions in respect of Eligible Employees from the Effective Date or other Transfer Date are as follows:
      1. Where the employer contribution rate equals the Employer Contribution Rate, the Contractor or any Sub-Contractor shall be solely responsible for the cost of those contributions;
      2. The Authority will be responsible for the cost of any employer contributions paid by the Contractor or any Sub-Contractor which exceed the Employer Contribution Rate and shall, upon receipt of evidence of such payments by the Contractor or any Sub-Contractor, include a sum equal to that amount within any charges due to the Contractor under Clause 11 of this Agreement.
      3. Where the employer contribution rate is below the Employer Contribution Rate, the Contractor shall without delay credit to the Authority the difference between the Employer Contribution Rate and the cost of the employer contributions actually paid by the Contractor or any Sub-Contractor within any charges due to the Contractor under Clause 11 of this Agreement.
   3. For the avoidance of doubt, additional costs attributable to the Contractor under the Admission Agreement, including in particular those costs identified in Clause 5.6 of the Admission Agreement, shall be met in full by the Contractor and do not form part of the ongoing employer contribution rate payable in accordance with the LGPS Regulations and are not subject to paragraph 6.2 of this Schedule.
   4. Save where the Admission Agreement is terminated in consequence of a breach by the Contractor or Sub-Contractor of the terms of the Admission Agreement and subject to payment of contributions by the Contractor or Sub-Contractor in accordance with paragraph 6.2 and any assessed additional costs under paragraph 6.3, the Authority shall be responsible for any deficiency in the LGPS funding in respect of the Eligible Employees calculated on the termination of the Admission Agreement in accordance with the LGPS Regulations. The Authority acknowledges that the amount paid by the Contractor pursuant to paragraph 6.2 will represent the Contractor’s or Sub-Contractor’s entire and maximum liability in respect of employer contributions under this Schedule and under the Admission Agreement
   5. In the event of any inconsistency between the terms of this Agreement (including this Schedule) and the terms of the Admission Agreement, as between the Authority and the Contractor only, the terms of this Agreement shall prevail.
4. Contractor pension scheme
   1. Where the Contractor or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS, the Contractor shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme (“the Contractor’s Pension Scheme”) with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer or from the Cessation Date (as the case may be). Such an occupational pension scheme must be:
      1. established no later than three months prior to the date of the Relevant Transfer or the Cessation Date and maintained until any payment to be made under Part 4 to this Schedule (Bulk Transfer Terms) is made ; and
      2. certified by the GAD as providing benefits that are the same as, broadly comparable to or better than those provided by the LGPS or any other pension scheme of which an Eligible Employee is a member immediately before the date of the Relevant Transfer or Cessation Date
   2. The Contractor shall produce evidence of compliance with this paragraph 7 to the Authority prior to the date of the Relevant Transfer or the Cessation Date.
   3. Where there are Transferring Original Employees who are not Eligible Employees but who are active members of or have the right to acquire benefits under an occupational pension scheme provided by a Third Party Employer on the Effective Date or other relevant Transfer Date, the Contractor shall and shall procure that any relevant Sub-Contractor shall offer those employees membership of the Contractor’s Pension Scheme.
   4. If the Contractor’s Pension Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant Sub-Contractor. The replacement scheme must comply with this Paragraph 7 as if it were the Contractor’s Pension Scheme.
   5. The costs of the Authority necessarily and reasonably incurred in connection with obtaining the necessary certification of comparability from the GAD shall be borne by the Contractor.
   6. The Contractor shall not, and shall procure that any relevant Sub-Contractor shall not, take or omit to take any action which would materially affect the benefits under the Contractor’s Pension Scheme of any Eligible Employees without the prior written agreement of the Authority (such consent not to be unreasonably withheld or delayed) except in relation to pre-existing contractual obligations.
   7. Where the award of benefits to the Eligible Employees is not permitted under the Compensation Regulations and/or the LGPS or a Contractor’s Pension Scheme is in place, the Contractor shall, and shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority.
   8. Where the benefits to be awarded under paragraph 7.6 are of a discretionary nature, they shall be awarded on the basis of the Authority’s written policy in relation to such benefits at the time of the Effective Date or date of another Relevant Transfer (which the Authority shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and shall procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.
5. claims from eligible employees or trade unions
   1. The Contractor hereby indemnifies the Authority and/or any Replacement Contractor and, in each case, their Sub-Contractors from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by Eligible Employees of the Authority and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
      1. Relate to pension rights in respect of periods of employment on or after the Effective Date or other relevant Transfer Date until the date of termination or expiry of this Agreement; or
      2. Arise out of the failure of the Contractor and/or any relevant Sub-Contractor to comply with the provisions of this Schedule before the date of termination or expiry of this Agreement,

Save to the extent that such losses have been caused by any act and/or omission of the Authority.

