

CONTRACT

Between

The Secretary Of State for Culture, Media And Sport

and

The Royal Parks Limited

**for the provision of maintenance and management of the Parks
currently under the management and control of the Royal Parks
Agency**

This Contract is made on 15 March 2017

BETWEEN

PARTIES

- 1 **The SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT (“Authority”)** whose office is at 100 Parliament Street, London SW1A 2BQ;
- 2 **THE ROYAL PARKS LIMITED** which is a company limited by guarantee registered in England and Wales (under company number 10016100 and registered charity number 1172042 and whose registered office is at The Old Police House, Hyde Park, London W2 2UH (“**the Charity**”);

RECITALS

- A The Authority has a number of functions and statutory responsibilities for the management of the Parks derived from the Law as more particularly set out in Schedule 2.
- B The Authority decided to incorporate the Charity, a public corporation with charitable status, and authorise the Charity to carry out those functions previously undertaken by The Royal Parks Agency (“**TRPA**”), an executive agency of the Authority.
- C The Charity’s charitable objects (the “**Objects**”) are, for the public benefit, to:
- (i) to protect, conserve, maintain and care for the Parks, including their natural and designed landscapes and built environment, to a high standard consistent with their historic, horticultural, environmental and architectural importance;
 - (ii) to promote the use and enjoyment of the Parks for public recreation, health and well-being including through the provision of sporting and cultural activities and events;
 - (iii) to maintain and develop the biodiversity of the Parks, including the protection of their wildlife and natural environment, together with promoting sustainability in the management and use of the Parks;
 - (iv) to support the advancement of education by promoting public understanding of the history, culture, heritage and natural environment of the Parks (and by way of comparison) elsewhere;
 - (v) to promote the national heritage including by hosting and facilitating ceremonies of state or of national importance within and in the vicinity of the Parks
- D The Authority and the Charity agree that the Charity shall provide the services specified in this Contract for the benefit of the public in accordance with the Objects and the Authority’s public functions and responsibilities set out in Schedule 2: Services (together, the “**Common Objectives**”).

- E It is anticipated that charitable activities carried out by The Royal Parks Foundation (charity number: 1097545) (the “Foundation”) will be transferred to the Charity in a separate agreement to enable the Charity to carry out those activities in addition to those previously undertaken by TRPA.
- F Parliament, under the Contracting Out (Functions relating to the Royal Parks) Order 2016 and the Contracting Out (Functions in relation to the Management of Crown Lands) Order 2003 (the “**Contracting Out Orders**”), both made under section 69 of the Deregulation and Contracting Out Act 1994, permitted the Authority to authorise another person to carry out the functions set out in those orders.
- G Under the terms of this Contract the Authority expressly authorises the Charity to carry out those functions previously carried out by **TRPA**.
- H On 15th March 2017, pursuant to the Contracting Out Orders, the Authority authorised the Charity to perform her functions as set out in the Authorisation at Schedule 13. The Authority enters into this Contract with the Charity for the provision of Services connected with the functions, previously carried out by TRPA, which are now to be carried out by the Charity in accordance with the Objects.
- I Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

Table of Contents

1	REPRESENTATIONS AND WARRANTIES	8
2	DURATION OF CONTRACT	8
3	SERVICES	8
4	GRANT OF RIGHTS	10
5	USE OF THE PARKS.....	11
6	CHARITY OBLIGATIONS IN RESPECT OF THE PARKS.....	12
7	AUTHORITY OBLIGATIONS.....	16
8	RESERVATION OF RIGHTS	17
9	KEY PERFORMANCE TARGETS.....	18
10	GOVERNANCE	18
11	RECORDS, AUDIT ACCESS AND OPEN BOOK DATA.....	18
12	INTELLECTUAL PROPERTY RIGHTS.....	19
13	CHARITY EQUIPMENT	21
14	PAYMENT, CHARGES, TAXATION AND VALUE FOR MONEY	21
15	SECURITY AND PROTECTION OF INFORMATION	23
16	LIABILITY	23
17	INSURANCE.....	25
18	PROMOTING TAX COMPLIANCE	25
19	REMEDIES FOR DEFAULT	26
20	TERMINATION RIGHTS.....	28
21	EXIT MANAGEMENT	31
22	FORCE MAJEURE	31
23	ASSIGNMENT AND NOVATION	33
24	SUPPLY CHAIN PROTECTION	33
25	VARIATION PROCEDURE.....	34
26	STAFF TRANSFER AND PENSIONS.....	34
27	CHARITY PERSONNEL	35
28	PREVENTION OF FRAUD AND BRIBERY.....	36
29	EQUALITY AND DIVERSITY	37
30	OFFICIAL SECRETS ACT AND FINANCE ACT.....	38
31	ENVIRONMENTAL REQUIREMENTS.....	38
32	SERVICE OF NOTICE.....	38
33	SEVERABILITY	40
34	RELATIONSHIP OF THE PARTIES	40
35	WAIVER	40

36	FURTHER ASSURANCES	40
37	ENTIRE AGREEMENT	41
38	THIRD PARTY RIGHTS.....	41
39	EXCLUSION OF SECURITY OF TENURE	41
40	DISPUTE RESOLUTION	42
41	LAW AND JURISDICTION.....	42
	SCHEDULE 1: INTERPRETATION AND DEFINITIONS.....	44
1	INTERPRETATION	44
2	DEFINITIONS.....	45
	SCHEDULE 2: SERVICES.....	66
1	GENERAL	66
2	SERVICES	66
3	CEREMONIAL EVENTS	66
4	THE RETAINED ASSETS	68
	SCHEDULE 3: CONTRACT CHARGES AND INVOICING.....	71
1	DEFINITIONS.....	71
2	CONTRACT CHARGES.....	71
3	CASH FEE	71
4	BARTER FEE.....	73
5	LICENCE FEE.....	76
6	COSTS AND EXPENSES	76
7	INVOICING PROCEDURE	76
8	ADJUSTMENT OF CONTRACT CHARGES	78
9	INDEPENDENT ACCOUNTANTS.....	78
	SCHEDULE 4: KEY PERFORMANCE TARGETS	80
1	GENERAL	80
2	KPTS APPLICABLE TO THIS CONTRACT.....	80
3	KPTS APPLICABLE TO FUTURE CONTRACT YEARS	80
	ANNEX A.....	83
	SCHEDULE 5: TERMINATION PAYMENT	84
	SCHEDULE 6: FINANCIAL REPORTS AND AUDIT RIGHTS.....	90
	SCHEDULE 7: NOT USED	92
	SCHEDULE 8: THE PARKS, GARDENS, RECREATION GROUNDS, OPEN SPACES AND OTHER LAND.....	93
	PART 1 – AUTHORITY OPERATED LAND	93
1	CROWN LANDS ACT 1851 PARK(S)	93

2	ROOSEVELT MEMORIAL ACT 1946.....	93
3	THE ROYAL PARKS AND OTHER OPEN SPACES REGULATIONS 1997	93
	PART 2 - AUTHORITY OWNED LAND.....	95
1	OTHER PARKS, GARDENS, RECREATION GROUNDS, OPEN SPACES AND OTHER LAND.....	95
	ANNEX – TITLE DOCUMENTS.....	96
	SCHEDULE 9: STAFF TRANSFER	105
	THE CHARITY SHALL COMPLY WITH THE REQUIREMENTS OF PART 1 OF THE PENSIONS ACT 2008, SECTION 258 OF THE PENSIONS ACT 2004 AND THE TRANSFER OF EMPLOYMENT (PENSION PROTECTION) REGULATIONS 2005 FOR ALL TRANSFERRING STAFF.	115
	THE CHARITY AND THE AUTHORITY RESPECTIVELY UNDERTAKE TO EACH OTHER:.....	116
	(A) TO PROVIDE ALL INFORMATION WHICH THE OTHER PARTY MAY REASONABLY REQUEST CONCERNING MATTERS (I) REFERRED TO IN THIS ANNEX AND (II) SET OUT IN THE ADMISSION AGREEMENT, AND TO SUPPLY THE INFORMATION AS EXPEDITIOUSLY AS POSSIBLE; AND	116
	(B) NOT TO ISSUE ANY ANNOUNCEMENTS TO RELEVANT EMPLOYEES PRIOR TO THE RELEVANT TRANSFER DATE CONCERNING THE MATTERS STATED IN THIS ANNEX WITHOUT THE CONSENT IN WRITING OF THE OTHER PARTY (NOT TO BE UNREASONABLY WITHHELD OR DELAYED).	116
	(A) NOT ADVERSELY AFFECT PENSION RIGHTS ACCRUED BY ANY FAIR DEAL EMPLOYEE IN THE PERIOD ENDING ON THE DATE OF THE RELEVANT FUTURE TRANSFER;	117
	(B) PROVIDE ALL SUCH CO-OPERATION AND ASSISTANCE AS THE SCHEMES AND THE REPLACEMENT SUPPLIER AND/OR THE AUTHORITY MAY REASONABLY REQUIRE TO ENABLE THE REPLACEMENT SUPPLIER TO PARTICIPATE IN THE SCHEMES IN RESPECT OF ANY ELIGIBLE EMPLOYEE AND TO GIVE EFFECT TO ANY TRANSFER OF ACCRUED RIGHTS REQUIRED AS PART OF PARTICIPATION UNDER NEW FAIR DEAL; AND	117
	(C) FOR THE PERIOD EITHER	117
	(PART B – NOT USED)	118
	(PART C – NOT USED).....	118
	PART D	118
	SCHEDULE 10: SECURITY AND PROTECTION OF INFORMATION	128
1	SECURITY REQUIREMENTS.....	128
2	PROTECTION OF AUTHORITY DATA	128
3	CONFIDENTIALITY.....	129
4	TRANSPARENCY	130
5	FREEDOM OF INFORMATION.....	131
6	PROTECTION OF PERSONAL DATA	131

SCHEDULE 11 EXIT MANAGEMENT	134
1 DEFINITIONS.....	134
2 INTRODUCTION.....	135
3 OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT	135
4 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES.....	136
5 EXIT PLAN.....	137
6 TERMINATION ASSISTANCE	139
7 TERMINATION ASSISTANCE PERIOD.....	139
8 TERMINATION OBLIGATIONS.....	140
9 ASSETS AND SUB-CONTRACTS	142
10 CHARITY PERSONNEL	144
11 CHARGES	144
12 APPORTIONMENTS	144
SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE.....	146
1 NEGOTIATION PROCEDURE	146
2 MEDIATION	146
3 ARBITRATION	147
4 CONDUCT OF THIRD PARTY CLAIMS.....	148
SCHEDULE 13: INITIAL AUTHORISATION	151
SCHEDULE 14: RETAINED ASSETS.....	154
ANNEX 1: NOTICE EXCLUDING THE PROVISIONS OF SECTIONS 24-28 OF THE ItA 1954.....	159
ANNEX 2: STATUTORY DECLARATION OF THE CHARITY.....	160
ANNEX 3: WAYS OF WORKING DOCUMENT.....	162

1 REPRESENTATIONS AND WARRANTIES

- 1.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Contract, and that this Contract is executed by its duly authorised representative.
- 1.2 The warranty set out in Clause 1.1 above shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or any undertaking in this Contract.
- 1.3 If at any time a Party becomes aware that a warranty given by it has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

2 DURATION OF CONTRACT

- 2.1 The Contract shall:
 - 2.1.1 take effect on the Commencement Date; and
 - 2.1.2 unless terminated at an earlier date by operation of Law or in accordance with the terms of this Contract, shall expire either:
 - (a) upon expiry or revocation of the authorisation given by the Initial Authorisation; or
 - (b) if the Authority elects to replace the Initial Authorisation, upon expiry or revocation of the authorisation given by the final Replacement Authorisation.
- 2.2 The Charity may apply for a Replacement Authorisation from the sixth year of the Initial Authorisation or any subsequent Replacement Authorisation.
- 2.3 If the Charity decides not to apply for a Replacement Authorisation in accordance with Clause 2.2 above it shall notify the Authority as soon as is reasonably possible and in any event no later than 18 months prior to expiry of the relevant Authorisation.

3 SERVICES

- 3.1 The Charity acknowledges and agrees that the Authority relies on the skill and judgment of the Charity in the provision of the Services and the performance of its obligations under this Contract.
- 3.2 The Charity shall provide the Services in all respects in accordance with the Authority's description of the Services in Schedule 2 or elsewhere in this Contract.

- 3.3 The Charity shall perform its obligations under this Contract in accordance with:
- 3.3.1 all applicable Law;
 - 3.3.2 Good Industry Practice;
 - 3.3.3 the applicable Contracting Out Order;
 - 3.3.4 the applicable Authorisation;
 - 3.3.5 the Standards; and
 - 3.3.6 the Security Policy.
- 3.4 The Charity shall:
- 3.4.1 maintain sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Contract;
 - 3.4.2 subject to Clause 25 (Variation), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - 3.4.3 provide reasonable information to the extent that it is not Charity's Confidential Information (including any Documentation), advice and assistance in connection with the Services, to enable the timely transition of the supply of the Services (or any of them) to the Authority and/or to any Replacement Service Provider;
 - 3.4.4 assign to the Authority, or if it is unable to do so (to the extent it is legally able to do so), hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Services. Where any such warranties are held on trust, the Charity shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Charity;
 - 3.4.5 deliver the Services in a proportionate and efficient manner;
 - 3.4.6 provide such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
 - 3.4.7 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Charity's obligations under this Contract; and

- 3.4.8 gather, collate and provide such information as the Authority may reasonably request for the purposes of ascertaining the Charity's compliance with its obligations under this Contract.
- 3.5 The Parties shall cooperate with each other to fulfil their contractual responsibilities and achieve the Common Objectives.
- 3.6 Except as expressly set out in this Contract, the Charity shall be responsible for and bear all costs incurred in the operation and management of the Parks.
- 3.7 An obligation on the Charity to do, or to refrain from doing, any act or thing shall include an obligation upon the Charity to procure that all Sub-Contractors and Charity Personnel also do, or refrain from doing, such act or thing.

4 GRANT OF RIGHTS

- 4.1 Subject to the terms of this Contract and more particularly the provisions of Clause 8 the following rights are granted by the Authority to the Charity in consideration of the provision of the Services:
 - 4.1.1 those ancillary rights reasonably necessary for the provision of the Services;
 - 4.1.2 the right to exploit commercial opportunities (subject to any Grade B(ii) Event) in the Parks, either directly or indirectly (by contracting with third parties);
 - 4.1.3 the receipt, as principal, of:
 - (a) any revenues derived from managing the Parks in accordance with the Charity's obligations under this Contract and all those revenues deriving directly from section 2(1) of the Parks Regulation (Amendment) Act 1926; and
 - (b) all monies due or arising from public use of Royal Parks facilities which are subject to payment for such use and Events.
- 4.2 Where the Charity contracts with any third party or Subsidiary to exploit any commercial opportunity at on or in the Parks:
 - 4.2.1 the Charity shall:
 - (a) request that the third party or Subsidiary obtains event interruption insurance which insures them against all Losses arising from the need to suspend or cancel an event, in whole or in part, as a consequence of a Grade B(ii) Event;
 - (b) ensure its agreements with such third party or Subsidiary include:

- (i) a Force Majeure and cancellation clause which provides that neither party to such agreement is liable for any default arising as a result of termination or suspension of the agreement which is due to an event of Force Majeure; and
 - (ii) a Grade B(ii) Event that would require cancellation of an event in whole or in part as an event of Force Majeure;
- (c) use all reasonable endeavours to ensure its contract with the third party or Subsidiary contains the following clause:

“In the event of a Grade B(ii) Event that would require cancellation of an event in whole or in part the Charity may order the immediate removal or relocation of all or part of the equipment required by the [*third party or Subsidiary*] for the [*event or commercial opportunity*] which may include, but is not limited to, air conditioning, barriers, cabling, scaffolding, flooring, trackway, temporary structures, marquees, platforms, mobile cabins, catering equipment, portable toilets, fencing, steel sheeting, generators and lighting, from the Parks,

the terms used herein to have the same meaning in such agreements as are defined in Schedule 1;

- 4.2.2 the provisions of Clause 24 shall apply to those third party contracts as if they were Sub-Contracts.