1. transfer to another employer
   1. Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE), the Contractor shall and shall procure that any relevant Sub-Contractor shall:
      1. Consult with and inform those Eligible Employees of the pension provisions relating to that transfer;
      2. Procure that the employer to which the Eligible Employees are transferred (“the New Employer”) complies with the provisions of this Schedule provided that references to the “Contractor” will become references to the New Employer, the relevant Transfer Date will be the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.
2. pension issues on expiry or termination
   1. The Contractor shall and shall procure that any relevant Sub-Contractor shall:
      1. Maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees),
      2. Promptly provide to the Authority such documents and information mentioned in clause 10.1(b) which the Authority may reasonably request in advance of the expiry or termination of this Agreement, and
      3. Fully co-operate (and shall use best endeavours to procure that the trustees of any Contractor’s Pension Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

Part 2 - Third party employees

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| **Third Party Employees** |
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Part 3- Admission agreement

**DATED 2016**

**BETWEEN**

**THE MAYOR AND BURGESSES OF THE LONDON**

**BOROUGH OF SOUTHWARK**

and

**[TRANSFEREE ADMISSION BODY]**

# ADMISSION AGREEMENT

ADMISSION AGREEMENT

**THIS AGREEMENT** is made the day of Two thousand and [ ]

**BETWEEN**

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street, London, SE1 2QH ("the Administering Authority"): and
2. [ ] whose registered office is at and whose registered number is [ ] ( “the Transferee Admission Body").

## WHEREAS: -

(1) The Administering Authority means the London Borough of Southwark which is an administering authority within the meaning of the Local Government Pension Scheme Regulations 2013 (the “Regulations”) and administers the Local Government Pension Scheme (the “Scheme”) and maintains the London Borough of Southwark Pension Fund, (the "Pension Fund"), in accordance with the Regulations.

1. The Administering Authority is also a scheme employer (“Scheme Employer“) within the meaning of the Regulations where the context so requires.

**(3)** The Transferee Admission Body is not a community admission body within the meaning of the Regulations.

(4) The Transferee Admission Body is a body, that is providing, or will provide service or assets in connection with the exercise of a function of the Administering Authority as a result of the transfer of the leisure management service or assets by means of a contract or other arrangement dated [\*\*\*\*\*\*\*\*\*\*\*\*\*\*].

(5) The Administering Authority and the Transferee Admission Body have agreed to enter into this admission agreement to enable the Eligible Employees (as defined in clause 1.1) to be members of the Scheme and to participate in the Pension Fund.

(6) The terms and conditions of such an admission have been agreed between the parties to this Agreement as follows:-

NOW IT IS HEREBY AGREED as follows:

1. Interpretation
   1. "Eligible Employees" means the employees employed by the Transferee Admission Body in connection with the provision of the service or assets referred to in clause (4) and listed in Schedule One for so long as they are employed in connection with the provision of those services or assets.

**PROVIDED THAT**

* 1. The employee is not a member of another occupational pension scheme in relation to the employment in respect of which he would otherwise be eligible to be designated for membership of the Scheme under the Regulations.

**AND PROVIDED THAT**

* 1. The employee otherwise satisfies the requirements of the Regulations appertaining to eligibility for membership of the Scheme.
  2. For the purposes of this agreement, the words "employed in connection with" shall mean those Eligible Employees who have, as defined under/for the purposes of TUPE been assigned to the organised grouping of employees situated in Great Britain which carries out, as its principal purpose, the delivery of the outsourced tasks to be performed by the Admission Body under the contract for the provision of services between the Admission Body and the Administering Authority dated [ ] and spend or are required by the Admission Body to spend in excess of 60% of their contracted working hours per week carrying out their duties in relation to that contract. If the Eligible Employee is temporarily employed on work other than the delivery of the outsourced tasks, for a period of not exceeding two (2) consecutive months, he will be covered by the contract between the Admission Body and the Administering Authority and therefore the Scheme.
  3. “Business Day” means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.
  4. **SAVE** as aforesaid the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires.
  5. In this agreement where the context so admits:-

### words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations unincorporated associations and partnerships;

### reference to any statutory provisions shall be deemed to include reference to any such provisions as from time to time amended varied replaced extended or re-enacted and any orders or regulations under such provisions unless the context otherwise requires;

### reference to Clauses or Schedules shall be deemed to be references to a Clause or a Schedule to this Agreement and references to a sub-Clause shall be deemed to be a reference to a sub-Clause of the Clause in which the reference appears; and

### headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

1. **Commencement Date**
   1. This Agreement shall have effect from [ ] day of [ ] Two thousand and [ ].
2. **Admission**
   1. The Administering Authority shall as from the date referred to in Clause 2 permit the Eligible Employees to be members of the Scheme and to participate as active members of the Pension Fund.
3. **Participation**
   1. The provisions of the Regulations shall apply for determining the rights and obligations of and the action which is to be taken by each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly.
   2. The provisions of the Regulations shall apply to the Eligible Employees in the same way as if the Transferee Admission Body were a Scheme employer within the meaning of the Regulations.
   3. The Transferee Admission Body warrants and represents to the Administering Authority that every Eligible Employee is employed in connection with the provision of the services or assets being carried out by the Transferee Admission Body as a result of those matters referred to in the Regulations.
   4. The Transferee Admission Body undertakes that it will promptly notify the Administering Authority in writing if any Eligible Employee ceases to be employed by them in connection with the provision of the services or assets under the Regulations as a result of which he became eligible to join the Scheme, becomes ineligible for any other reason under the Regulations or provides written notice to leave the Scheme and that employee shall cease to be an active member of the Scheme.
   5. The Transferee Admission Body undertakes that it will promptly and in any event on a monthly basis notify the Administering Authority in writing if any Eligible Employee who is employed in connection with the provision of services or assets for the purposes of this Agreement increases or decreases:

### the number of hours per week; or

### the proportion of his working week.

* 1. The Transferee Admission Body undertakes that it will promptly notify the Administering Authority in writing if any transfer (whether under TUPE or otherwise) occurs of any Eligible Employee who is employed in connection with the provision of services or assets for the purposes of this Agreement from the employment of the Transferee Admission Body to the employment of any other body.
  2. Any employee who has opted not to participate in the Scheme and join the Fund prior to the Commencement Date and is not therefore listed in Schedule One (but would otherwise be an Eligible Employee) retains the right (under The Best Value Authorities Staff Transfers (Pensions) Direction 2007) to require the Transferee Admission Body to nominate them for membership at any time in the future. The Transferee Admission Body will notify the Administering Authority in writing of any employee to be admitted and the date of admission. Following admission, nominated employees will thereafter be deemed to be Eligible Employees under this Agreement and all warranties, undertakings and other requirements of the Regulations and this Agreement will apply to them in full.

1. **Payments**
   1. The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund such contributions and payments as are due under the Regulations in respect of the Eligible Employees and as more particularly set out in Schedule Two.
   2. The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund the employee and employer pension contributions on a monthly basis in arrears. The payment must be paid to the Administering Authority no later than the date specified in regulations made under the Pensions Act 1995 and in any event before the 19th day of the month following the month in respect of which the contributions are due to be paid.
   3. The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund any revised contributions due under Sub-Clause 7.2.2 within 30 days of receipt of a written request from the Administering Authority.
   4. The Transferee Admission Body shall pay to the Administering Authority in addition to any pension contributions payable under this Agreement, an amount in respect of the Pension Fund administration costs as recommended by an actuary appointed by the Administering Authority.
   5. The Transferee Admission Body shall promptly pay to the Administering Authority any amount incurred by the Administering Authority as a result of the actions of the Transferee Admission Body (and in any event no later than 7 Business Days following a written demand for an amount from the Administering Body).
   6. Where the Transferee Admission Body:

### terminates the employment contract of an Eligible Employee who is aged 55 or over at the time by reason of redundancy or in the interests of efficiency (or otherwise allows such employee to retire on those grounds); or

### grants an early retirement request in relation to an Eligible Employee (including where such Eligible Employee is a deferred member of the LGPS); or

### terminates the employment contract of an Eligible Employee on the grounds of permanent ill health or infirmity of mind or body; or