5 USE OF THE PARKS

Licence to occupy the Parks

- 5.1 The Authority hereby grants the Charity (and the Charity Personnel) a non-exclusive licence to enter and occupy the Parks free of charge and the Parks shall be used by the Charity solely for the purpose of performing its obligations under this Contract and to further its Objects PROVIDED THAT not more than 20% of the Charity’s activities shall be activities that are outside the remit of fulfilling its contractual obligation to provide the Services. The Charity, and any Subsidiary of the Charity, shall have the use of the Parks as licensee or sub-licensee only and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract and in accordance with Schedule 11 (Exit Management).
- 5.2 The Charity agrees and acknowledges that the Charity, any Subsidiary of the Charity, and any Charity Personnel are permitted to occupy the Parks as licensee only and no relationship of landlord and tenant can be created between the Authority and the Charity in respect of the Parks.
- 5.3 The Charity may grant sublicences to Subsidiaries and other third parties under this Clause 5.1 only subject to all of the following conditions:

- 5.3.1 a condition that the Charity shall procure that the Subsidiary or third party observes and complies with the relevant obligations on the Charity contained in clauses 3 (Services), 5.3, 6 (Charity Obligations in Respect of the Parks), 11(Records, Audit Access and Open Book Data), 12.1.1(b), 13 (Charity Equipment), 14.5 (Income Tax and National Insurance Contributions), 15 (security and Protection of Information), 16.1 (Unlimited Liability), 17 (Insurance), 23 (Assignment and Novation), 24 (Supply Chain Protection), 27 (Charity Personnel), 28 (Prevention of Fraud and Bribery), 29 (Equality and Diversity) 31 (Environmental Requirements), and 41 (Law and Jurisdiction);
- 5.3.2 a condition that the Charity shall procure that the Subsidiary or third party contractually agrees to observe and comply with the Clauses referred to in 5.3.1 above, and that such terms are enforceable by and expressed to be enforceable by the Authority; and
- 5.3.3 a condition that the Charity shall procure that the Subsidiary or third party contractually agrees to obtain the consent of the Authority in respect of any matter for which the consent of the Authority is required under this Contract.
- 5.4 The Charity shall not grant sublicences to Subsidiaries and other third parties under this Clause 5 where the conditions set out in clause 5.3 have not been met, without the prior written approval of the Authority.
- 5.5 The Charity shall not do or permit or suffer anything to be done by it, its employees, invitees, or any others authorised by it which results in the grant of any interest to a third party which gives rise to a right of security of tenure under the Landlord and Tenant Act 1954 over the whole or any part of the Parks.
- 5.6 The Charity shall (and shall procure that its Subsidiaries shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Parks.
- 5.7 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Charity or the Charity Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Parks in any manner it sees fit.

6 CHARITY OBLIGATIONS IN RESPECT OF THE PARKS

- 6.1 In respect of the Authority Owned Land, the Authority has the benefit of, and is subject to, the terms of the title documents listed in the Annex to Schedule 8.
- 6.2 The Charity shall not interfere with the Authority (or its officers, servants or agents) in the exercise of the Authority's rights of possession occupation and control of the Parks.

- 6.3 The Charity will observe and perform the obligations on the part of the Authority in respect of the Authority Owned Land as if the same were set out here in full.
- 6.4 The Charity agrees and acknowledges that nothing in this Contract is intended to create a lease or letting of any part or parts of the Authority Owned Land or to confer any rights on the Charity above that of a bare licensee.
- 6.5 Subject to clauses 6.1 to 6.4 above the Charity shall:
- 6.5.1 manage, grant, renew and receive income from third party commercial and residential licences and concessions to use any part or parts of the Parks (or buildings in the Parks) PROVIDED THAT:
- (a) any licences and concessions are granted on behalf of the Authority;
 - (b) any licences and concessions, if granted for a term extending beyond the Expiry Date, must determine by the date which is the ten year anniversary of the Expiry Date;
 - (c) any licences granted over all or part of the Authority Owned Land must be terminable by either party by written notice to the other with immediate effect where the Authority's right to occupy the Leased Property determines (whether by expiry or earlier termination);
 - (d) on expiration or sooner termination of the any licences granted over the whole or any part of the Authority Owned Land, the Charity shall leave the area licensed clean and tidy and shall remove all Charity Equipment;
 - (e) all licences and concessions granted in accordance with Clause 6.5.1 and/or renewed in order to comply with Clause 5.5 shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Service Provider upon the Charity ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - (f) the Charity shall, at its own cost, make all payments due under and otherwise observe and perform all of the obligations of the Authority under any residential or commercial licences or concessions and shall indemnify and keep indemnified the Authority against all actions, proceedings, claims and demands brought or made by or on behalf of any third party and all damages, costs, expenses and liabilities incurred, suffered or arising directly or indirectly therefrom, relating to or otherwise

connected with any failure to make those payments or observe and perform those obligations.

- 6.5.2 comply (and require any third party occupier to comply) with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and legally required codes of practice relating to health and safety, which may apply to people working at the Parks; and
- 6.5.3 put in place and maintain (and require any third party occupier to put in place and maintain) appropriate systems and measures to manage the risks to the health and safety of staff and visitors (of all kinds) at the Parks.

6.6 Alterations

6.6.1 Where the Charity intends to construct new buildings or undertake structural alterations of existing buildings at the Parks, the Charity shall:

- (a) provide the funding (including full transaction costs and insurance) for the construction or alterations so that it is at no cost to the Authority;
- (b) seek and obtain all necessary consents in accordance with clause 6.9.3, and
- (c) ensure the construction or alterations:
 - (i) cause the minimum disturbance and disruption necessary to the general public;
 - (ii) are in keeping with the natural and designed landscapes and built environment of the Parks;
 - (iii) are of a standard consistent with the historic, horticultural, environmental and architectural importance of the Parks;
 - (iv) are not damaging or deleterious to the reputation of the Authority.

6.6.2 Ownership of new buildings in the Parks or structural alterations to existing buildings shall rest with the Authority.

6.7 User

The Charity shall not use or permit use of the Parks:

6.7.1 for any purpose other than in furtherance of the Objects and in provision of the Services in accordance with the terms of this Contract;

6.7.2 in a way that causes Loss, damage or nuisance to the Authority or any other owner or occupier of neighbouring property or in a manner that is harmful to the reputation of the Authority; or

6.7.3 for any illegal purpose.

6.8 Security of the Parks

6.8.1 The Security Policy and the provisions of Schedule 10 set out the Charity's responsibilities to maintain the security of the Parks as part of the Services and the Charity shall comply with these provisions in all respects. The Charity shall work with the Metropolitan Police in maintaining the security of the Parks and shall comply with the Security Policy and any other reasonable security requirements of the Authority.

6.8.2 The Charity shall allow the Authority the opportunity to inspect its physical security arrangements at any time on reasonable prior notice.

6.9 Boundary and Planning Issues

6.9.1 The Authority shall consult the Charity in the event that it is consulted under Regulation 10 (1) of The Town and Country Planning (General Development Procedure) Order 1995 in relation to a development falling within paragraph (1) of the table referred to in that Regulation.

6.9.2 The Charity shall be consulted in relation to any proposed changes to the boundaries of the Parks and the Charity's approval (not to be unreasonably withheld or delayed) shall be obtained before such changes take effect.

6.9.3 Where the Charity proposes to carry out any activities at the Parks which require planning or local authority permission, the Charity shall first:

- (a) notify the Authority of such activities
- (b) apply for and secure all consents from the relevant local authority before such activities are commenced;
- (c) comply with all conditions or limitations imposed by any permission; and
- (d) upon request provide a copy of any permission to the Authority.

6.9.4 If a planning or local authority permission is subject to any of the following conditions, the Charity shall not implement the permission without the prior Approval of the Authority:

- (a) a condition that requires the Authority to enter into any planning agreement with a planning or local authority;
- (b) a condition that requires any works to be carried out on or by a date that may be subsequent to the expiry of the Contract Period;
- (c) a condition that otherwise creates a financial liability upon an owner or operator of the Parks that may be ongoing after the expiry of the Contract Period.

6.9.5 The Charity shall perform and observe all covenants conditions and provisions affecting the whole or any part of the Parks contained in any planning or local authority permission.

6.10 Indemnity

6.10.1 The Charity undertakes to indemnify and keep the Authority indemnified against all actions, proceedings, claims and demands brought or made against the Authority by or on behalf of any third party and all Losses incurred by, suffered or arising therefrom, relating to or otherwise connected with:

- (a) the exercise of the Charity's rights over the Parks;
- (b) the state of repair and condition of the Parks during the Contract Period;
- (c) any act, neglect or default of the Charity or anyone at the Parks with the express or implied authority of the Charity; or
- (d) any breach of the obligations on the part of the Charity in this Clause 6,

without prejudice to any rights or remedies of the Authority under this Contract and without any duty to mitigate in respect of any breach, non-performance or non-observance of any obligation under this Contract.

7 AUTHORITY OBLIGATIONS

7.1 In order to facilitate the management and operation of the Parks by the Charity, the Authority shall respond to and provide in a prompt and timely manner such documentation, data and other information as the Charity reasonably requests in order for the Charity to perform its obligations under this Contract.

7.2 The Authority shall provide such assistance to the Charity as the Charity reasonably requires to perform its obligations under this Contract and to achieve the Common Objectives.

- 7.3 In fulfilling its statutory functions and responsibilities and in exercising any rights or enjoying any benefits to which it is entitled, in respect of the Parks alone, the Authority shall give due consideration to the Charity's obligation to advance the Objects.
- 7.4 Without prejudice to its rights under this Contract and in Law, and subject to any legal requirements or Government policy, the Authority shall use reasonable endeavours to ensure that, in complying with its obligations under this Contract, neither it, nor any of its employees, embarrasses the Charity or otherwise brings the Charity into disrepute by engaging in any act or omission which will diminish the trust that the public places in the Charity.

8 RESERVATION OF RIGHTS

8.1 Residual Statutory Functions

- 8.1.1 Notwithstanding the rights granted to the Charity under this Contract, the Authority, in the exercise of its residual statutory functions regarding the Parks, reserves the right to:
- (a) make any decisions which are in the national interest and which directly affect the Parks;
 - (b) require that the Charity, at the reasonable cost of the Authority, gives such reasonable assistance as is necessary to enable the Authority to exercise its residual functions over the Parks.

8.2 Contentious Activities Requiring Authority Consent

- 8.2.1 The Charity shall not plan to carry out any activity which could conflict with the Authority's Statutory Functions as specified in the Contracting Out Order without first consulting with the Authority in accordance with Clause 8.2.2 below, and receiving the Approval of the Authority.
- 8.2.2 If the Charity wishes to carry out any such conflicting activities described in clause 8.2.1 above, it shall first submit a request to the Authority. The request shall set out:
- (a) full details of the activity; and
 - (b) the actual or anticipated effect of the activity on any Services and how they are in the public interest.
- 8.2.3 The Authority will discuss the proposed activity with the Charity to assist it in its decision whether or not to consent to the activity.
- 8.2.4 The Authority shall notify the Charity whether or not it consents to the activity as soon as reasonably practicable.
- 8.2.5 The Authority may reject the Charity's request in its entire discretion.

8.3 Grosvenor Square Gardens

8.3.1 The Authority may, in its entire discretion and at any time, elect to vary the definition of Parks to remove those obligations concerning and rights over Grosvenor Square Gardens.

8.3.2 If the Authority elects to remove Grosvenor Square Gardens from the definition of Parks, the Authority shall complete and send a signed form of variation to the Charity, giving reasonable time limits for a response.

8.3.3 The Charity shall, within the time limits specified by the Authority:

- (a) approve and countersign the variation
- (b) vacate or procure vacant possession of Grosvenor Square Gardens; and
- (c) remove the Charity Equipment together with any other materials used by the Charity to supply the Services and leave Grosvenor Square Gardens in a clean, safe and tidy condition. The Charity is solely responsible for making good any damage to Grosvenor Square Gardens or any objects contained thereon, other than fair wear and tear, which is caused by the Charity and/or any Charity Personnel.

8.3.4 This Contract shall remain effective and unaltered except as amended by such variation.

9 KEY PERFORMANCE TARGETS

9.1 The Charity shall at all times during the Contract Period achieve the Key Performance Targets set out in Schedule 4.

10 GOVERNANCE

10.1 The Parties shall comply with the provisions of the Ways of Working Agreement, initially annexed hereto but as amended from time to time in relation to the management and governance of this Contract.

10.2 Any Dispute concerning the Parties' compliance with the Ways of Working Agreement shall be resolved following the dispute resolution procedure contained therein.

10.3 For the avoidance of doubt, the Trustees shall exercise their independent discretion in carrying out any activities pursuant to the terms of this Contract, consistent with their responsibilities in charity law and the Charity's duties under this Contract.

11 RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 11.1 The Parties shall comply with the provisions of: Schedule 6 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data, the provision of the Financial Reports and the exercise of the Audit Rights by the Authority or any Auditor.
- 11.2 The Charity shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority in accordance with Good Industry Practice and Law.
- 11.3 The Charity shall, subject to the Authority providing reasonable notice, afford any Auditor access to the records and accounts referred to in Clause 11.1 at the Charity's premises during Business Hours and/or provide records and accounts (including copies of the Charity's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 11.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Charity and/or its Sub-Contractors of any of the Charity's obligations under this Contract.
- 11.4 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Charity or delay the provision of the Services save insofar as the Charity accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.
- 11.5 Subject to the Charity's rights in respect of Confidential Information, the Charity shall provide the Auditor(s) with all reasonable co-operation and assistance in relation to:
- 11.5.1 all reasonable information requested by the Authority within the scope of the audit;
- 11.5.2 reasonable access (within Business Hours and on reasonable notice) to sites controlled by the Charity and to any Charity Equipment used in the provision of the Services; and
- 11.5.3 access to the Charity Personnel.
- 11.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 11, unless the audit reveals a Default by the Charity in which case the Charity shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Allocation of title to IPR

- 12.1.1 Save as expressly granted elsewhere under this Contract or the Transfer Agreement:
- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Charity or its licensors, including:
 - (i) the Charity Background IPR;
 - (ii) the Third Party IPR; and
 - (iii) the Project Specific IPR.
 - (b) the Charity shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:
 - (i) Authority Background IPR; and
 - (ii) Authority Data.
- 12.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 12.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 12.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

12.2 IPR Indemnity

- 12.2.1 The Charity shall at during and after the Contract Period, on written demand indemnify and hold harmless the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 12.2.2 If an IPR Claim is made, or the Charity anticipates that an IPR Claim might be made, the Charity may, at its own expense and sole option, either:
- (a) procure the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:

- (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- (ii) the replaced or modified item does not have an adverse effect on any other Services;
- (iii) there is no additional cost to the Authority; and
- (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

13 CHARITY EQUIPMENT

13.1 The Charity shall provide all the Charity Equipment necessary for the provision of the Services.

13.2 On the Expiry Date the Charity shall be responsible for the removal of all relevant Charity Equipment from the Sites and/or the Parks, including the cost of packing, carriage and making good the Sites and/or the Parks following removal.

13.3 The Charity shall, at the Authority's written request, at its own expense and as soon as reasonably practicable remove from the Parks any Charity Equipment or any component part of Charity Equipment which in the reasonable opinion of the Authority is hazardous, noxious or not required for the purposes of this Contract.

14 PAYMENT, CHARGES, TAXATION AND VALUE FOR MONEY

14.1 Contract Charges

In consideration of the Charity carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the undisputed Contract Charges in accordance with the funding profile and the invoicing procedure in Schedule 3 (Contract Charges and Invoicing).

14.2 Licence Fee

14.2.1 In consideration of the licence to occupy granted by the Authority pursuant to Clause 5, the Charity shall pay the Authority the Licence Fee provided for under Schedule 3

14.3 VAT

14.3.1 The Contract Charges and Licence Fee are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.

14.3.2 The Charity shall indemnify and hold harmless the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Charity's failure to account for or to pay any VAT relating to payments made to the Charity under this Contract. Any amounts due under this Clause 14.2 (VAT) shall be paid in cleared funds by the Charity to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

14.4 Retention and Set Off

The Charity shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, save as in respect to the Licence Fee.

14.5 Income Tax and National Insurance Contributions

14.5.1 Where the Charity or any Charity Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Charity shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Charity or any Charity Personnel.

14.5.2 In the event that any one of the Charity Personnel is a Worker who receives consideration relating to the Services, then, in addition to its obligations under Clause 14.5.1, the Charity shall ensure that its contract with the Worker contains the following requirements:

- (a) that the Authority may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements in Clause 14.5.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;

- (b) that the Worker's contract may be terminated at the Authority's request if:
- (c) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 14.5.2(a); and/or
- (d) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clauses 14.5.1(a) or 14.5.1(b) or confirms that the Worker is not complying with those requirements; and

14.5.3 That the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

15 SECURITY AND PROTECTION OF INFORMATION

15.1 The Parties agree to observe and comply in full with the provisions of Schedule 10 (Security and Protection of Information)

16 LIABILITY

16.1 Unlimited Liability

16.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees; or
- (c) any liability to the extent it cannot be excluded or limited by Law.

16.2 Financial Limits

16.2.1 Subject to Clause 16.1 (Unlimited Liability) and Clause 16.3 (Non-recoverable Losses), the Charity's total aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Charity shall in no event exceed:

- (a) in relation to any Defaults occurring in the first Contract Year, £250,000;
- (b) in relation to Defaults occurring during any subsequent Contract Year, £250,000.

16.2.2 Subject to Clause 16.1 (Unlimited Liability) and Clause 16.3 (Non-recoverable Losses), and without prejudice to its obligation to pay the

undisputed Contract Charges as and when they fall due for payment or the Termination Payment (if applicable), the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

- (a) in relation to any Authority Causes occurring in the first Contract Year, £250,000;
- (b) in relation to any Authority Causes occurring during any subsequent Contract Year, £250,000.

16.3 Non-recoverable Losses

16.3.1 Subject to Clause 16.1 (Unlimited Liability) and paragraphs 4.4 and 4.5 of Schedule 2 (Services), neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

16.4 Recoverable Losses

16.4.1 Subject to Clause 16.2.1 (Financial Limits), and notwithstanding Clause 16.3 (Non-recoverable Losses), the Charity acknowledges that the Authority may, amongst other things, recover from the Charity the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Charity:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) subject to Clause 16.6.1 the additional reasonable cost of procuring Replacement Services until the Expiry Date, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- (c) any compensation or interest paid to a third party by the Authority; and
- (d) any fine, penalty or costs incurred by the Authority pursuant to Law.