### brings the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after age 55; or

### brings the deferred or active benefit of an Eligible Employee into payment on the grounds of permanent ill health or infirmity of mind or body; or

### grants an augmentation of benefits in relation to an Eligible Employee (including but not limited to an augmentation under Regulation 12 or 13 of the Benefits Regulations) which is in addition to any augmentation that an Eligible Employee is entitled to as of right under the LGPS; or

### reduces or waives any contributions due from any Eligible Employee; or

### awards pay increases to Eligible Employees the average percentage increase of which exceeds the rate for pay increases in the last valuation of the LGPS prior to the award of the pay increase in question; or

### waives any reduction to benefits under Regulation 18 of the Benefits Regulations; or

### exercises a discretion in relation to an Eligible Employee (whether under the Administration Regulations, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 or otherwise

the Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund the sum notified to them in writing by the Administering Authority as representing the additional identifiable cost to the Pension Fund**,** as certified by an actuary appointed by the Administering Authority, such sum to be paid within 30 days of receipt of the written notification.

* 1. Any financial penalty incurred by the Pension Fund arising from the failure of the Transferee Admission Body to comply with the terms of this Agreement shall be repaid to the Pension Fund by the Transferee Admission Body within 30 days of receiving a written request from the Administering Authority.
  2. If any sum payable under the Regulations or this Agreement by the Transferee Admission Body to the Administering Authority or to the Pension Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations the Administering Authority shall require the Transferee Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid or, in respect of sums under Clause 5.4, to pay interest calculated at one (1) per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three monthly rests.
  3. The Administering Authority may set off against any payments due to the Transferee Admission Body an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due to the Transferee Admission Body as an employing authority.

1. **Transferee Admission Body’s Undertakings**

TheTransferee Admission Body undertakes: -

* 1. to comply with any reasonable instructions or requests received from the Administering Authority to promptly provide or procure to be provided such information and documents as provided for by the Regulations, and which the Administering Authority may reasonably require to carry out their duties in respect of employees nominated to the Pension Fund. Any reasonable additional costs incurred by the Administering Authority or its Pension Fund howsoever arising as a result of any delay upon the part of the Transferee Admission Body, shall in the Administering Authority's discretion be reimbursed by the Transferee Admission Body;
  2. to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996 / 1655);
  3. to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and, subject to clause 6.4, in any employer’s guide published by the Administering Authority and provided by the Administering Authority to the Transferee Admission Body;
  4. to award benefits (where permitted) to the Eligible Employees under the Local Government (Discretionary Payments) Regulations 1996 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the Compensation Regulations”) and/or under the Pension Fund in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Scheme Employer.
  5. to formulate and publish within 3 months of the date referred to in Clause 2 a Statement concerning the Transferee Admission Body's policy on the exercise of its discretions under the Regulations and to keep such policies under review;

### to notify the Administering Authority of any changes to these discretions to be agreed by the Transferee Admission Body and the Administering Authority prior to the publication and a copy of the amended statement shall be sent by the Transferee Admission Body to the Administering Authority within one month or any amendment;

### any agreed change to the discretions by the Transferee Admission Body which incur additional employer contribution costs as determined by an actuary nominated by the Administering Authority are to be met by the Transferee Admission Body;