16.5 Indemnity

16.5.1 The Charity shall indemnify the Authority in respect of any claims, proceedings, actions, damages, legal costs, expenses and any other

liabilities, which are caused directly or indirectly by any act or omission of the Charity or which arise howsoever in the Parks.

16.5.2 In respect of Third Party Claims, the provisions of paragraph 4, Schedule 12 (Dispute Resolution Procedure) shall apply.

16.6 **Miscellaneous**

16.6.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.

17 **INSURANCE**

17.1 The Charity shall effect and maintain in force all necessary insurances to cover its potential liabilities in connection with this Contract which shall include, as a minimum:

17.1.1 employers' liability insurance in respect of the Charity's employees with a minimum limit of five million pounds sterling (£5,000,000) (or such higher minimum limit as required by Law from time to time);

17.1.2 public liability insurance with a minimum limit of one hundred million pounds sterling (£100,000,000) for claims arising from a single event or series of related events ;and

17.1.3 any other insurances as may be required by applicable Law, together the "**Insurances**".

17.2 On the written request of the Authority, the Charity shall provide the Authority with a copy of each insurance policy.

17.3 The Charity will maintain in force such Insurances during the Contract Period.

17.4 The Charity shall not do or omit to do anything to vitiate the Insurances.

17.5 In the event that the Authority receives a claim relating to or arising out of the Services and/or this Contract, the Charity shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

18 **PROMOTING TAX COMPLIANCE**

18.1 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Charity shall:

18.1.1 notify the Authority in writing of such fact within five (5) Working Days becoming aware of its occurrence; and

18.1.2 promptly provide to the Authority:

- (a) details of the steps that the Charity is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

18.2 In the event that the Charity fails to comply with this Clause 18 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

19 REMEDIES FOR DEFAULT

19.1 Remedies

19.1.1 In the event that either Party commits a material Default which is capable of remedy (a “**Notifiable Default**”), the defaulting Party shall as soon as is reasonably practicable and within seven Working Days of becoming aware of the Notifiable Default notify the non-defaulting Party of the same in writing.

19.1.2 If:

- (a) the defaulting Party notifies the non-defaulting Party that a Notifiable Default has occurred; or
- (b) the non-defaulting Party notifies the defaulting Party that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the defaulting Party has to rectify),

then, unless the Notifiable Default also constitutes a Rectification Plan Failure and the non-defaulting Party serves a Termination Notice, the defaulting Party shall comply with the Rectification Plan Process set out in Clause 19.2.

19.1.3 If:

- (a) the defaulting Party fails to submit or resubmit a draft Rectification Plan to the non-defaulting Party within the timescales specified in Clauses 19.2.1 or 19.2.3; or
- (b) the non-defaulting Party, acting reasonably, rejects a revised draft of the Rectification Plan submitted by the defaulting Party pursuant to Clause 19.2.3; or
- (c) the defaulting Party fails to rectify a material Default within the later of:

- (i) 30 Working Days of a notification made pursuant to Clause 19.1.1; and
- (ii) (where the Parties have agreed a Rectification Plan in respect of that material Default and, if applicable, the non-defaulting Party can demonstrate that it is implementing the Rectification Plan in good faith) the date specified in the Rectification Plan by which the defaulting Party must rectify the material Default,

this will constitute a “**Rectification Plan Failure**” and, without prejudice to any other rights and remedies of termination provided for in this Contract, the non-defaulting Party shall be entitled to terminate this Contract for material Default.

19.2 Rectification Plan Process

19.2.1 The defaulting Party shall submit a draft Rectification Plan to the non-defaulting Party for it to review as soon as reasonably possible after the original notification pursuant to Clause 19.1.1. The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the defaulting Party proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

19.2.2 The non-defaulting Party may reject the draft Rectification Plan by notice to the defaulting Party if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the non-defaulting Party.

19.2.3 The non-defaulting Party shall notify the non-defaulting Party whether or not it consents to the draft Rectification Plan as soon as reasonably practicable. If the non-defaulting Party rejects the draft Rectification Plan, the non-defaulting Party shall give reasons for its decision and the defaulting Party shall take these reasons into

account in the preparation of a revised Rectification Plan. The defaulting Party shall submit the revised draft of the Rectification Plan to the non-defaulting Party for review within 5 Working Days (or such other period as agreed between the Parties) of the non-defaulting Party's notice rejecting the first draft.

- 19.2.4 If the non-defaulting Party consents to the draft Rectification Plan or any revised Rectification Plan the defaulting Party shall immediately start work on the actions set out in the Rectification Plan and the non-defaulting Party may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Event.

20 TERMINATION RIGHTS

Termination by the Authority

20.1 Termination on Insolvency

The Authority may terminate this Contract by issuing a Termination Notice to the Charity where an Insolvency Event affecting the Charity occurs.

20.2 Termination for Breach of Regulations

The Authority may terminate this Contract by issuing a Termination Notice to the Charity on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

20.3 Termination on Revocation or Non-Renewal of the Authorisation

Termination on Revocation

20.3.1 The Authority may terminate this Contract by issuing a Termination Notice to the Charity where the Initial Authorisation (or any Replacement Authorisation) is revoked.

20.3.2 The Termination Notice issued pursuant to Clause 20.3.1 will specify the date of termination of this Contract which must be not less than 3 months from the date of the Termination Notice.

Termination on Non-Renewal

20.3.3 The Authority may terminate this Contract by issuing a Termination Notice to the Charity where the Initial Authorisation (or any Replacement Authorisation) is not renewed where it would otherwise expire.

20.3.4 The Termination Notice issued pursuant to Clause 20.3.3 will specify the Expiry Date as the date of termination.

Termination by either Party

20.4 Termination on Material Default

20.4.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party where a right of termination is expressly reserved in this Contract, including pursuant to:

- (a) Clause 15.1 (Security and Protection of Information)
- (b) Clause 19.1.3 (Rectification Plan Failure)
- (c) Clause 23 (Assignment and Novation),

20.4.2 The Authority may terminate this Contract by issuing a Termination Notice to the Charity where:

- (a) there is a breach of Clause 18 (Promoting Tax Compliance).
- (b) the Charity commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; or
- (c) the Charity commits a material Default, which in the reasonable opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Clause 19.1 (Remedies);

20.4.3 For the purpose of Clause 20.4.2(b) and (c), a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

20.5 Termination for continuing Force Majeure Event

Either Party may, by, by issuing a Termination Notice to the other Party terminate this Contract in accordance with Clause 22.3.1(a) (Force Majeure).

20.6 Termination on failure to agree the Cash Fee

Either Party may, by issuing a Termination Notice to the other Party, terminate this Contract where the Parties fail to agree a replacement Cash Fee in accordance with the provisions of Schedule 3 (Contract Charges and Invoicing), provided that the date for termination specified in that notice shall be not less than 18 months from the date of the Termination Notice.

20.7 Partial Termination Suspension and Partial Suspension

20.7.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend this entire Contract.

- 20.7.2 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend part only of this Contract with the prior approval of the Charity (such approval not to be unreasonably withheld or delayed) provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the reasonable opinion of the Authority, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 20.7.3 Any suspension of this Contract under Clause 20.7.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 20.7.4 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Contract Charges.

Consequences of Expiry or Termination

20.8 Payments by the Charity

- 20.8.1 In the event of termination or expiry of this Contract, the Charity shall repay to the Authority all Contract Charges it has been paid in advance in respect of Services not provided by the Charity as at the date of expiry or termination.
- 20.8.2 Where the Authority:
- (a) terminates or suspends (in whole or in part) this Contract under Clauses 20.1, 20.4 and 20.7; and
 - (b) then makes other arrangements for the supply of the Services,
- the Authority may recover from the Charity the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority until the Expiry Date provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Charity until the Authority has established the final cost of making those other arrangements.

20.9 Payments by the Authority

- 20.9.1 If this Contract is terminated by the Authority pursuant to Clause 20.3.1, the Authority shall pay the Charity the Termination Payment which shall be the Charity's sole remedy for the termination of this Contract.

20.9.2 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 20.2, 20.3.3, 20.4, 20.5, and/or 20.6, or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 11 (Exit Management); and
- (b) payments in respect of unpaid Contract Charges for Services received up until the Termination Date.

20.10 Consequences of Termination for Any Reason

Save as otherwise expressly provided in this Contract:

20.10.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry;

20.10.2 any assets or reserves of monies held by the Charity following the expiry or earlier termination of this Contract shall be used solely for the benefit of the Parks in accordance with the Charity's Objects;

20.10.3 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Charity under Clauses 11 (Records, Audit Access & Open Book Data), 12 (Intellectual Property Rights), 15 (Security and Protection of Information), 16 (Liability), 20.8 (Consequences of Termination under Clause 20), 20.9 (Consequences of Termination for Any Reason), 26 (Staff Transfer and Pensions), 33 (Severability), 37 (Entire Agreement), 38 (Third Party Rights), 40 (Dispute Resolution), and 41 (Law and Jurisdiction), and the provisions of Paragraph 2 Schedule 1 (Definitions), Schedule 3 (Contract Charges, Payment and Invoicing), Schedule 9 (Staff Transfer and Pensions, Schedule 11 (Exit Management), Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

21 EXIT MANAGEMENT

21.1 The Parties shall comply with the exit management provisions set out in Schedule 11 (Exit Management).

22 FORCE MAJEURE

22.1 Subject to the remainder of this Clause 22, neither Party shall have any liability under or be deemed to be in breach of this Contract for any delays or

failures in performance of this Contract which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

22.2 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Charity is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

22.3 Where, as a result of a Force Majeure Event:

22.3.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than six (6) months; and
- (b) the Charity shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;

22.3.2 the Charity fails to perform its obligations in accordance with this Contract:

- (a) the Authority shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise any rights to terminate this Contract in whole or in part as a result of failure other than pursuant to Clauses 20.4 to 20.8; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;

22.3.3 the Charity shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

22.4 Relief from liability for the Affected Party under this Clause 22 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

23 ASSIGNMENT AND NOVATION

- 23.1 The Charity shall not assign novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.
- 23.2 The Authority may assign novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority. The Charity shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 23.2.
- 23.3 A change in the legal status of the Authority shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

24 SUPPLY CHAIN PROTECTION

24.1 Appointment of Sub-Contractors

- 24.1.1 The Charity shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Charity is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Contract in the delivery of the Services; and
 - (c) assign novate or otherwise transfer to the Authority or any Replacement Service Provider any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 24.1.2 Upon request of the Authority, the Charity shall provide copies of any Sub-Contract and any further information reasonably requested by the Authority in respect of Sub-Contractors.
- 24.1.3 Notwithstanding any provision of Schedule 10 (Security and Protection of Information) if the Charity notifies the Authority that the Charity has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

24.2 Supply Chain Protection

24.2.1 The Charity shall ensure that all Sub-Contracts contain a provision

- (a) requiring the Charity to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a invoice;
- (b) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 24.2.1; and
- (c) conferring a right to the Authority to publish the Charity's compliance with its obligation to pay undisputed invoices within the specified payment period.

24.2.2 The Charity shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a invoice;

24.3 **Retention of Legal Obligations**

The Charity shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

25 **VARIATION PROCEDURE**

25.1 This Contract shall not be varied unless such variation is agreed in writing and signed by all Parties ("**Variation**"). The Contract shall remain effective and unaltered except as amended by such Variation.

25.2 A Party may request a Variation by completing and sending the Variation form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation, reasonable time limits for a response, and details of any additional cost that may be incurred.

25.3 The receiving Party shall respond to the request within the time limits specified in the Variation form.

26 **STAFF TRANSFER AND PENSIONS**

26.1 The Parties agree that employees from TRPA at the commencement of the provision of each part of the Services shall transfer to the Charity under a Relevant Transfer and, Part A of Schedule 9 (Staff Transfer) shall apply; and Part D of Schedule 9 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

26.2 The Charity shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Charity or any Charity Personnel or any Sub-Contractor.

27 CHARITY PERSONNEL

27.1 Charity Personnel

27.1.1 The Charity shall:

- (a) ensure that all Charity Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
 - (iii) comply with all reasonable requirements of the Authority security requirements set out in Schedule 8 (Security);
- (b) comply with all lawful instructions and reasonable directions of the Authority given in accordance with the Authority's rights (but subject to the Authority's obligations) under this Contract and provide the Services to the reasonable satisfaction of the Authority;
- (c) subject to Schedule 9 (Staff Transfer), retain overall control of the Charity Personnel at all times so that the Charity Personnel shall not be deemed to be employees, agents or contractors of the Authority.

27.2 Convictions

27.2.1 For each member of Charity Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the Charity shall (and shall procure that the relevant Sub-Contractor shall):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Charity shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Conviction or an inappropriate record.

28 PREVENTION OF FRAUD AND BRIBERY

28.1 Each Party represents and warrants to the other that neither it, nor to the best of its knowledge any of its directors, officers, employees, agents, consultants and contractors engaged in the performance of the obligations under this Contract, have at any time prior to the Commencement Date:

28.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

28.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

28.2 The Charity shall not during the Contract Period:

28.2.1 commit a Prohibited Act; and/or

28.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

28.3 The Charity shall during the Contract Period:

28.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

28.3.2 keep appropriate records of its compliance with its obligations under Clause 28.3.1 and make such records available to the Authority on request;

28.3.3 if so required by the Authority, within thirty (30) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing that the Charity and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Charity shall provide such supporting evidence of compliance as the Authority may reasonably request; and

28.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it

and any Charity Personnel or any person acting on the Charity's behalf from committing a Prohibited Act.

28.4 The Charity shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 28.1, or has reason to believe that it has or any of the Charity Personnel have:

28.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

28.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

28.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

28.5 If the Charity makes a notification to the Authority pursuant to Clause 28.4, the Charity shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 11 (Records, Audit Access and Open Book Data).

28.6 If the Charity breaches Clause 28.3, the Authority may by notice:

28.6.1 require the Charity to remove from performance of this Contract any Charity Personnel whose acts or omissions have caused the Charity's breach; or

28.6.2 immediately terminate this Contract for material Default.

28.7 Any notice served by the Authority under Clause 28.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

29 EQUALITY AND DIVERSITY

29.1 The Charity shall:

29.1.1 perform its obligations under this Contract (including those in relation to provision of the Services) in accordance with:

(a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

- (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

29.1.2 take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

30 OFFICIAL SECRETS ACT AND FINANCE ACT

30.1 The Charity shall comply with the provisions of The Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989.

31 ENVIRONMENTAL REQUIREMENTS

31.1 The Charity shall, when working on the Sites, perform its obligations under this Contract in accordance with the Authority’s Environmental Policy where a copy of the same has been provided to the Charity.

32 SERVICE OF NOTICE

32.1 Except as otherwise expressly provided within the Contract, any notices sent under this Contract must be in writing. For the purpose of this Clause 32, an e-mail is accepted as being "in writing".

32.2 Subject to Clause 32.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 32.3 and 32.4)	9.00am on the first Working 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 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other	At the time recorded by the delivery service, provided that delivery is	Properly addressed prepaid and delivered as evidenced by signature of a delivery

prepaid, next Working Day service providing proof of delivery	between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	receipt
---	---	---------

32.3 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 Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 32.1:

32.3.1 any Termination Notice,

32.3.2 any notice in respect of:

(a) partial termination, suspension or partial suspension (Clause 20.7 (Partial Termination, Suspension and Partial Suspension)),

(b) waiver (Clause 35 (Waiver and Cumulative Remedies))

(c) Default or Authority Cause; and

32.3.3 any Dispute Notice.

32.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 32.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 32.1) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

32.5 This Clause 32 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

32.6 For the purposes of this Clause 32, the address and email address of each Party shall be

32.6.1 For the Authority:

Address: 100 Parliament Street, London SW1A 2BQ

For the attention of: Parliamentary Under Secretary of State for Sport, Tourism and Heritage

Department for Culture, Media and Sport

32.6.2 For the Charity:

Address: The Old Police House, Hyde Park, London W2 2UH

For the attention of: The Chief Executive

33 SEVERABILITY

- 33.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 33.2 In the event that any deemed deletion under Clause 33.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

34 RELATIONSHIP OF THE PARTIES

- 34.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

35 WAIVER

- 35.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 32 (Service of Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 35.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

36 FURTHER ASSURANCES

36.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

37 ENTIRE AGREEMENT

37.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

37.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

37.3 Nothing in this Clause 37 shall exclude any liability in respect of misrepresentations made fraudulently.

38 THIRD PARTY RIGHTS

38.1 The provisions of paragraphs 2 to 7 inclusive of the Pensions Annex to Part A of Schedule 9 (Staff Transfer) and of paragraph 9.10 of Schedule 11 (Exit Management) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

38.2 Subject to Clause 38.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

38.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

38.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 38.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

39 EXCLUSION OF SECURITY OF TENURE

39.1 In the event that, notwithstanding the provisions of Clause 6.2, this Contract creates a tenancy in respect of any of the Authority Owned Land the Parties confirm that:

39.1.1 the Authority served a notice on the Charity, as required by section 38A(3)(a) of the Landlord and Tenant Act 1954, applying to any such tenancy created by this Contract, before this Contract was entered into (a certified copy of which notice is annexed to this Contract); and

39.1.2 the Charity made a statutory declaration dated **13th March 2017** in accordance with the requirements of section 38A(3)(b) of the LTA 1954 (a certified copy of which statutory declaration is annexed to this Contract); and

39.2 The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to any tenancy created by this Contract.

40 DISPUTE RESOLUTION

40.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

40.2 The Charity shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

40.3 The Parties shall comply with the provisions of paragraph 4 of Schedule 12 in respect of any Third Party Claims.

41 LAW AND JURISDICTION

41.1 This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

41.2 Subject to Clause 40 (Dispute Resolution) and Schedule 12 (Dispute Resolution Procedure), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

IN WITNESS of which this Contract has been duly executed by the Parties.

Signed by the Chair of Trustees duly authorised for and on behalf of **The Royal Parks Limited**

Signature: Loyd Grossman
Name: LOYD GROSSMAN
Position: Chair of Trustees

Date: 15th March 2017

Signed by the duly authorised representative of the Secretary of State for Culture, Media and Sport for and on behalf of the **Authority**

Signature: Tracey Crouch
Name: TRACEY CROUCH MP
Position: Parliamentary Under Secretary of State for Sport, Tourism and Heritage
Department for Culture, Media and Sport

Date: 15th March 2017

SCHEDULE 1: INTERPRETATION AND DEFINITIONS

1 INTERPRETATION

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in paragraph 2, Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 The obligations in this Contract shall not be interpreted in a way which would:
- 1.2.1 cause the Charity to lose its charitable status; and
 - 1.2.2 require the Trustees to act inconsistently with their duties in charity law,
- and any Dispute arising under this paragraph 1.2 shall be resolved in accordance with the Dispute Resolution Procedure
- 1.3 In this Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.3.6 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to "representations" shall be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under this Contract;

1.3.8 references to “Clauses” and “Schedules” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and

1.3.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.4 In the event of and only to the extent of any conflict between the Clauses the Schedules and any documents referred to therein, the conflict shall be resolved in accordance with the following descending order of precedence:

applicable Contracting Out Order;

applicable Authorisation;

the Clauses and Schedule 1;

the Schedules 2 to 14; and

Ways of Working Document

1.5 Any restrictions on the Charity’s activities or obligations to be met by the Charity apply and are to be met by any trading subsidiary of the Charity as if that trading subsidiary was a party to this Contract in the place of the Charity.

2 DEFINITIONS

2.1 In accordance with paragraph 1 of this Schedule (Interpretation), the following expressions shall have the following meanings:

"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Approval"	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
"Audit"	any exercise by the Authority of its Audit Rights pursuant to Clause 11 (Records, Reports, Audit and Open Book Data) and Schedule 6 (Financial Reports and Audit Rights);
"Auditor"	means:

	<ul style="list-style-type: none"> a) the Charity’s internal auditors; b) the National Audit Office c) the Authority’s statutory or regulatory auditors; d) the C&AG, their staff and/or any appointed representatives of the National Audit Office e) HM Treasury or the Cabinet Office f) any party formally appointed by the Authority to carry out audit or similar review functions; and g) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 6 (Financial Reports and Audit Rights);
“Authorisation”	means either the Initial Authorisation or any Replacement Authorisation;
"Authority Assets"	means the Authority’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services;
"Authority Background IPR"	<p>means:</p> <ul style="list-style-type: none"> a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes, software and procedures; b) IPRs created by the Authority independently of this Contract; and/or c) Crown Copyright which is not available to the Charity otherwise than under this Contract;
"Authority Cause"	means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Authority is liable to the Charity;
"Authority Data"	<p>means:</p> <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Authority’s Confidential Information,

	<p>and which:</p> <ul style="list-style-type: none"> i) are supplied to the Charity by or on behalf of the Authority; or ii) the Charity is required to generate, process, store or transmit pursuant to this Contract; or <p>b) any Personal Data for which the Authority is the Data Controller (as the same is defined in the DPA);</p>
“Authority Owned Land”	means the land listed in Part 2 of Schedule 8 and forming part of the Parks, the legal title of which is held by the Authority;
"Authority Property"	means the property, other than real property and IPR, including any equipment issued or made available to the Charity by the Authority in connection with this Contract;
"Authority Representative"	means the representative appointed by the Authority from time to time in relation to this Contract;
"Authority's Confidential Information"	<p>means:</p> <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority (including all Authority Background IPR and Project Specific IPR); b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority's attention or into the Authority's possession in connection with this Contract; and <p>information derived from any of the above, save to the extent that such information enters the public domain other than by a breach of any obligation of confidentiality.</p>
“Business Hours”	means from 9am to 5.30pm, Monday to Friday;
“C&AG”	means the Comptroller and Auditor General
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly

	<p>Sponsored Public Body (advisory, executive, or tribunal);</p> <p>c) Non-Ministerial Department; or</p> <p>d) Executive Agency;</p>
"Ceremonial Event"	means any Grade A Event, Grade B(i) Event or B(ii) Event.
"Charity"	means the person, firm or company named in the recitals with whom the Authority enters into this Contract;
"Charity Assets"	means all assets and rights used by the Charity to provide the Services in accordance with this Contract but excluding the Authority Assets;
"Charity Background IPR"	<p>means</p> <p>a) Intellectual Property Rights owned by the Charity before the Commencement Date, for example those subsisting in the Charity's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Charity's Know-How or generic business methodologies; and/or</p> <p>b) Intellectual Property Rights created by the Charity independently of this Contract;</p>
"Charity Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Charity and/or of any Sub-Contractor engaged in the performance of the Charity's obligations under this Contract;
"Charity Equipment"	means the Charity's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Charity (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Contract;
"Charity Representative"	means the representative appointed by the Charity and notified to the Authority in accordance with the Ways of Working Document;
"Charity's Confidential Information"	<p>means</p> <p>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Charity (including the Charity Background IPR) trade secrets, Know-How, and/or personnel of the Charity;</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be</p>

	<p>considered to be confidential and which comes (or has come) to the Charity's attention or into the Charity's possession in connection with this Contract;</p> <p>c) information derived from any of the above, save to the extent that such information enters the public domain other than by a breach of any obligation of confidentiality.</p>
"Commencement Date"	means 15th March 2017
"Confidential Information"	means the confidential information of the Authority and/or the Charity (as the context specifies) obtained or communicated under or in connection with this Contract on a confidential basis and includes all Personal Data within the meaning of the Data Protection Act 1998;
"Contract"	means this agreement between the Authority and the Charity;
"Contract Charges"	means the charges (exclusive of any applicable VAT), payable to the Charity by the Authority under this Contract, as set out in Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Charity of its obligations under this Contract less any reasonable deductions;
"Contract Period"	means the term of this Contract from the Commencement Date and ending on the Expiry Date or on earlier termination of this Contract;
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
"Contracting Out Order"	means the Contracting Out (Functions relating to the Royal Parks) Order 2016 and the Contracting Out (Functions in relation to the Management of Crown Lands) Order 2003, both made under section 69 of the Deregulation and Contracting Out Act 1994;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (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

	<p>Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006</p>
<p>"Costs"</p>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Charity in providing the Services:</p> <ul style="list-style-type: none"> a) the cost to the Charity or the Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Charity Personnel, including: <ul style="list-style-type: none"> i) base salary paid to the Charity Personnel; ii) employer's national insurance contributions; iii) employer pension contributions and in respect of TRPA Employees those sums set out at clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the Admission Agreement; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Authority; b) costs incurred in respect of those Charity Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Charity Assets by the Charity to the Authority or (to the extent that risk and title in any Charity Asset is not held by the Charity) any cost actually incurred by the Charity in respect of those Charity Assets; c) operational costs which are not included within (a) or (b) above, to the extent that such costs are

	<p>necessary and properly incurred by the Charity in the provision of the Services;</p> <p>but excluding:</p> <ul style="list-style-type: none"> a) Overheads; b) financing or similar costs; c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period whether in relation to Charity Assets or otherwise; d) taxation; e) fines and penalties; and f) non-cash items (including depreciation, amortisation, impairments and movements in provisions);
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Default"	<p>means:</p> <ul style="list-style-type: none"> a) in the case of the Charity any breach of the obligations of the Charity including but not limited to: <ul style="list-style-type: none"> i) abandonment of this Contract in breach of its terms;

	<ul style="list-style-type: none"> ii) failure to meet the KPTs; iii) failure to satisfy the terms of the Transfer Agreement; iv) failure to assist in the provision of Grade A Events or obstruction of the provision of Grade B(i) Events or Grade B(ii) Events; or v) any other default, act, omission, negligence or statement of the Charity, of its Sub-Contractors or any Charity Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Charity is liable to the Authority; and <p>b) in the case of the Authority, any Authority Cause</p>
"Disclosing Party"	has the meaning given to it in Schedule 10 (Security and Protection of Information);
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 12;
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Charity to the Authority under this Contract; b) is required by the Charity in order to provide the Services; and/or c) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under

	vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part-time workers or fixed term employees; e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions; f) claims whether in tort, contract or statute or otherwise; g) 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;
"Environmental Policy"	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority;
"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

or EIRs"	department in relation to such regulations;
"Expiry Date"	means either: a) the date on which the Initial Authorisation expires; or b) where applicable, the date upon which the final Replacement Authorisation expires;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act 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 legislation;
"Force Majeure Event"	means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Charity of its obligations arising from: a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: i) any industrial dispute relating to the Charity, the Charity Personnel (including any subsets of them) or any other failure in the Charity or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Foundation"	means Royal Parks Foundation charity (registration

	number: 1097545) set up to fundraise in support of the Royal Parks;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Grade A Events"	Regular State and Royal ceremonial events which shall include (but are not limited to): (a) the Changing of the Guard; (b) Gun Salutes; (c) Her Majesty the Queen's Annual Birthday Parade; (d) State Visits; (e) Remembrance Sunday Parade; (f) State opening of Parliament; (g) any other event which would be undertaken by the Charity on behalf of the Authority which would have been in the reasonable contemplation of the Parties at the Commencement Date;
"Grade B(i) Events"	Major anniversaries or ceremonies of national or international significance initiated and delivered by Her Majesty's Government or the Royal Household (with agreement of Her Majesty's Government) and which require the use of some or all of the Parks and which would have been in the reasonable contemplation of the Parties

	<p>at the Commencement Date and which shall include (but are not limited to):</p> <p>(a) events such as VE Day or VJ Day;</p> <p>(b) Her Majesty The Queen’s Jubilee;</p>
“Grade B(ii) Events”	<p>Major State and Royal Ceremonial Events of national or international importance or significance initiated or delivered by Her Majesty’s Government which require the use of some or all of the Parks, which shall include (but are not limited to):</p> <p>(a) a State Funeral;</p> <p>(b) a Coronation;</p> <p>(c) the Wedding or Funeral of a principal member of the Royal Family;</p>
“Grosvenor Square Gardens”	<p>means the gardens covered by s1 of the Roosevelt Memorial Act 1946 from time to time as detailed further in Schedule 8;</p>
"Halifax Abuse Principle"	<p>means the principle explained in the CJEU Case C-255/02 Halifax and others;</p>
"HMRC"	<p>means Her Majesty’s Revenue and Customs;</p>
"Holding Company"	<p>has the meaning given to it in section 1159 of the Companies Act 2006;</p>
"Information"	<p>has the meaning given to it under section 84 of the Freedom of Information Act 2000;</p>
“Initial Authorisation”	<p>means the authorisation to the Charity to carry out the Authority’s functions given by the Authority under the Contracting Out Orders, as appended to Schedule 13;</p>
"Insolvency Event"	<p>means, in respect of the Charity:</p> <p>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</p> <p>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors'</p>

	<p>meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</p> <p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Charity is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
"Insurances"	has the meaning given to it in Clause 17.1;
"Intellectual Property Rights" or "IPR"	<p>means</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Charity (or to which the Charity has provided access) to the Authority in

	the fulfilment of its obligations under this Contract;
"Key Performance Targets" or "KPTs"	means the key performance targets as described in Schedule 4;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Charity is bound to comply;
"Licence Fee"	means the fee payable by the Charity to the Authority under this Contract, as calculated in accordance with paragraph 5 of Schedule 3 (Contract Charges, Payment and Invoicing), in consideration of the grant of a licence to occupy the Parks;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Charity Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Charity's offices, or to and from the Sites) but excluding lunch breaks;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Objects"	means the objects of the Charity as amended for time to time and provisionally set out in Recital C
"Occasion of Tax Non-Compliance"	means: a) any tax return of the Charity submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

	<ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Charity under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Charity was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or <p>b) any tax return of the Charity submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</p>
"Open Book Data "	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Contract Charges already paid or payable and Contract Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Charity's Costs broken down against each charitable objective in accordance with the Charity's Statement of Recommended Practice; b) operating expenditure relating to the provision of the Services; and c) the Charity surplus on an annual basis;
"Other Parks, Gardens, Recreation Grounds, Open Spaces And Other Land"	<p>means the other parks, gardens, recreation grounds, open spaces and other land detailed in Schedule 8;</p>
"Outer Circle Agreement"	<p>means an agreement for road maintenance dated 1 January 1983 between (1) the Secretary of State for the Environment and (2) the Crown Estate Paving Commissioners</p>
"Outer Circle Maintenance Works"	<p>To:</p> <ul style="list-style-type: none"> (a) At all times maintain and repair and keep repaired and be solely responsible for the maintenance and repair of the roadway and kerbstones of the Outer Circle and adjoining spur roads and bridges over Regent's Canal as shown coloured red on the plan annexed to the Outer Circle

	<p>Agreement; and</p> <p>(b) Cleanse, maintain and repair and keep repaired the drains and gulleys of the Outer Circle roadway adjoining spur roads and bridges over Regent’s Canal coloured red on the plan annexed to the Outer Circle Agreement.</p>
"Overheads"	<p>means those amounts which are intended to recover a proportion of the Charity’s or the relevant Sub-Contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Charity Personnel and accordingly included within limb (a) of the definition of “Costs”;</p>
"Parks"	<p>means the parks, gardens, recreation grounds, open spaces and other land listed in Schedule 8 which are owned, controlled or occupied by the Authority and are made available for use by the Charity or its Sub-Contractors for provision of the Services (or any of them);</p>
"Party"	<p>means the Authority or the Charity and "Parties" shall mean both of them;</p>
"Personal Data"	<p>means personal data as defined in the Data Protection Act 1998 which is Processed by the Charity or any Sub-Contractor or Subsidiary on behalf of the Authority pursuant to or in connection with this Contract;</p>
"Processing"	<p>has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;</p>
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

	<p>c) committing any offence:</p> <p>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)</p> <p>ii) under legislation or common law concerning fraudulent acts; or</p> <p>iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</p> <p>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
"Project Specific IPR"	<p>means:</p> <p>a) Intellectual Property Rights in items created by the Charity (or by a third party on behalf of the Charity) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Charity's obligations under this Contract and all updates and amendments to the same;</p> <p>but shall not include the Charity Background IPR;</p>
"Recipient"	has the meaning given to it in Schedule 10 (Security and Protection of Information);
"Rectification Plan"	means either any draft Rectification Plan or revised Rectification Plan once consented to by the Authority following the Rectification Plan Process;
"Rectification Plan Process"	has the meaning given to it in Clause 19.2;
"Registers"	has the meaning given to in Schedule 10 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2015 and/or the Concessions Contracts Regulation 2016 and/or the Public Contracts (Scotland) Regulations 2012 and/or the Concessions Contracts (Scotland) Regulations 2016 (as the context requires) as amended from time to time;
"Related Charity"	means any person who provides services to the Authority which are related to the Services from time to time;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Charity is established;
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Replacement Authorisation"	means a replacement authorisation to the Charity to carry out the Authority's functions given by the Authority under the Contracting Out Orders, replacing either: a) the Initial Authorisation; or b) any subsequent Replacement Authorisation.
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services during the Contract Period, whether those services are provided by the Authority internally and/or by any third party;
"Replacement Sub-Contractor"	means a sub-contractor of the Replacement Service Provider to whom Transferring Charity Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Replacement Service Provider"	means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Services for its own account, shall also include the Authority;
"Request for Information"	means a request for information relating to this Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Restricted Countries"	has the meaning given to it in Paragraph 6.2 of Schedule 10 (Protection of Personal Data);
"Retained Assets"	means those assets listed in Schedule 14, the reasonable and proper costs of any renewal, repair or restoration of which are to be met by the Authority'
"Royal Park(s)"	means the parks covered by the s22 Crown Lands Act 1851 from time to time as detailed further in Part 1 of Schedule 8;
"RPOS Parks and Open Spaces"	means the parks, gardens, recreation grounds, open spaces and other land covered by the Royal Parks And Other Open Spaces Regulations 1997 from time to time as detailed further in Schedule 8;

"Schedule"	means a schedule to this Contract;
"Security Policy"	means the Charity's security policy in respect of the Parks, as agreed between the Parties and as updated from time to time;
"Service Transfer"	means any transfer of the Services (or any part of the Services), for whatever reason, from the Charity or any Sub-Contractor to a Replacement Service Provider or a Replacement Sub-Contractor;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Charity to the Authority as referred to in Clause 6 (Charity Obligations in Respect of the Parks) and Schedule 2 (Services);
"Sites"	means any premises (including the Parks, the Charity's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> a) the Services are (or are to be) provided; or b) the Charity manages, organises or otherwise directs the provision or the use of the Services;
"Staffing Information"	has the meaning give to it in Schedule 11 (Staff Transfer);
"Standards"	means any: <ul style="list-style-type: none"> a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Charity would reasonably and ordinarily be expected to comply with; b) standards agreed between the Parties from time to time; c) guidance on Managing Public Money, published by HM Treasury in 2007, as amended and updated from time to time; d) relevant Government codes of practice and guidance applicable from time to time.
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party: <ul style="list-style-type: none"> a) provides the Services (or any part of them); b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or

	c) is responsible for the management, direction or control of the provision of the Services (or any part of them);
"Sub-Contractor"	means any person other than the Charity, who is a party to a Sub-Contract and the servants or agents of that person;
"Subsidiary"	means a company controlled by the Charity, where the Charity: a) holds a majority of the voting rights in the company; or b) is a member of the company and has the right to appoint or remove a majority of its directors; or c) is a member of the company and controls, alone, under an agreement with other members, a majority of the voting right;
"Termination Date"	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
"Termination Payment"	the payment determined in accordance with Schedule 5 (Payments on Termination);
"Third Party Claim"	any claim which is made or threatened by any third party against the Authority;
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the Charity for the purpose of providing the Services;
"Transfer Agreement"	means the Agreement entered into by the Parties for the transfer of the business and assets of TRPA from the Authority to the Charity;
"TRPA"	means the Royal Parks Agency, an Executive Agency of the Authority;
"Trustee"	means a trustee of the Charity
"Valid Invoice"	means an invoice issued by one Party to the other that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Schedule 3 (Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 25 (Variation Procedure);

"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means any one of the Charity Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees applies in respect of the Services;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England.