* 1. in considering staff for early retirement in the interests of the efficiency of the Transferee Admission Body’s service, or in redundancy situations, or when exercising any discretion under the Regulations, to seek advice from the Administering Authority as to the potential costs involved and to comply with the policies and procedures current at the date of the early retirement, redundancy or exercise of discretion. Those policies and procedures current at the date of this Agreement are attached at Schedule Three. *[Where the payment of such discretionary benefits is not, for whatever reason, possible, the Transferee Admission Body shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms];*
  2. to notify the Administering Authority of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;
  3. without prejudice to the requirements of the Regulations and any employer’s guide published by the Administering Authority and provided to the Transferee Admission Body, to notify promptly the Administering Authority in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affect entitlement to benefits under the Scheme and of any terminations of employment by virtue of redundancy or in the interests of efficiency or for any other reason;
  4. that it shall not grant an additional period of membership to an Eligible Employee without the written consent of the Scheme Employer;
  5. that it shall not grant an additional period of membership to an Eligible Employee or former Eligible Employee under regulation 12 or grant an additional pension under regulation 13 of the Benefits Regulations save to the extent that the appropriate sum is paid to the Administering Authority for credit to the Pension Fund before the expiry of the relevant period within the meaning of the Regulations;
  6. not to do any act, omission or thing which would prejudice the status of the Scheme as a registered pensions scheme under Schedule 32 of the Finance Act 2004;
  7. to notify the Administering Authority immediately of any matter which may affect, or is likely to affect, its participation in the Scheme and the Pension Fund and give immediate notice to the Administering Authority of any actual or proposed change in its status which may give rise to a termination of this Agreement including but not limited to take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution and shall supply a copy of the relevant proposals to the Administering Authority;
  8. Consequent upon any changes in the documents mentioned in the preceding paragraph 6.12 the Transferee Admission Body shall not nominate any person for admission to the Pension Fund or make any representation whatsoever to any person regarding continued membership of the Pension Fund without prior authorisation from the Administering Authority.
  9. It shall not without the consent in writing of the Administering Authority (which shall only be given subject to the payment by the Transferee Admission Body of such reasonable costs as the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the Pension Fund or on the Administering Authority a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given.
  10. It shall not take or omit to take any action which would materially affect the benefits under the Pension Fund of any Eligible Employees without the prior written agreement of the Administering Authority (such consent not to be unreasonably withheld or delayed) except in relation to pre-existing contractual obligations.

1. **Periodic Valuations**
   1. The Administering Authority may periodically obtain from an actuary a certificate specifying, in the case of the Transferee Admission Body, the percentage or amount by which, in the actuary’s opinion, the contribution rate at the common rate or any prior individual adjustment within the meaning of the Regulations should be increased or reduced. This is with a view to ensuring that, as far as is reasonable possible, the value of assets of the Pension Fund in respect of Eligible Employees and former Eligible Employees under the Agreement is neither materially more or materially less than the anticipated liabilities of the Pension Fund in respect of the said Eligible Employees at the date this Agreement is due to end.
   2. When this Agreement is terminated, the Administering Authority must obtain:-

### an actuarial valuation as at the termination date of the liabilities of the Pension Fund in respect of Eligible Employees and former Eligible Employees, under the Agreement, of the Transferee Admission Body, and

### a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from the Transferee Admission Body.

1. **Termination**
   1. Subject to clauses 8.2 and 8.3this Agreement shall terminate at the end of the notice period upon any of the parties hereto giving a minimum of three months notice to terminate this agreement to the other parties to this agreement but such notice shall not have effect unless a broadly comparable occupational pension scheme is made available to the Eligible Employees who are active members of the Scheme at the date of termination of this Agreement. Such termination shall not affect the rights or obligations of the parties as respects any employee of the Transferee Admission Body who is or has been a member of the Pension Fund, nor the obligation of the Transferee Admission Body to satisfy any costs or liabilities consequent upon the Agreement or termination of the Agreement.
   2. This Agreement shall automatically terminate in the event that the Transferee Admission Body ceases to be a Transferee Admission Body for the purposes of the Regulations or ceases otherwise to be eligible to participate as a Transferee Admission Body in relation to the Pension Fund as a matter of law, or the Administering Authority ceases to be an Administering Authority in relation to the Pension Fund.
   3. This Agreement may be terminated with immediate effect by the Administering Authority by notice in writing to the Transferee Admission Body in the event of:-

### any breach by the Transferee Admission Body of any of its obligations under this Agreement

PROVIDED THAT if the breach is capable of remedy the Administering Authority shall first afford to the Transferee Admission Body the opportunity of remedying that breach within such reasonable period as the Administering Authority may specify; or

### the insolvency, winding up or liquidation of the Transferee Admission Body; or

### the failure by the Transferee Admission Body to pay any sums due to the Administering Authority or to the Pension Fund within seven days of the periods specified in Clauses 5.2, 5.3, 5.4 and 5.5 or, in any case, within 37 days of receipt of a notice from the Administering Authority requiring them to do so; or

### the failure by the Transferee Admission Body to ensure the approved bond or indemnity is in place or to renew or adjust the level of a bond or indemnity in accordance with Clause 9.3 or 9.4.

### The Transferee Admission Body must notify the Administering Authority immediately if:-

### it wishes to cease to be a Transferee Admission Body for the purposes of the Regulations; or

### it is aware that it will cease to be a Transferee Admission Body under the Regulations.

### If the Transferee Admission Body ceases to be an Admission Body under clause 8.1 or 8.2;

### the Eligible Employees shall immediately cease to be members of the Pension Fund; and

### it shall pay forthwith to the Administering Authority the costs which may be required by the Administering Authority arising from such termination; and

### The termination of this Agreement, howsoever arising, is without prejudice to the rights, duties and liabilities of any party accrued prior to such termination. The clauses of this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

1. **Bond, Indemnity or Guarantee**
   1. The Admission Body has carried out, to the satisfaction of the Administering Authority, an assessment, taking account of actuarial advice, of the level of risk arising on the premature termination of the provision of the service or assets by reason of insolvency, winding up or liquidation of the Admission Body’
   2. The level of risk identified by this assessment does not require the Transferee Admission Body to enter into an indemnity or bond.
2. **Notifications**
   1. The Administering Authority undertakes to inform the Secretary of State promptly of the date on which this Agreement takes effect, and of the Transferee Admission Body’s name and address where required by the Regulations.
3. **Notices**
   1. Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the registered office of the Transferee Admission Body or the address of the Administering Authority or the office of the Secretary of State (as the case may be) and shall be deemed to have been duly given or made (i) if delivered by hand, upon delivery at the address provided for in this clause 10 unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day, in which case it will be deemed to have been given at 9am on the next Business Day; or (ii) if sent by prepaid first class post, on the second Business Day after the date of posting.
4. **Public Inspection**
   1. This Agreement shall be made available for public inspection by the Administering Authority as required by the Regulations at its main place of business and at such other Council offices as it considers appropriate.
5. **Disputes**
   1. The Administering Authority and the Transferee Admission Body shall use their best endeavours to resolve by agreement any disputes arising between them;
   2. If any dispute cannot be settled amicably through ordinary negotiations within fourteen (14) days of the dispute commencing, the dispute shall be referred to the relevant Strategic Director of the Administering Authority and a senior Partner or Director of the Transferee Admission Body who shall attempt to resolve the dispute. If the parties are unable to settle any dispute by this further process of negotiation within fourteen (14) days the parties will refer the matter for mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
6. **Applicable Law**
   1. 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.
7. **Rights of Third Parties**
   1. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it save for the Eligible Employees.
8. **Amendments**
   1. No amendment to this Agreement shall be binding unless in writing and signed by the Director of Finance on behalf of the Administering Authority and by the duly authorised representative of the Transferee Admission Body and expressed to be for the purpose of such amendment.

**IN WITNESS** whereof the parties have executed this Agreement as a Deed the day and year first before written

## THE COMMON SEAL of )

**THE MAYOR AND BURGESSES)**

**OF THE LONDON BOROUGH OF)**

**SOUTHWARK** was hereunto affixed)

in the presence of):

…………………………………………

Authorised Officer

SIGNED and DELIVERED AS A

DEED by

acting by a director and its secretary or two directors

……………………………………………….. Director / Company Secretary

……………………………………………….. Director / Company Secretary

**SCHEDULE ONE**

**ELIGIBLE EMPLOYEES**

Only those staff who are active members of the LGPS at the point of transfer are listed here.

Staff who had opted out of membership of the LGPS prior to the transfer retain the right (under The Best Value Authorities Staff Transfers (Pensions) Direction 2007) to require the admission body to nominate them for membership at any time in the future (whilst they are employed in connection with the provision of the outsourced service).

## SCHEDULE TWO

## ACTUARIAL DETAIL

Employer Contribution Rate

In this Agreement “Employer Contribution Rate” shall mean:-

for the duration of this Admission Agreement, the rate of [ %] set by the Administering Authority as a result of an Actuarial Valuation Report of the Pension Fund dated [ ] based on the investment performance of the Pension Fund (OR set by the Administering Authority on [ ].)

**SCHEDULE THREE – ILL HEALTH AND EARLY RETIREMENT POLICIES**

1. Business Managers Guide to Retirement

[to be inserted on award]

Part 4 - Bulk Transfer Terms

The Authority’s actuary shall determine the terms for bulk transfers from the LGPS to the Contractor’s Pension scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.

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| **SCHEDULE 7**  **DRAFT FORM OF LEASES AND LICENCES** |

Schedule 7  
Draft form of Leases or Licences

[Attached is the Authority’s standard form lease. The form of lease/licences for each of the Facilities, the Title information and site specific issues will be issued with the tender documentation.]