SCHEDULE 2: SERVICES

1 GENERAL

1.1 This Schedule specifies the Services to be provided under this Contract.

2 SERVICES

2.1 Subject to the provisions of paragraph 3 below, the Charity shall carry out the activities detailed in the Annex to this Schedule 2 in accordance with the Objects and shall provide any service consistent with the Objects required to ensure that the Authority's functions, as delegated to the Charity by way of the Authorisation and this Contract, are successfully fulfilled and delivered, including but not limited to the following:

2.1.1 managing the Royal Parks in accordance with s22 of the Crown Lands Act 1851;

2.1.2 managing and maintaining Grosvenor Square Gardens in accordance with s1 of the Roosevelt Memorial Act 1946;

2.1.3 managing and maintaining Other Parks, Gardens, Recreation Grounds, Open Spaces And Other Land in fulfilment of the Charity's non-statutory maintenance responsibilities; and

2.1.4 managing and maintaining the RPOS Parks and Open Spaces in accordance with Royal Parks And Other Open Spaces Regulations 1997;

2.1.5 supporting the Ceremonial Events;

2.1.6 undertaking and discharging in full the Outer Circle Maintenance Works;

2.1.7 improving the natural and built environment of the Parks;

2.1.8 promoting leisure, recreational and educational activities;

2.1.9 managing and maintaining any flag poles, bridges and trees at the Parks (and in particular at St James's Park); and

2.1.10 any other services which immediately before the Commencement Date were provided by TRPA, unless the Charity is prevented from doing so specifically by the terms of this Contract, or by Law.

3 CEREMONIAL EVENTS

- 3.1 The Charity shall provide all assistance the Authority requires to enable the Authority to deliver the following at or near or in the Parks:
 - 3.1.1 the Grade A Events and that assistance shall be at the Charity's own cost;
 - 3.1.2 the Grade B(i) Events at the reasonable and proper cost of the event organiser; and
 - 3.1.3 the Grade B(ii) Events at the reasonable and proper cost of the Authority.
- 3.2 The Charity shall:
 - 3.2.1 grant all necessary licences required for the provision of any Ceremonial Event; and
 - 3.2.2 ensure:
 - (a) all new commercial opportunities to be exploited by the Charity immediately prior and during any Grade B(ii) Events and as a consequence of such Grade B(ii) Events are Approved by the Authority; and
 - (b) it suspends or terminates any commercial opportunities immediately prior to and during any Grade B(ii) Events where requested to do so by the Authority.
- 3.3 Where the provisions of paragraph 3.1 above conflict with paragraph 2 of this Schedule 2 or Clause 4 (Grant of Rights), the provisions of this paragraph 3 shall prevail and the Ceremonial Events are to be successfully delivered notwithstanding any Losses the Charity may incur.

4 THE RETAINED ASSETS

- 4.1 The Charity shall be responsible for the day-to-day management and maintenance of the Retained Assets.
- 4.2 Notwithstanding paragraph 4.1 above, the Charity shall not be obliged to carry out any periodic renewal, repair or restoration of any of the Retained Assets (the “**Extraordinary Works**”) unless the Authority has given prior written consent to such Extraordinary Works and agreed to meet the reasonable costs of the same.

ANNEX

- Managing and maintaining the Parks – the land, buildings, monuments and other structures directly or through contractors
- Making the Parks safe places for visitors to enjoy
- Providing information about the Parks to the public and promoting the Parks
- Letting contracts and procuring services
- Providing services such as refreshments, playgrounds, car parking, toilets, seating
- Providing directly or through contractors, activities or facilities for activities such as walking, running, boating, horseriding, cycling and a variety of sports
- Caring for the environment – the land, flora and fauna
- Supporting the Secretary of State and DCMS in their responsibilities for the Parks, for example by responding to Parliamentary questions, MPs' correspondence.
- Hosting national and state ceremonies and supporting the delivery of those ceremonies
- Providing educational services
- Engaging with stakeholders including local residents, friends associations, the police, local authorities, the Royal Household, Government, charities
- Managing public funds in a manner compliant with public accounting rules and the guidance contained in https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf
- Landscape planning and management
- Raising funds and trading in accordance with applicable charity and tax law, through, for example, providing commercial and other events in the Parks – by means of third party contractors or directly - ranging from large scale events such as Winter Wonderland to smaller more local events and by other means, including soliciting donations, purchasing or providing services, obtaining grants and the National Lottery
- Planning for business continuity, seeking legal and accountancy and other expert advice
- Managing the working environment, including safety and security of staff

- Recycling and composting
- Managing waste
- Growing plants
- Dealing with plant diseases and pests
- Managing utilities, including use of water
- Managing watercourses and features
- Managing photography and filming in the Parks
- Benchmarking against national and international comparators
- Cemetery management
- Maintaining roads and paths
- Participating in public consideration of issues relating to the parks, for example London wide committee on green spaces
- Supporting London's emergency planning
- Recruiting and managing volunteers
- Provide cultural activities and installing and maintaining art works
- Maintaining sustainable levels of wildlife, including culling, in accordance with Government Policy and relevant legislation

SCHEDULE 3: CONTRACT CHARGES AND INVOICING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“actual Barter Fee” or “ <i>aBF</i> ”	shall be calculated in accordance with paragraph 4.3
“estimated Barter Fee” or “ <i>eBF</i> ”	shall be calculated in accordance with paragraph 4.2;
“Cash Fee”	shall be calculated in accordance with paragraph 3 and Annex 1 hereto;
“Independent Accountants”	has the meaning given in paragraph 9 below;
“Payment Year”	means each year from 1 st April in one year to 31 st March in the immediately following year during the Contract Period. For the avoidance of doubt, the first Payment Year shall be from 1 st April 2017 to 31 st March 2018 inclusive;
“Payment Day”	means 1 st June, 1 st September, 1 st December and 1 st March in any Payment Year
“Quarter Day”	means 1st April, 1st July, 1st October and 1st January in any Payment Year
“2016-2017 Grant”	means £24,589,000

2 CONTRACT CHARGES

- 2.1 The Contract Charges for the first Payment Year and every subsequent Payment Year during the Contract Period shall comprise the Cash Fee and the Barter Fee.
- 2.2 Subject to paragraph 8 of this Schedule (Adjustment of Contract Charges), the Contract Charges cannot be increased during the Contract Period and are the maximum and only amounts payable under this Contract.

3 CASH FEE

- 3.1 Subject to the review process referred to at paragraph 3.2 below, the total annual Cash Fee payable by the Authority for each Payment Year shall be the amount set in the table in Annex 1, payable either quarterly in advance or

monthly in arrears in accordance with the terms of paragraph 7.2 and 7.3 of this Schedule 3.

3.2 The Cash Fee for Payment Years 1, 2 and 3 may not be adjusted. The Cash Fee for Payment Year 4 onwards shall be reviewed as follows:

3.2.1 From 1 July 2019 the Parties shall review the proposed Cash Fee for Payment Years 4, 5, 6 and 7, and shall use their reasonable endeavours to agree the Cash Fee for those Payment Years by 1st January 2020;

3.2.2 In their review of the Cash Fee the Parties will consider all relevant information, including (but not limited to):

- (a) the Charity's financial and KPT performance over the preceding 5 years;
- (b) the level of reserves held by the Charity and any general assessment of overall business sustainability;
- (c) any future investment plans agreed between the Parties for the next five Payment Years; and
- (d) the mid-to-long-term business plan of the Charity,

3.2.3 If agreement is reached, the reviewed Cash Fee for Payment Year 4 (and the following Payment Years) will become effective from 1st April 2020;

3.2.4 Thereafter the Cash Fee shall be reviewed every five years from 1st July 2019 to be agreed by 1st January the following year (each a "**Review Date**") and any amended Cash Fee will become effective on the 1st April of the following year. In the absence of any agreement being reached during any such review, the previously applicable Cash Fee shall continue in force.

3.2.5 If no agreement is reached by 1 January 2020 or by any subsequent Review Date:

- (a) the matter shall be a Dispute and shall be resolved in accordance with the Dispute Resolution Procedure;
- (b) the Cash Fee for the Payment Year immediately following the Review Date shall continue being the Cash Fee for the previous Payment Year; and
- (c) if the Dispute has not been resolved by the date 6 months following the Review Date the Parties shall be entitled to terminate this Contract pursuant to Clause 20.6 (Termination on failure to agree the Cash Fee).

4 BARTER FEE

4.1 The annual Barter Fee payable by the Authority shall be a sum calculated in accordance with the principles of this paragraph 4, payable quarterly in accordance with the terms of paragraph 7.4 of this Schedule 3.

4.2 The estimated Barter Fee (**eBF**) shall be calculated using the following formula:

$$eBF = Ve - RA - C - OM$$

Where:

Ve = the estimate of the potential commercial value of the Contract to the Charity and any Subsidiary in a Payment Year

RA = a risk adjustment calculated at 15% of V

C = the estimated direct costs to the Charity for the relevant Payment Year comprised of (a) 10% of the estimated hard maintenance costs, (b) 10% of the landscape maintenance costs, (c) 35% of the staff and maintenance and other operating costs

OM = an operator's margin calculated at 5% of V,

4.3 The actual Barter Fee (**aBF**) shall be calculated using the following formula:

$$aBF = Va - C - OM$$

Where:

Va = the actual commercial value of the Contract to the Charity and any Subsidiary in a Payment Year

C = the estimated direct costs to the Charity for the relevant Payment Year comprised of (a) 10% of the estimated hard maintenance costs, (b) 10% of the landscape maintenance costs, (c) 35% of the staff and maintenance and other operating costs

OM = an operator's margin calculated at 5% of V

4.4 The Charity shall notify the Authority of its estimated Barter Fee in writing no later than 30 Working Days prior to:

4.4.1 the second Payment Year; and

4.4.2 the start of each subsequent Payment Year.

- 4.5 The Barter Fee is calculated with reference to an annual estimate of the potential value of the Contract to the Charity, and the Parties acknowledge and agree that the actual value of this Contract and direct costs incurred by the Charity may be higher or lower than the estimates used to calculate the estimated Barter Fee prior to each Payment Year. The Barter Fee payable by the Authority shall therefore be subject to adjustment as follows:
- 4.5.1 The Charity shall continually review the actual value of the Contract and, where actual earnings under the Contract differ to the estimate originally used to calculate **Ve**, the Charity shall adjust the remaining invoices yet to be submitted for the same Payment Year to account for such difference. Any upward or downward adjustment shall be applied equally across the remaining invoices for that Payment Year.
- 4.5.2 The actual earnings of the Charity in connection with providing the Services in any Payment Year shall be set out in the Charity's statutory accounts for the same year. As soon as reasonably practicable after the approval of the Charity's statutory accounts for the preceding financial year (and in any event no later than 10 Working Days following the submission of such statutory accounts to Companies House), the Charity shall submit to the Authority for approval a Reconciliation Statement (the "**Reconciliation Statement**") which must show:
- (a) any difference between the actual Barter Fee and the estimated Barter Fee (as adjusted if applicable) invoiced to the Authority for the same Payment Year;
 - (b) a full breakdown of the difference; and
 - (c) a full explanation of any discrepancy that is greater than +/- 10% of the original estimated Barter Fee.
- 4.5.3 If the Authority does not agree with a Reconciliation Statement, the following provisions apply:
- (a) The Authority shall notify the Charity and set out in its notice the terms on which it disagrees together with its reasons for such disagreement and an explanation of any adjustments which it considers should be made to the Reconciliation Statement. Any such notice shall be sent to the Charity within 20 Working Days of delivery of the Reconciliation Statement.
 - (b) The Authority and the Charity shall then use their reasonable endeavours to agree, in writing, adjustments to the Reconciliation Statement.
 - (c) If the Authority and the Charity are unable to agree such adjustments within 20 Working Days of the notice given by the

Authority in accordance with paragraph (a) above, then the matter shall be referred to the Independent Accountants on the application of either the Authority or the Charity.

4.5.4 If:

- (a) the Authority does not notify the Charity that it does not agree with the Reconciliation Statement in accordance with paragraph 4.5.3 (a) above; or
- (b) the Authority notifies the Charity that it approves the Reconciliation Statement; or
- (c) The Independent Accountant approves a Reconciliation Statement,

the Reconciliation Statement will be deemed agreed and the provisions of paragraphs 4.5.5 and 4.5.6 shall apply as appropriate.

4.5.5 Where an agreed Reconciliation Statement shows the **aBF** exceeds the **eBF** (because the actual commercial value of the Contract to the Charity and any Subsidiary in a Payment Year (**Va**) exceeds the figure (representing the estimated commercial value of the Contract to the Charity and any Subsidiary in a Payment Year) used to calculate the estimated Barter Fee for that Payment Year (**Ve**)), the Charity shall issue a separate invoice (the “**Reconciliation Invoice**”) to the Authority for the difference between **aBF** and **eBF**, together with any VAT properly chargeable thereon.

4.5.6 Where an agreed Reconciliation Statement shows that the **aBF** is less than the **eBF**, the Charity shall deduct the difference (inclusive of any VAT properly reimbursable thereon), from the amount to be next invoiced to the Authority under this Contract. If no such invoice is due, or if the amount to be deducted would result in a negative amount to be invoiced, the Charity shall instead make a payment to the Authority of the difference (inclusive of any VAT properly reimbursable thereon), within 20 Working Days of agreement of the Reconciliation Statement and, if required, issue a corresponding credit note to the Authority.

4.6 Where the Parties have agreed a Reconciliation Statement pursuant to the provisions of paragraph 4.5 above, the Authority shall either:

4.6.1 issue a separate invoice to the Charity for the amount demanded under a Reconciliation Invoice; or

4.6.2 deduct the difference from the amount to be next invoiced to the Charity under this Contract or issue a credit note to the Charity in respect of the difference to be credited pursuant to the provisions of paragraph 4.5.6 (net of any VAT),

as appropriate.

5 LICENCE FEE

5.1 The Licence Fee for the first Payment Year and every subsequent Payment Year during the Contract Period shall be a sum equivalent to the Barter Fee invoiced by the Charity to the Authority and calculated in accordance with the principles of paragraph 4, payable quarterly in accordance with the terms of paragraph 7.4 of this Schedule 3;

6 COSTS AND EXPENSES

6.1 The Contract Charges include all costs and expenses relating to the Services and/or the Charity's performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Charity in respect of such performance, including in respect of matters such as:

6.1.1 any incidental expenses that the Charity incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Charity Personnel, network or data interchange costs or other telecommunications charges; or

6.1.2 any amount for any services provided or costs incurred by the Charity prior to the Commencement Date.

7 INVOICING PROCEDURE

7.1 Before the Charity can submit an invoice to the Authority, the Charity shall first send the Authority a draft invoice setting out the Contract Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which:

7.1.1 the Charity shall be entitled to submit its invoice for the Contract Charges; and

7.1.2 (where the agreed invoice relates to the Barter Fee) the Authority shall be entitled to submit its invoice for the Licence Fee (which for the avoidance of doubt will, net of VAT, equal the Barter Fee).

Cash Fee

7.2 During the first Payment Year:

7.2.1 the Cash Fee is payable quarterly in advance on each Quarter Day on receipt of a Valid Invoice; and

7.2.2 the Charity shall submit an agreed invoice to the Authority in respect of the Cash Fee for each quarter no more than 5 Working Days before each Quarter Day.

7.3 During each subsequent year after the first Payment Year:

7.3.1 the Cash Fee is payable monthly in arrears on receipt of a Valid Invoice; and

7.3.2 the Charity shall submit an agreed invoice to the Authority no earlier than three Working Days prior to the first day of the month invoiced.

Barter Fee

7.4 During each Payment Year:

7.4.1 The Barter Fee is payable quarterly in the third month of each quarter on receipt of a Valid Invoice; and

7.4.2 the Charity shall submit an agreed invoice to the Authority in respect of the Barter Fee for each quarter on the Payment Day relating to that quarter.

7.5 Subject to paragraph 7.6, each Party shall pay all sums properly due and payable to the other in cleared funds on either the relevant Quarter Day, Payment Day or first day of the calendar month (as the case may be) following receipt of a Valid Invoice, and if such day is not a Working Day, payment shall be made on the Working Day immediately following.