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| **Schedule 8**  **Anticipated Changes** |

SCHEDULE 8  
ANTICIPATED CHANGES

[SEE INFORMAITON IN RELATION TO CANADA WATER]

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| **SCHEDULE 9**  **LONDON LIVING WAGE** |

Schedule 9  
London Living Wage

1. dEFINITIONS
   1. For the Purposes of this Schedule 9 the following definitions shall apply:

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| --- | --- |
| **Word or Phrase** | Meaning |
| **Relevant Staff:** | shall mean all employees and other staff *(*including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year. |
| **Equivalent Hourly Wage:** | shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act). |
| **The London Living Wage:** | shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure. |

1. the london living wage
   1. The Contractor shall:
      1. ensure that all Relevant Staff employed or engaged by the Contractor are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
      2. ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
      3. provide to the Authority such information concerning the London Living Wage and the performance of its obligations under this special condition 1 as the Authority may reasonably require and within the deadlines it reasonably imposes;
      4. co-operate and provide all reasonable assistance to the Authority in monitoring the effects of the London Living Wage including without limitation assisting the Authority in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.
   2. For the avoidance of doubt, any breach by the Contractor of this Schedule 9 will be a breach of a material obligation in relation to which the Authority is entitled to rely upon its termination rights under this Agreement.

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| **SCHEDULE 10**  **AUTHORITY POLICIES** |

Schedule 10  
Authority Policies

**The following are the Authority Policies at the Commencement Date:**

1. Complaints Policy
2. Protecting Adults at Risk
3. Safeguarding Standards
4. Site Waste & Energy Guidelines.
5. [Branding and Advertising]
6. Sustainability Policy and Update.
7. Think Healthy Vending Guidance.
8. Vending Healthy Drinks A Guide for Schools.
9. Equal Opportunities Policy.

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| **SCHEDULE 11**  **THIRD PARTY INTERESTS** |

Schedule 11   
Third Party Interests

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| **SCHEDULE 12**  **PERFORMANCE MONITORING SYSTEM** |

Schedule 12  
Performance Monitoring System

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| **SCHEDULE 13**  **BUILDING CONDITION SURVEYS** |

Schedule 13  
Building Condition Surveys

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| **SCHEDULE 14**  **ENHANCEMENT WORKS** |

Schedule 14  
Enhancement Works

**[THE AUTHOIRTY’S PLANS AT PECKHAM PULSE AND SEVEN ISLANDS WILL BE SET OUT HERE]**

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| **SCHEDULE 15**  **SCHEME FOR SURPLUS SHARE** |

Schedule 15  
Scheme for Surplus Share

1. Definitions

The words set out below shall have the following meaning in this Schedule 14:

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| --- | --- |
| Word or Phrase | Meaning |
| “Actual Income” | all the income (excluding VAT) of the Facilities from all activities, equipment hire, advertising and sponsorship revenue, club bookings and any other source of revenue, as revealed in the audited statement delivered pursuant to paragraph 3 of this Schedule 14; |
| “Actual Expenditure” | All the expenditure (excluding VAT) in relation to the Facilities including the Management Fee but excluding any capital expenditure; |

1. Surplus Share
   1. The Contractor shall throughout the Contract Period use all reasonable endeavours to increase Actual Income.
2. Monthly Statement
   1. At the same time as submitting the monthly statement in accordance with Clause 25.2, the Contractor shall deliver to the Authority a duly completed statement in a form approved by the Authority in respect of the previous calendar month showing Actual Income and Actual Expenditure which statement shall be signed by the Contractor’s Representative.
3. Annual Statement
   1. Within six (6) months of each anniversary of the end of each Contract Year the Contractor shall deliver to the Authority a duly completed statement in a form approved by the Authority in respect of the previous Contract Year showing all Actual Income and Actual Expenditure which statement shall be audited by an independent certified accountant engaged by the Contractor and shall be signed by such accountant as representing a true, complete and accurate statement of Actual Income and Actual Expenditure in respect of that Contract Year. In relation to the final Contract Year the statement shall be provided within six (6) months of the Expiry Date or the Termination Date as the case may be.
   2. The statement delivered by the Contractor under Clause 4.1 above will be subject to approval by the Authority who shall either certify the Actual Income and Actual Expenditure for the purposes of payments under the Agreement or certify some alternative figure within fourteen (14) Business Days of such statement being delivered to the Authority. This clause is without prejudice to the operation of Clause 7.
4. Calculation of the Surplus
   1. In the event that the aggregate Actual Income in a Financial Year exceeds the aggregate of the Actual Expenditure for that period then the amount of such excess income (the “Surplus”) shall be apportioned between the Parties as follows:

|  |  |  |
| --- | --- | --- |
| Surplus | Authority Share | Contractor Share |
| £0 to £125,000 |  |  |
| £125,001 to £250.000 |  |  |
| £250,001 and above |  |  |