7.6 Only the difference between the gross amounts of each Party's invoice submitted in respect of the Barter Fee and the Licence Fee (and any reconciliation invoices submitted pursuant to paragraphs 4.5.5 and 4.6) for the same quarter shall be payable by the Authority to the Charity

7.7 Both Parties shall ensure that each invoice (whether submitted electronically or in a paper form, as the Authority may specify):

7.7.1 contains all appropriate references, including the unique order reference number previously provided by the Authority;

7.7.2 Is dated the first date of the relevant invoice period;

7.7.3 is submitted to the relevant address specified in paragraphs 7.9 and 7.9 of this Schedule;

7.7.4 shows separately the VAT added to the due and payable Contract Charges in accordance with Clause 14.3.1 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and

7.7.5 is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

7.8 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Contract, to such bank or building society account as the recipient Party may from time to time direct.

7.9 The Charity shall submit invoices directly to:

c/o Historic England Finance Dept

The Engine House,

Fire Fly Avenue

Swindon

Wiltshire SN2 2EH

Emailyourinvoices-dcms@historicengland.org.uk

7.10 The Authority shall submit invoices to:

The Finance Director

The Royal Parks Limited

The Old Police House

Hyde Park

London W2 2UH

8 ADJUSTMENT OF CONTRACT CHARGES

8.1 The Contract Charges may be adjusted as set out in paragraphs 3.2 and 4 or as may otherwise be approved.

9 INDEPENDENT ACCOUNTANTS

9.1 Where the Parties have not agreed a Reconciliation Statement under paragraph 4.5 above, either Party may serve notice on the other proposing a firm of accountants (the “**Independent Accountants**”), following which:

9.1.1 the Parties have 5 Working Days to agree the proposed Independent Accountants;

9.1.2 Failing such agreement, the Independent Accountants shall be appointed by or on behalf of the President of the Institute of Chartered Accountants in England and Wales for the time being.

9.1.3 The Independent Accountants shall determine the matters in dispute between the Authority and the Charity.

- 9.2 The Independent Accountants shall acts as experts and not as arbitrators and their decision shall, in the absence of manifest error, be final and binding on the Authority and the Charity.
- 9.3 The costs of the Independent Accountant shall be borne equally by the Charity and the Authority.
- 9.4 The Charity shall provide the Authority and the Independent Accountants with all such information, assistance, documents, records and working papers as the Authority and, as the case may be, the Independent Accountants may reasonably require for the purpose of this Schedule 3.

SCHEDULE 4: KEY PERFORMANCE TARGETS

1 GENERAL

1.1 This Schedule sets out the KPTs by which the Charity's overall performance under this Contract shall be managed by the Authority.

2 KPTS APPLICABLE TO THIS CONTRACT

2.1 The KPTs applicable under this Contract are set out in Annex A of this Schedule.

3 KPTS APPLICABLE TO FUTURE CONTRACT YEARS

3.1 The KPTs applicable to this Contract may be amended for each subsequent Contract Year after the first Contract Year by agreement between the Parties (acting reasonably) prior to the Commencement of each relevant Contract Year.

3.2 KPTs relate to Charity's overall performance under this Contract and include (but shall not be limited to):

3.2.1 administration;

3.2.2 conservation;

3.2.3 maintenance/repair;

3.2.4 recreation and entertainment;

3.2.5 income generation;

3.3 If the Parties fail to reach agreement on setting KPTs before the commencement of the relevant Contract Year, the KPTs shall be set by the Authority acting reasonably and in good faith.

3.4 Commercial Activities

3.5 For the purpose of this Schedule 4:

3.5.1 Commercial Activities shall include:

(a) Catering;

(b) Commercial events including but not limited to events such as British Summertime, Winter Wonderland and Frieze;

(c) Lodges let on the open market;

(d) The following types of Property licence:

- (i) Used to be known as the Better Buildings programme but is now BAU – Magazine, future regents storeyard development
- (ii) Freeboard licences
- (iii) Wayleaves and encroachments
- (e) Commercial activity licences for various commercial activities such as filming, theatre, and commercial photography

3.5.2 Commercial Activities shall not include:

- (a) Adhoc licences –for example where occupants of properties on boundary requiring licence to locate contractors compound on our land pay a fee.
- (b) Income associated with events and activities that are licenced for regulation purposes, and not for profit:
 - (i) community events
 - (ii) picnics
 - (iii) Personal fitness
 - (iv) Dog walking
 - (v) Skating
 - (vi) Press permits
 - (vii) Student photography
- (c) Lodges / property let on non-commercial basis such as:
 - (i) Staff lodges
 - (ii) Property let on a non-market rate basis – e.g. Duck Island cottage
- (d) Income associated with services that are charged to subsidise the cost, not for profit:
 - (i) Toilets
 - (ii) Sports
 - (iii) Education classes etc.
 - (iv) Deck chairs

- (v) Funerary services
- (vi) Car parking charges
- (e) Grants –one-off opportunistic sources of income that cannot be relied upon and are highly variable. For example grants received from Lottery Funds, from TfL or the London Marathon Trust
- (f) Any income of a highly opportunistic nature on the basis that it will not be available to us in following years. E.g. merchandise sales associated with a Royal wedding / birth or a licence fee generated. Other highly variable income associated with planned / targeted/ marketed activities would still be in-scope
- (g) Corporate Partnering
- (h) Donations and gifts

Annex A

KP Targets

Requirement		KPT
Landscape asset condition	1	Maintain a minimum average Green Flag score for all of the eight Royal Parks of 75%
	2	Maintain the designation of Bushy Park and Richmond Park as Sites of Special Scientific Interest.
	3	Maintain the existing Grade II* designation of The Green Park and the Grade 1 designations of Brompton Cemetery and the remaining Royal Parks in the Register of Parks and Gardens of special historic interest in England
Condition of buildings and structures	4	Increase the number of listed buildings / structures assessed as being “good” or “fair” condition to 179 by the end of March 2018 and increasing further by at least one per annum, achieving a minimum of 183 by the end of March 2022
	5	Increase the number of unlisted buildings, memorials, statues, sculptures, structures and fountains assessed as being “good” or “fair” condition to 362 by the end of March 2018 and increasing further by at least three per annum, achieving a minimum of 380 by the end of March 2022
Visitor Satisfaction	6	To engage with stakeholders in accordance with The Royal Parks Stakeholder Engagement Strategy (March 2014), and to report annually against the key principles of stakeholder engagement, including key metrics around numbers of stakeholders attending bi-annual meetings, numbers of donors engaged, numbers of social media followers and website hits.
	7	Maintain above 90% the number of visitors to the Royal Parks who assess the quality of the parks overall as being “excellent” or “good”.
Commercial	8	To deliver all major events in line with the “Hosting Major Events in The Royal Parks - May 2015” strategy document.
	9	Increase year on year net income generated by TRP Commercial Activities from the 2016/17 baseline until the end of the year 2019/20

SCHEDULE 5: TERMINATION PAYMENT

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Breakage Costs Payment”	the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Contract Breakage Costs”	the amounts payable by the Charity to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant key Sub-contracts or third party contracts as a direct result of the early termination of this Contract;
“Request for Estimate”	a written request sent by the Authority to the Charity, requiring that the Charity provide it with an accurate estimate of the Termination Payment that would be payable if the Authority exercised its right under Clause 20.7.1 to terminate this Contract on a specified Termination Date;
“Termination Estimate”	has the meaning given in Paragraph 10.2;
“Third Party Contract”	a contract with a third party entered into by the Charity exclusively for the purpose of delivering the Services;
“Unrecovered Costs”	the Costs incurred by the Charity in the performance of this Contract to the extent that the same remain at the Termination Date to be recovered through Contract Charges that but for the termination of this Contract would have been payable by the Authority after the Termination Date in accordance with Schedule 3 (<i>Contract Charges and Invoicing</i>) as such Costs and Charges are forecast in the Ways of Working document;
“Unrecovered Payment”	an amount equal to the lower of: (a) the Unrecovered Costs; and (b) the amount specified in Paragraph 4; and

2 TERMINATION PAYMENT

- 2.1 The Termination Payment payable pursuant to Clause 20.9.1 (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.
- 2.2 The Parties acknowledge and agree that the longer the notice given by the Authority in Clause 20.3.2, the lower the Termination Payment will be.

3 BREAKAGE COSTS PAYMENT

- 3.1 The Charity may recover through the Breakage Costs Payment only those costs incurred by the Charity directly as a result of the termination of this Contract which:
- (a) would not have been incurred had this Contract continued until expiry of the authorisation given by the Initial Authorisation or, where the Authority has elected to replace the Initial Authorisation, the final Replacement Authorisation;
 - (b) are unavoidable, proven, reasonable, and not capable of recovery;
 - (c) are incurred under arrangements or agreements that are directly associated with this Contract;
 - (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Charity; and
 - (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

- 3.2 The Breakage Costs Payment shall not exceed 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 3.3 The Authority shall not be liable under this Schedule for any costs associated with Charity Personnel (whether relating to redundancy, redeployment or otherwise).

Contract Breakage Costs

3.4 The Charity shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

- (a) are not assigned or novated to either the Authority or a Replacement Service Provider (as the case may be) at the request of the Authority in accordance with Schedule 11 (*Exit Management*); and
- (b) the Charity can demonstrate:
 - (i) are surplus to the Charity's requirements after the Termination Date, whether in relation to use internally within its business or in furthering its Objects; and
 - (ii) have been entered into by it in the ordinary course of business.

3.5 The Charity shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.6 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Charity is obliged to pay in respect of:

- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Charity premises which may arise as a consequence of the termination of this Agreement; and/or
- (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate.

5 MITIGATION OF CONTRACT BREAKAGE COSTS AND UNRECOVERED COSTS

5.1 The Charity agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Unrecovered Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
- (c) in relation Third Party Contracts and Sub-contracts that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Charity for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs and Unrecovered Costs payable by the Authority or a third party to the Charity. In the event of any Dispute arising over whether the Charity can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred for determination in accordance with the procedure detailed in Schedule 12 (*Dispute Resolution Procedure*).

6 FULL AND FINAL SETTLEMENT

6.1 The Parties shall use their reasonable endeavours to agree the Termination Payment by the day which is the date 3 months after the proposed Termination Date, following which if no agreement has been reached the matter shall be referred to paragraph 2 of the procedure detailed in Schedule 12 (*Dispute Resolution Procedure*).

6.2 Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Charity in relation to any termination by the Authority pursuant to Clause 20.3.1, and the Charity shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

7 INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Authority to the Charity in accordance with the payment terms set out in Schedule 3 (*Contract Charges and Invoicing*).

8 SET OFF

The Authority shall be entitled to set off any outstanding liabilities of the Charity against any amounts that are payable by it pursuant to this Schedule.

9 NO DOUBLE RECOVERY

9.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 11 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

9.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Charity has already received the Contract Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

9.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

10 ESTIMATE OF TERMINATION PAYMENT

10.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 12 month period.

10.2 The Charity shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:

(a) include:

- (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
- (b) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

10.3 The Charity acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Contract.

10.4 If the Authority issues a Termination Notice to the Charity within the stated period for which a Termination Estimate remains valid, the Charity shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Charity and the Authority.

SCHEDULE 6: FINANCIAL REPORTS AND AUDIT RIGHTS

1 FINANCIAL TRANSPARENCY OBJECTIVES

The Charity acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Charity shall co-operate with the Authority in order to achieve, the following objectives:

1 Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Charity including an analysis of the Costs, time spent by Charity Personnel in providing the Services and the Charity's income from Commercial Activities undertaken by the Charity using the Parks; and
- (b) for both Parties to be able to understand the Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques.

2 Agreeing the impact of Change

- (c) for both Parties to agree the quantitative impact of any changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Contract Charges;
- (d) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

3 Continuous improvement

- (e) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (f) to enable the Authority to demonstrate that it is achieving value for money for the tax payer,

(together the “**Financial Transparency Objectives**”).

2 OPEN BOOK DATA

- 2.1 The Charity acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.
- 2.2 During the Contract Period, and for a period of 7 years following the end of the Contract Period, the Charity shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Auditors access to the Open Book Data.

2.3 The Charity may choose who will carry out its own internal Audit.

3 EXTERNAL AUDIT

- 3.1 The Charity will undergo an External Audit in each Payment Year by the C&AG, who will audit the Charity's and any Charity Subsidiary's consolidated annual financial statements and examine their regularity and propriety; the NAO will be responsible for delivering the certified accounts and associated Annual Report, if applicable, to the Authority.
- 3.2 In addition, the C&AG will have access to the Charity's books and records, and request explanations as are reasonably necessary, for the purpose of carrying out examinations into the economy, efficiency and effectiveness with which the Charity has used its resources in discharging its functions.
- 3.3 Each External Audit will be conducted in accordance with the International Standards on Auditing (UK & Ireland) and will cover the financial statements for each Payment Year. These statements comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, Statement of Changes to Taxpayers' Equity, the related notes and the part of the Remuneration Report to be audited.

SCHEDULE 7: NOT USED

SCHEDULE 8: THE PARKS, GARDENS, RECREATION GROUNDS, OPEN SPACES AND OTHER LAND

PART 1 – AUTHORITY OPERATED LAND

1 CROWN LANDS ACT 1851 PARK(S)

1.1 The parks in scope of s22 of the Crown Lands Act 1851 at the Commencement Date are:

- 1.1.1 St James's Park
- 1.1.2 Hyde Park
- 1.1.3 The Green Park
- 1.1.4 Kensington Gardens
- 1.1.5 Regent's Park
- 1.1.6 Primrose Hill
- 1.1.7 Greenwich Park
- 1.1.8 Richmond Park
- 1.1.9 Bushy Park

1.2 The buildings, land and appurtenant rights which comprise the parks are those parts that were the responsibility of the TRPA immediately prior to the Commencement Date including those parts, to assist with identification, described in the attached plans, together with all rights of access and any other rights enjoyed in connection therewith.

2 ROOSEVELT MEMORIAL ACT 1946

2.1 The garden in scope of the Roosevelt Memorial Act 1946 is Grosvenor Square Gardens.

2.2 The buildings, land and appurtenant rights which comprise the Grosvenor Square Gardens are those parts that were the responsibility of the TRPA immediately prior to the Commencement Date including those parts, to assist with identification, described in the attached plans, together with all rights of access and any other rights enjoyed in connection therewith.

3 THE ROYAL PARKS AND OTHER OPEN SPACES REGULATIONS 1997

3.1 The relevant parks, gardens, recreation grounds, open spaces and other land to which the Royal Parks And Other Open Spaces Regulations 1997 apply are as follows:

- 3.1.1 The garden at street level adjacent to the Jewel Tower, and the lawn surrounding the King George V Memorial (together also known as Poet's Corner);
 - 3.1.2 Brompton Cemetery;
 - 3.1.3 Bushy Park;
 - 3.1.4 Canning Green, being the lawn on the land bounded by Great George Street, Parliament Square, Broad Sanctuary and Little George Street, London SW1;
 - 3.1.5 The Longford River and those parts of its banks which are for the time being under the control or management of the Charity;
 - 3.1.6 Green Park;
 - 3.1.7 Greenwich Park, being those parts of the Park which are for the time being under the control and management of the Charity;
 - 3.1.8 Grosvenor Square Gardens;
 - 3.1.9 Hyde Park;
 - 3.1.10 Kensington Gardens;
 - 3.1.11 Primrose Hill;
 - 3.1.12 Regent's Park;
 - 3.1.13 Richmond Park;
 - 3.1.14 St James's Park;
 - 3.1.15 Victoria Tower Gardens.
- 3.2 The buildings, land and appurtenant rights which comprise the parks, gardens, recreation grounds, open spaces and other land listed in paragraph 3.1 above are those parts that were the responsibility of TRPA immediately prior to the Commencement Date including those parts, to assist with identification, described in the attached plans, together with all rights of access and any other rights enjoyed in connection therewith.

PART 2 - AUTHORITY OWNED LAND

1 OTHER PARKS, GARDENS, RECREATION GROUNDS, OPEN SPACES AND OTHER LAND

1.1 Other parks, gardens, recreation grounds, open spaces and other land, the freehold or leasehold of which is held by the Authority:

1.1.1 Brompton Cemetery;

1.1.2 The Longford River;

1.1.3 Victoria Tower Gardens;

1.1.4 Canning Green;

1.1.5 Poets' Green;

1.1.6 Pembroke Lodge.

1.2 The buildings, land and appurtenant rights which comprise the parks, gardens, recreation grounds, open spaces and other land listed in paragraph 1.1 above are those parts that were the responsibility of TRPA immediately prior to the Commencement Date including those parts, to assist with identification, described in the attached plans, together with all rights of access and any other rights enjoyed in connection therewith.

ANNEX – TITLE DOCUMENTS

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
St James's Park and The Green Park	Freehold land Title absolute	NGL 870635	Main Parks	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			Rights granted by Licence 13/12/04 between Commissioners of Works and Public Buildings and Gas and Light and Coke Company Unilateral Notice affecting land tinted yellow (Spring Gardens access licence)
Hyde Park	Freehold land Title absolute	NGL 893361	Main park includes barracks	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP	Land tinted blue (Underground car park) TFL noted as an additional address for service Land tinted pink (barracks) SoS for Defence		Underground car park noted on title subject to Hyde Park (Underground Parking) Act 1961 Leases Car Park 99 yrs from 5/4/2012 lessee title NGL926758 Lease comprises other land subsoil forming part of Crossrail

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
					noted as address for service		Barracks land subject to section 7 of Knightsbridge and other Crown Lands Act 1879
Hyde Park	Freehold land Title absolute	NGL 9499 59	Additional land at French Embassy and HPC corner toilets	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP	French Embassy have an Encroachment Licence with us		
Kensington Gardens	Freehold land Title absolute	NGL 8934 46	Main park	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			
Regent's	Freehold	NGL 8751	Main park up	The Queen's			UN notice – Agreement for

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
Park	Land Title absolute	49	to outer circle	most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			Lease 20/202102 between SoS Culture Media and Sport and Regent's Park Theatre Leases London Zoo 60 yrs from 24/6/1995 title NGL783239 Regents College (part) from 25/3/06 to 31/8/2014 title NGL863688 Open Air Theatre 25 yrs from 25/07/2012 title NGL927738
Regent's Park	Freehold Land Title absolute	NGL 9007 45	Gloucester Slips Car park area	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T			

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
				RP			
Regent's Park				Part of the park on the outer circle is not registered opposite Wingfield House			
Primrose Hill	Freehold land Title absolute	NGL 875149	Main park	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			
Greenwich	Freehold land Title absolute	TGL2 77148	Main Park	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			
Greenwich	Freehold land	SGL2 2390	The Queens Orchard	Registered in the name		Restriction on	Conveyance 19/1/76

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
	Title absolute	1		of SoS for Communities and Local Government		title no disposition without SoS (TRP) consent	between SoS for Defence and Greenwich Council contains restrictive covenants not to damage or build on park wall
Richmond	Freehold land Title absolute	TGL172133	Acquired land at Chohole Gate for entrance to the golf course	Registered in name of Secretary of State for Culture Media and Sport			Transfer of this and other land contains restrictive covenants not to build dwellings for the working classes
Richmond	Freehold land Title absolute	TGL319296	Main area of park	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive TRP			
Richmond	Freehold land Title absolute	TGL319297	Southern area of park	The Queen's most Excellent Majesty in Right of Her			Parts of the land subject to the leases set out Lease dated

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
				Crown – Address for service care of Chief Executive TRP			23/3/95 for 150 years from 5/7/1994 land at the Cottage Thatched House Lodge
Richmond	Freehold land Title absolute	TGL3 1927 5	Eastern side of the park	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive TRP			
Richmond		Title not known lease pre dates registration of Crown Land Lease expires 4 April	Lease Pembroke Lodge	Crown Estate Commissioners	TRP		

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
		2091					
Richmond	Freehold land Title absolute	SGL7 7574 1	Land at Ladderstile Ride	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			Land subject to a right of way from Kingston Hill leading to the Ladderstile Gate
Bushy	Freehold land Title absolute	TGL3 1593 4	Main area of the park land	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive T RP			
Bushy	Freehold land Title absolute	TGL3 2786	Clpperstile area including buildings and car park	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief			

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
				Executive TRP			
Bushy	Freehold land Title absolute	TGL3 1643 7	Allotments and Kings Field	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive TRP	LBRUT included in address for service		
Bushy	Freehold land Title absolute	TGL3 1643 7	Royal Paddocks	The Queen's most Excellent Majesty in Right of Her Crown – Address for service care of Chief Executive TRP	Royal Household included in the address for service		
Brompton Cemetery	Freehold land Title absolute	BGL6 5757	Main Park	Registered in the name of the Secretary of State for DCMS			
Mill House Longford	Freehold land	TGL3 7043 2	Just mill house rest of the river not	Registered in the name of Sos for Communitie			

Type of Property	Type of Title	Title document	Description	Superior interest? Registered Proprietor	Occupational interests?	Benefits	Restrictions Items noted on Charges Register
	Title absolute		registered	s and Local Government care of TRP			
Victoria Tower Gardens	Freehold land Title absolute	168570	Main park	Registered in the name of the Secretary of State for DCMS			

SCHEDULE 9: STAFF TRANSFER

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Admission Agreement”	An admission agreement in the form available on the Civil Service Pensions website on the relevant date, to be entered into by the Charity and/or Sub-contractor which the Charity and / or the Sub-contractor agrees to participate in the Schemes in respect of these Services as amended from time to time and TRPA Employees;
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time remains eligible to participate in the Admission Agreement;
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“Fair Deal Employees”	those TRPA Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal;
“Foundation Employees”	those employees of the Foundation to whom the Employment Regulations will apply on the Relevant Transfer Date;
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document at the Relevant Transfer Date;
“Schemes”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under s25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and

(ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and 'alpha' introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

“Staffing Information”

in relation to all persons identified on the Charity's Provisional Charity Personnel List or the Charity's Final Charity Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials

relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Charity's Final Charity Personnel List”

a list provided by the Charity of all Charity Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

“Charity's Provisional Charity Personnel List”

a list prepared and updated by the Charity of all Charity Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Charity;

“Transferring Charity Employees”

those employees of the Charity and/or the Charity's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

“TRPA Employees”

those employees of TRPA to whom the Employment Regulations will apply on the Relevant Transfer Date;

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Charity to provide an indemnity, undertaking or warranty, the Charity shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Charity, Replacement Service Provider or Replacement Sub-contractor, as the case may be.

PART A

TRPA Employees at commencement of the Services

1. **RELEVANT TRANSFERS**

1.1 The Authority and the Charity agree that:

- (a) the commencement of the provision of the Services will be a Relevant Transfer in relation to TRPA Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between TRPA and TRPA Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Charity and TRPA Employees.

1.2 **The Authority** shall use reasonable endeavours to ensure that TRPA complies with all of its obligations under the Employment Regulations and performs and discharges all of its obligations in respect of the TRPA Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) TRPA; and (ii) the Charity.

2. **AUTHORITY INDEMNITIES**

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Charity against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Authority and/or TRPA in respect of any TRPA Employee or any appropriate employee representative (as defined in the Employment Regulations) of any TRPA Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority and/or TRPA before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to TRPA Employees; and/or
 - (ii) any custom or practice in respect of any TRPA Employees which TRPA is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing TRPA Employees arising from or connected with any failure by the Authority and/or TRPA to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any TRPA Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a TRPA Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from TRPA to the Charity, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority and/or TRPA to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to TRPA Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by TRPA other than a TRPA Employee for whom it is alleged the Charity as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a TRPA Employee or any appropriate employee representative (as defined in the Employment Regulations) of any TRPA Employee relating to any act or omission of the Authority and/or TRPA in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Charity or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Charity or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any TRPA Employees before the Relevant Transfer Date on account of substantial detrimental changes to his/her

working conditions proposed by the Charity and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

- (b) arising from the failure by the Charity or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a TRPA Employee claims, or it is determined in relation to any person who is not identified by the Authority as a TRPA Employee, that his/her contract of employment has been transferred from TRPA to the Charity pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Charity shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
- (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Charity, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Charity shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Charity may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Charity acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Charity against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Charity takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:

- (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Charity and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Charity neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Charity to the Authority within 6 months of the Relevant Transfer Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Charity within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Charity and the Charity shall, comply with such obligations as may be imposed upon it under applicable Law.

3. **CHARITY INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Charity shall indemnify the Authority and the Foundation and/ or TRPA as appropriate against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Charity or any Sub-contractor in respect of any Foundation Employees and/or TRPA Employees or any appropriate employee representative (as defined in the Employment Regulations) of any Foundation Employees and/or TRPA Employees whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Charity or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to either the Foundation Employees and/or TRPA Employees; and/or
 - (ii) any custom or practice in respect of any Foundation Employees and/or TRPA Employees which the Charity or any Sub-contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Foundation Employees and/or TRPA Employees arising from or connected with any failure by the Charity or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Charity or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Foundation Employees and/or TRPA Employees to their material detriment on or after their transfer to the Charity or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Foundation Employee and/or TRPA Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Charity or any Sub-contractor to, or in respect of, any TRPA Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Foundation Employee and/or TRPA Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Foundation Employee and/or TRPA Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Charity or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Charity or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to any Foundation

Employee and/or any TRPA Employee in respect of the period from (and including) the Relevant Transfer Date;

- (h) any claim made by or in respect of Foundation Employees and/or TRPA Employees or any appropriate employee representative (as defined in the Employment Regulations) of any Foundation Employee and/or TRPA Employee relating to any act or omission of the Charity or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Foundation's and/or TRPA's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Charity or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Foundation and/or TRPA and/or Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Foundation's and/or TRPA's failure to comply with its obligations under the Employment Regulations.

3.3 The Charity shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Foundation Employees and/or TRPA Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and all such sums due as a result of Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority, the Foundation and the Charity.

4. **INFORMATION**

The Charity shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or the Foundation and/or TRPA in writing such information as is necessary to enable the Foundation and/or TRPA to carry out their duties under regulation 13 of the Employment Regulations. The Authority shall use reasonable endeavours to ensure that TRPA shall promptly provide to the Charity in writing such information as is necessary to enable the Charity to carry out their respective duties under regulation 13 of the Employment Regulations.

5. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Charity of employees whose employment begins after the Relevant Transfer Date, and the Charity undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Charity shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any TRPA Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007, revised 2013;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. **PENSIONS**

Without prejudice to the Interpretation clause in the definition section above, the Charity shall, and/or shall procure that each of its Sub-contractors shall, (where applicable) comply with the pensions provisions in the following Annex.

ANNEX TO PART A

PENSIONS

1. EMPLOYER OBLIGATION

The Charity shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

2 PARTICIPATION

2.1 The Charity undertakes to enter into the Admission Agreement. The Charity and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Charity to participate in the Schemes in respect of the Fair Deal Employees.

2.2 The Charity and the Authority agree:

- (a) That the arrangements entered into for participation in the Schemes include arrangement with the body responsible for the Schemes for the Authority to be notified if the Charity breaches the Admission Agreement; and
- (b) notwithstanding the terms of this Annex, the Charity shall notify the Authority in the event that it breaches the Admission Agreement.

2.3 The Charity shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Charity participating in the Schemes, to include without limitation MyCSP's on-boarding costs.

3 FUTURE SERVICE BENEFITS

3.1 The Charity shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Charity shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

3.2 The Charity undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such

cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date, being the date the Eligible Employee ceased to participate in the Schemes.

- 3.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal¹.

4 FUNDING

- 4.1 The Charity undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 4.2 The Charity shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Charity to or in respect of the Schemes.

5 PROVISION OF INFORMATION

The Charity and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to relevant employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

6 INDEMNITY

The Charity undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Foundation Employees and TRPA Employees arising in respect of service on or after the Relevant Transfer Date which relate to the participation in an

¹ This clause simply means that the CSCS & CSIBS are not part of NFD, they should be considered as part of the TUPE due diligence

occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

7 SUBSEQUENT TRANSFERS

The Charity shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the replacement supplier and/or the Authority may reasonably require to enable the replacement supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the replacement supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

(PART B – NOT USED)

(PART C – NOT USED)

PART D

EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Charity agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination in accordance with Clause 20 of this Contract;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Charity's Provisional Charity Personnel List, together with the Staffing Information in relation to the Charity's Provisional Charity Personnel List and it shall provide an updated Charity's Provisional Charity Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Charity shall provide to the Authority or at the direction of the Authority to any Replacement Service Provider and/or any Replacement Sub-contractor:

- (a) the Charity's Final Charity Personnel List, which shall identify which of the Charity Personnel are Transferring Charity Employees; and
- (b) the Staffing Information in relation to the Charity's Final Charity Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Charity under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-contractor.

1.4 The Charity warrants, for the benefit of the Authority, any Replacement Service Provider, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Charity agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Charity's Provisional Charity Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Charity Personnel listed on the Charity Provisional Charity Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Charity Personnel (including any payments connected with the termination of employment);
 - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Charity Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Charity's Provisional Charity Personnel List;
 - (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - (f) terminate or give notice to terminate the employment or contracts of any persons on the Charity's Provisional Charity Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Service Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Charity or relevant Sub-contractor or received from any persons listed on the Charity's Provisional Charity Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Charity shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- (a) the numbers of employees engaged in providing the Services;
 - (b) the percentage of time spent by each employee engaged in providing the Services;

- (c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up in accordance with the pension provisions at clause 3.2 of the pension provisions at Annex A above; and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Charity shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Service Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Charity Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Charity Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Charity shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Service Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Charity's Final Charity Personnel List who is a Transferring Charity Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

1.8 The Charity shall comply, and shall procure that each Sub-Contractor shall comply with paragraph 7 on the Annex to Part A Pensions.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Authority and the Charity acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination in (accordance with Clause 17 of this Contract or otherwise)) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations

and/or the Acquired Rights Directive will apply. The Authority and the Charity further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Charity and the Transferring Charity Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Charity Employee.

- 2.2 The Charity shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Charity Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Charity Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Charity and/or the Sub-contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Charity shall indemnify the Authority and/or the Replacement Service Provider and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Charity or any Sub-contractor in respect of any Transferring Charity Employee (or, where applicable any employee representative as defined in the Employment Regulations) of any Transferring Charity Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Charity or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Charity Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Charity Employees which the Charity or any Sub-contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Charity Employees arising from or connected with any failure by the Charity or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Charity Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Charity Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Charity to the Authority and/or Replacement Service Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Charity or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Charity Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Charity or any Sub-contractor other than a Transferring Charity Employee for whom it is alleged the Authority and/or the Replacement Service Provider and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Charity Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Charity Employee relating to any act or omission of the Charity or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Service Provider to comply with regulation 13(4) of the Employment Regulations.

- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Charity Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Service Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Charity Employee claims, or it is determined in relation to any person who is not a Transferring Charity Employee, that his/her contract of employment has been transferred from the Charity or any Sub-contractor to the Replacement Service Provider and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- (a) the Authority shall procure that the Replacement Service Provider shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Charity; and
 - (b) the Charity may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Service Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Charity or a Sub-contractor, the Authority shall procure that the Replacement Service Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or

- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Service Provider and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 2.8 Subject to the Replacement Service Provider and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Charity shall indemnify the Replacement Service Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Service Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:

- (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Service Provider and/or Replacement Sub-contractor to the Charity within 6 months of the Service Transfer Date.

- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Charity or any Sub-contractor nor dismissed by the Replacement Service Provider and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Charity Employee and the Replacement Service Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 2.11 The Charity shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Charity Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and all such sums due as a result of and Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Charity and/or any Sub-contractor; and
 - (b) the Replacement Service Provider and/or the Replacement Sub-contractor.
- 2.12 The Charity shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Service Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Service Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Service Provider and/or Replacement Sub-contractor, shall promptly provide to the Charity and each Sub-contractor in writing such information as is necessary to enable the Charity and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Service Provider indemnifies the Charity on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Service Provider and/or Replacement Sub-contractor in respect of each Transferring Charity Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Charity Employee);
 - (b) the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Charity Employees; and/or

- (ii) any custom or practice in respect of any Transferring Charity Employees which the Replacement Service Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Charity Employees arising from or connected with any failure by the Replacement Service Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Service Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Charity Employees on or after their transfer to the Replacement Service Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Charity Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Service Provider or Replacement Sub-contractor to, or in respect of, any Transferring Charity Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Charity in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Charity Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Charity Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Charity or Sub-contractor, to the Replacement Service Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- (g) a failure of the Replacement Service Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Charity Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Charity Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Charity Employee relating to any act or omission of the Replacement Service Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Charity and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Charity and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

3 PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part D, where in this Part D the Authority accepts an obligation to procure that a Replacement Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Replacement Service Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Replacement Service Provider does or does not act accordingly.

SCHEDULE 10: SECURITY AND PROTECTION OF INFORMATION

1 SECURITY REQUIREMENTS

- 1.1 The Charity shall comply with the Security Policy as amended (and agreed between the Parties) from time to time.
- 1.2 If the Charity believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Authority. In doing so, the Charity must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be subject to the Variation Procedure.
- 1.3 Until and/or unless a change to the Contract Charges is agreed by the Authority pursuant to the Variation Procedure the Charity shall continue to provide the Services in accordance with its existing obligations.

2 PROTECTION OF AUTHORITY DATA

- 2.1 The Charity shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 2.2 The Charity shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Charity of its obligations under this Contract or as otherwise Approved by the Authority.
- 2.3 To the extent that the Authority Data is held and/or Processed by the Charity, the Charity shall supply that Authority Data to the Authority as requested by the Authority and in the format (if any) specified by the Authority and in any event as specified by the Authority from time to time in writing.
- 2.4 The Charity shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 2.5 The Charity shall ensure that any system on which the Charity holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 2.6 If at any time the Charity suspects or has reason to believe that the Authority Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Charity shall notify the Authority immediately and inform the Authority of the remedial action the Charity proposes to take.
- 2.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Authority may itself restore or procure the restoration of Authority Data, to the extent required by the Authority in its absolute discretion and shall be repaid by the Charity any reasonable expenses incurred in doing so.

3 CONFIDENTIALITY

- 3.1 For the purposes of this Paragraph 3, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 3.2 Except to the extent set out in this Paragraph 3 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 3.2.1 treat the Disclosing Party's Confidential Information as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 3.2.2 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract.
- 3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 3.3.1 where disclosure of the Confidential Information is required by Law, provided that Paragraph 5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs; or
- 3.3.2 the need for such disclosure arises out of or in connection with:
- (a) any legal challenge or potential legal challenge against the Authority or the Charity arising out of or in connection with this Contract;
- (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
- (c) the conduct of a Central Government Body review in respect of this Contract.
- 3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 3.5 Subject to Paragraphs 3.2 and 3.7, the Charity may only disclose the Confidential Information of the Authority on a confidential basis to:

- 3.5.1 Charity Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Charity's obligations under this Contract; and
- 3.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 3.6 Where the Charity discloses Confidential Information of the Authority pursuant to Paragraph 3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 3.7 The Authority may disclose the Confidential Information of the Charity:
 - 3.7.1 to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - 3.7.2 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - 3.7.3 to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Paragraph 3.