1. Payment of the Surplus
   1. Once the Parties have agreed the amount of the Surplus (or it has been determined pursuant to the Dispute Resolution Procedure) the Contractor shall adjust the next invoice for payment of the Management Fee to reflect the amount of the Surplus to be paid to the Authority.
2. General
   1. For the purposes of this Agreement, in calculating the Surplus no allowance or deduction may be made in respect of theft or loss by the Contractor’s employees.
   2. Where any dispute arises in respect of the determination of the amount of the Surplus either party may refer the matter to the Dispute Resolution Procedure.
3. Records
   1. Without prejudice to Clause 24, the Contractor shall maintain proper records and accounts in respect of the Services, particularly in respect of Actual Expenditure and Actual Income. Such records and accounts shall be completed for each twelve (12) month period on an accruals basis. Any income received or expenditure expended by the Contractor must be accounted for in the appropriate trading period and in relation to the Contract Period. For the purposes of reconciling the accounts which relate to the end of the Contract Period (or earlier termination), the Authority will apportion any Actual Income received or Actual Expenditure incurred by the Contractor for advanced bookings that extend beyond the Contract Period.
4. Deficit
   1. For the avoidance of doubt the Parties shall not share any deficit.

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| **SCHEDULE 16**  **CHANGE IN REVENUE** |

Schedule 16  
Change in Revenue

1. Change in Revenue
   1. Subject to the provisions of this Schedule 16 (Change in Revenue), any Change in Revenue shall be calculated in respect of each relevant activity by determining, in accordance with paragraph 3 below, the anticipated daily Revenue for the relevant activity in question for the period in question (the "Anticipated Daily Revenue") and deducting from that sum the actual daily Revenue received for the relevant activity in question for the period in question.
   2. The Authority shall be entitled to audit, at frequent intervals, actual Revenue received at the Facilities.
2. Antipcated Dialy Revenue per Activity
   1. The Anticipated Daily Revenue for each activity shall vary between Facility, Contract Years and seasons (as set out in paragraphs 4 and 5 below), and are set out in the Anticipated Daily Revenue Tables below.
   2. In respect of Gym & Memberships:-
      1. the High Season rate shall apply in January May;
      2. the Mid Season rate shall apply in June November; and
      3. the Low Season rate shall apply in December.
   3. In respect of all activities except for Gym & Memberships:-
      1. the High Season rate shall apply in January May;
      2. the Mid Season rate shall apply in June November; and
      3. the Low Season rate shall apply in December.
   4. The Anticipated Daily Revenue rates set out in the Anticipated Daily Revenue Tables below are daily and shall be indexed.
3. Mitigation
   1. The Contractor shall at all times take all reasonable steps to minimise and mitigate any loss of Revenue and the consequences of any Compensation Event which shall include addressing variable costs and making appropriate cost adjustments.
4. Cap on Recovery
   1. The Contractor shall not be entitled to recover as a Change in Revenue (pursuant to this Schedule 16), any greater amount than the level of Revenue which it is projected to recover as set out in the Anticipated Daily Revenue Tables below.
5. Payment of change in revenue sums
   1. The Authority shall (at its discretion, save where expressly provided otherwise under this Contract) compensate the Contractor in respect of any Change in Revenue arising from a Change in Revenue Event by lump sum payment or instalments, provided that (where the Authority is entitled to and elects to pay by instalments) the instalments must reflect the amount and timing of the loss of Revenue recoverable pursuant to this Schedule.

[INSERT REVENUE TABLES FOR EACH FACILITY AND EACH ACTIVITY IN EACH FACILITY]

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| **SCHEDULE 17**  **IMPROVEMENT WORKS** |

Schedule 17  
IMPROVEMENT WORKS

[THIS IS WHERE THE CONTRACTOR’S PROPOSALS FOR IMPROVEMENT WORKS, IF ANY ARE SET OUT]