- 3.8 Nothing in this Paragraph 3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 3.9 In the event that the Charity fails to comply with Paragraphs 3.2 to 3.6, the Authority reserves the right to terminate this Contract for material Default.

4 TRANSPARENCY

- 4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Charity to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 4.2 Notwithstanding any other provision of this Contract, the Charity hereby gives his consent for the Authority to publish this Contract in its entirety (but with

any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.

- 4.3 The Charity shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

5 FREEDOM OF INFORMATION

- 5.1 The Charity acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall:

5.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;

5.1.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

5.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

5.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

- 5.2 The Charity acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (without consulting or obtaining consent from the Charity. The Authority shall take reasonable steps to notify the Charity of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

6 PROTECTION OF PERSONAL DATA

- 6.1 The Charity shall:

6.1.1 Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Contract;

6.1.2 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction,

or damage to the Personal Data, including the measures as are set out in Paragraphs 1 (Security Requirements) and 2 (Protection of Authority Data);

- 6.1.3 not disclose or transfer the Personal Data to any third party or Charity Personnel unless necessary for the provision of the Services
- 6.1.4 take reasonable steps to ensure the reliability and integrity of any Charity Personnel who have access to the Personal Data and ensure that the Charity Personnel:
 - (a) are aware of and comply with the Charity's duties under this Paragraphs 6.1 and 1 (Security Requirements), 2 (Protection of Authority Data) and 3 (Confidentiality);
 - (b) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless permitted by this Contract; and
 - (c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- 6.1.5 notify the Authority within five (5) Working Days if it receives:
 - (a) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (b) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (c) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- 6.1.6 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Paragraph 6.1.5, including by promptly providing:
 - (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

- (c) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- 6.1.7 if requested by the Authority, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Paragraph 6.1 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 6.2 The Charity shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “**Restricted Countries**”).

The Charity shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority’s obligations under the DPA to the extent the Charity is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

SCHEDULE 11 EXIT MANAGEMENT

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Charitable Assets"	means those Charity Assets transferred to the Charity from third parties during the Contract Period strictly by virtue of the Charity's capacity as a Charity for the purpose of achieving the Charity's Objects;
"Exclusive Assets"	means those Charity Assets (excluding Charitable Assets) used by the Charity or a Sub-Contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.3 of this Schedule for managing the Parties' respective obligations under this Schedule;
"Net Book Value"	means the net book value of the relevant Charity Asset(s) calculated in accordance with the depreciation policy of the Charity set out in the letter in the agreed form from the Charity to the Authority of even date with this Contract;
"Non-Exclusive Assets"	means those Assets (if any) which are used by the Charity or a Sub-Contractor in connection with the Services but which are also used by the Charity or Sub-Contractor for other purposes;
"Registers"	means the register referred to in paragraph 3.1 of this Schedule;
"Termination Assistance"	means the activities to be performed by the Charity pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for

which the Charity is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule;

"Transferable Assets"

means those of the Exclusive Assets which are capable of legal transfer to the Authority;

"Transferable Contracts"

means the Sub-Contracts, licences for Charity's Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Service Provider to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;

"Transferring Assets"

has the meaning given to it in paragraph 9.2.1 of this Schedule;

"Transferring Contracts"

has the meaning given to it in paragraph 9.2.3 of this Schedule.

2 INTRODUCTION

- 2.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Charity to the Authority leading up to and covering the Expiry Date and the transfer of service provision to the Authority and/or a Replacement Service Provider.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Charity to the Authority and/or a Replacement Service Provider at the Expiry Date.

3 OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT

- 3.1 During the Contract Period, the Charity shall:
 - 3.1.1 create and maintain a Register of all Charity Assets
 - 3.1.2 at all times keep the Registers up to date, in particular in the event that Charity Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.
- 3.2 The Charity shall (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party IPR supplied by third parties and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Service Provider upon the Charity ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.

- 3.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule. The Charity's Exit Manager shall be responsible for ensuring that the Charity and its employees, agents and Sub-Contractors comply with this Schedule. The Charity shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Charity as are reasonably necessary to enable the Charity to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

4 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point during the Contract Period, the Charity shall provide to the Authority and/or its potential Replacement Service Provider (subject to the potential Replacement Service Provider entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Service Provider undertaking due diligence:
- 4.1.1 details of the Service(s);
 - 4.1.2 a copy of the Registers, updated by the Charity up to the date of delivery of such Registers;
 - 4.1.3 an inventory of Authority Data in the Charity's possession or control;
 - 4.1.4 an inventory of the Charitable Assets
 - 4.1.5 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 4.1.6 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 4.1.7 all information relating to Transferring Charity Employees required to be provided by the Charity under this Contract; and
 - 4.1.8 such other material and information as the Authority shall reasonably require,
- (together, the “**Exit Information**”).
- 4.2 The Charity acknowledges that the Authority may disclose the Charity's Confidential Information to an actual or prospective Replacement Service Provider or any third party to whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of

this Schedule disclose any Charity's Confidential Information which is information relating to the Charity's or its Sub-Contractors' prices or costs).

4.3 The Charity shall:

4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and

4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

4.4 The Charity may charge the Authority for its reasonable additional costs to the extent the Authority requests more than two (2) updates in any six (6) month period.

4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Charity shall be such as would be reasonably necessary to enable a third party to:

4.5.1 prepare an informed offer for those Services; and

4.5.2 not be disadvantaged in any subsequent procurement process compared to the Charity (if the Charity is invited to participate).

5 EXIT PLAN

5.1 The Charity shall, at least twelve (12) months prior to the Expiry Date (or as soon as reasonably practicable), deliver to the Authority an Exit Plan which:

5.1.1 sets out the Charity's proposed methodology for achieving an orderly transition of the Services from the Charity to the Authority and/or its Replacement Service Provider on the expiry or termination of this Contract;

5.1.2 complies with the requirements set out in paragraph 5.3 of this Schedule;

5.1.3 details which of the Charity Assets are Charitable Assets;

5.1.4 is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:

- 5.3.1 how the Exit Information is obtained;
- 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
- 5.3.3 the management structure to be employed during the Termination Assistance Period;
- 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
- 5.3.5 how the Services will transfer to the Replacement Service Provider and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Charity or its Sub-Contractors (where applicable);
- 5.3.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Service Provider upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Charity agrees that all assets and contracts used by the Charity in connection with the provision of the Services will be available for such transfer);
- 5.3.7 proposals for the training of key members of the Replacement Service Provider's personnel in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
- 5.3.8 proposals for providing the Authority or a Replacement Service Provider copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Charity; and
 - (b) relating to the use and operation of the Services;
- 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Charity in connection with the performance of the supply of the Services;
- 5.3.10 proposals for the identification and return of all Authority Property in the possession of and/or control of the Charity or any third party (including any Sub-Contractor);
- 5.3.11 proposals for the disposal of any redundant Services and materials;

- 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Service Provider for Staffing Information pursuant to Schedule 9 (Staff Transfer);
- 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Charity to the Replacement Service Provider and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Service Provider in order to effect an orderly handover of the provision of the Services.

6 TERMINATION ASSISTANCE

- 6.1 The Authority shall be entitled to require the provision of Termination Assistance during the Contract Period by giving written notice to the Charity (a "**Termination Assistance Notice**") at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
 - 6.1.1 the date from which Termination Assistance is required;
 - 6.1.2 the nature of the Termination Assistance required; and
 - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Charity ceases to provide the Services.
- 6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Charity ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Charity to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Charity to such effect.

7 TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Charity shall:
 - 7.1.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;

- 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Service Provider;
 - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority;
 - 7.1.4 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 7.2 Without prejudice to the Charity's obligations under paragraph 7.1.3 of this Schedule, if it is not possible for the Charity to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority, any additional costs incurred by the Charity in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

8 TERMINATION OBLIGATIONS

- 8.1 The Charity shall comply with all of its obligations contained in the Exit Plan.
- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Charity's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Charity shall:
 - 8.2.1 cease to use the Authority Data;
 - 8.2.2 provide the Authority and/or the Replacement Service Provider with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Charity after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - 8.2.4 return to the Authority such of the following as is in the Charity's possession or control:
 - (a) all copies of any software licensed by the Authority to the Charity under this Contract;
 - (b) all materials created by the Charity under this Contract in which the IPRs are owned by the Authority;

- (c) any parts of the equipment which belongs to the Authority;
- (d) any items that have been on-charged to the Authority, such as consumables; and
- (e) all Authority Property issued to the Charity. Such Authority Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
- (f) any sums prepaid by the Authority in respect of Services not Delivered by the Expiry Date;

8.2.5 vacate the Parks ;

8.2.6 remove the Charity Equipment together with any other materials used by the Charity to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Charity is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Charity and/or any Charity Personnel;

8.2.7 provide access during normal working hours to the Authority and/or the Replacement Service Provider for up to twelve (12) months after expiry or termination to:

- (a) such information relating to the Services as remains in the possession or control of the Charity; and
- (b) such members of the Charity Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Charity, provided that the Authority and/or the Replacement Service Provider shall pay the reasonable costs of the Charity actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Charity's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Charity in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9 ASSETS AND SUB-CONTRACTS

- 9.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Charity shall not, without the Authority's prior written consent:
- 9.1.1 terminate, enter into or vary any Sub-Contract;
 - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Charity Assets or acquire any new Charity Assets; or
 - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Charity pursuant to paragraph 7.1.4 of this Schedule, the Authority shall provide written notice to the Charity setting out:
- 9.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Service Provider ("**Transferring Assets**");
 - 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
 - the Authority and/or the Replacement Service Provider requires the continued use of; and
 - 9.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Service Provider (the "**Transferring Contracts**"),
- 9.3 in order for the Authority and/or its Replacement Service Provider to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Service Provider, the Charity shall provide all reasonable assistance to the Authority and/or its Replacement Service Provider to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Service Provider requires to provide the Services or the Replacement Services.
- 9.4 With effect from the expiry of the Termination Assistance Period, the Charity shall sell the Transferring Assets to the Authority and/or its nominated Replacement Service Provider for a consideration equal to their Net Book Value, except where:

- 9.4.1 a Termination Payment is payable by the Authority to the Charity, in which case, payment for such Assets shall be included within the Termination Payment; or
 - 9.4.2 the cost of the Transferring Asset has been partially or fully paid for through the Contract Charges at the expiry Date, in which case the Authority shall pay the Charity the Net Book Value of the Transferring Asset less the amount already paid through the Contract Charges.
- 9.5 Risk in the Transferring Assets shall pass to the Authority or the Replacement Service Provider (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Service Provider (as appropriate) on payment for the same.
- 9.6 Where the Charity is notified in accordance with paragraph 9.2.2 of this Schedule that the Authority and/or the Replacement Service Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets or Charitable Assets, the Charity shall as soon as reasonably practicable:
- 9.6.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Service Provider to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 9.6.2 procure a suitable alternative to such assets and the Authority or the Replacement Service Provider shall bear the reasonable proven costs of procuring the same.
- 9.7 The Charity shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Service Provider of the Transferring Contracts. The Charity shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 9.8 The Authority shall:
- 9.8.1 accept assignments from the Charity or join with the Charity in procuring a novation of each Transferring Contract; and
 - 9.8.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Service Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Service Provider does the same.
- 9.9 The Charity shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Service Provider has been effected.

- 9.10 The Charity shall indemnify the Authority (and/or the Replacement Service Provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Service Provider) pursuant to paragraph 9.7 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10 CHARITY PERSONNEL

- 10.1 The Authority and Charity agree and acknowledge that in the event of the Charity ceasing to provide the Services or part of them for any reason, Schedule 9 (Staff Transfer) shall apply.
- 10.2 The Charity shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Service Provider.
- 10.3 During the Termination Assistance Period, the Charity shall give the Authority and/or the Replacement Service Provider reasonable access to the Charity's personnel to present the case for transferring their employment to the Authority and/or the Replacement Service Provider.
- 10.4 The Charity shall immediately notify the Authority or, at the direction of the Authority, the Replacement Service Provider of any period of notice given by the Charity or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Charity shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Service Provider, unless approval has been obtained from the Customer which shall not be unreasonably withheld.

11 CHARGES

- 11.1 Except as otherwise expressly specified in this Contract, the Charity shall not make any charges for the services provided by the Charity pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Charity in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

12 APPORTIONMENTS

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between

the Authority and the Charity and/or the Replacement Service Provider and the Charity (as applicable) as follows:

- 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 12.1.2 the Authority shall be responsible for (or shall procure that the Replacement Service Provider shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 12.1.3 the Charity shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Service Provider shall pay) any monies due under paragraph 12.1 of this Schedule as soon as reasonably practicable.

SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE

1 NEGOTIATION PROCEDURE

- 1.1 If a Dispute arises then first:
 - 1.1.1 the representative of the Authority and the Charity Representative shall attempt in good faith to resolve the Dispute; and
 - 1.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.
- 1.2 The Dispute Notice shall set out:
 - 1.2.1 the material particulars of the Dispute; and
 - 1.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen.
- 1.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 1.4 The Parties shall seek to resolve Disputes as follows:
 - 1.4.1 first by negotiation between a Senior civil servant at the Department for Culture, Media and Sport and an executive director of the Charity;
 - 1.4.2 then, if the Dispute has not been resolved within twenty (20) Working Days, by negotiation between the a senior civil servant at Permanent Secretary level at the Department for Culture, Media and Sport and the CEO of the Charity; and
 - 1.4.3 then, if the Dispute has not been resolved within twenty (20) Working Days, by escalation to the Chairperson of the Charity.
- 1.5 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

2 MEDIATION

- 2.1 If the dispute cannot be resolved by the Parties pursuant to paragraph 1 above, the Parties shall refer it to mediation pursuant to the procedure set out in paragraph 2.3 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Charity does not agree to mediation.
- 2.2 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or

arbitration) and the Charity and its Personnel shall comply fully with the requirements of the Contract at all times.

2.3 The procedure for mediation and consequential provisions relating to mediation are as follows:

2.3.1 a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to Centre for Effective Dispute Resolution to appoint a Mediator.

2.3.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

2.3.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

2.3.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

2.3.5 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in paragraph 3.

3 ARBITRATION

3.1 Subject to paragraph 2, the Parties shall not institute court proceedings until the procedures set out in paragraphs 1 and 2 have been completed save that:

3.1.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Charity requiring the dispute to be referred to and resolved by arbitration in accordance with paragraph 3.2.

3.1.2 if the Charity intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the

Charity requiring the dispute to be referred to and resolved by arbitration in accordance with paragraph 3.2.

3.1.3 the Charity may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with paragraph 3.2, to which the Authority may consent as it sees fit.

3.2 In the event that any arbitration proceedings are commenced pursuant to paragraph 3.1:

3.2.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

3.2.2 the Authority shall give a written notice of arbitration to the Charity (the “**Arbitration Notice**”) stating:

(a) that the dispute is referred to arbitration; and

(b) providing details of the issues to be resolved;

3.2.3 (the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

3.2.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

3.2.5 if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

3.2.6 the arbitration proceedings shall take place in London and in the English language; and

3.2.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

3.2.8

4 CONDUCT OF THIRD PARTY CLAIMS

4.1 In the event of a Third Party Claim, the Authority and the Charity shall as soon as reasonably practicable, give written notice of the Third Party Claim to the other Party, specifying in reasonable detail the nature of the claim, and the Charity shall:

- 4.1.1 keep the Authority reasonably informed of the progress of the Third Party Claim and of any material developments in relation to the Third Party Claim;
 - 4.1.2 if requested by the Authority, provide to the Authority (at the Authority's expense) copies of any material correspondence or other documents relating to the Third Party Claim (subject to legal professional privilege and any obligations of confidence that are binding on the Charity or any Charity Subsidiary);
 - 4.1.3 use all reasonable endeavours to consult with the Authority regarding the conduct of the Third Party Claim;
 - 4.1.4 take such action as the Authority may reasonably request in writing to avoid, dispute, resist, mitigate, compromise or defend the Third Party Claim and to appeal against any judgment given in respect of it;
 - 4.1.5 if required by the Authority in writing, delegate the conduct of any legal proceedings in respect of the Third Party Claim to the Authority (Proceedings). For this purpose, the Charity shall retain such firm of solicitors as is selected by the Authority to proceed on behalf of the Charity, in relation to the Proceedings in accordance with the instructions of the Authority, and the Charity shall give such information and assistance as the Authority or the appointed solicitors may reasonably require in connection with the conduct of the Proceedings.
- 4.2 The Authority shall not be liable for a claim under this Contract unless notice in writing summarising the nature of the relevant claim (in so far as it is known to the Charity) and, as far as is reasonably practicable, the amount claimed, has been given by or on behalf of the Charity to the Authority prior to the expiry of the period of 12 months commencing on the Commencement Date and the Authority shall have no liability in respect of a claim under this Contract if and to the extent that such claim is based upon a contingent liability unless and until such liability becomes an actual liability.
- 4.3 Any Third Party Claim or other claim against the Authority notified in accordance with paragraph 4.1 shall (if not previously satisfied, settled or withdrawn) be deemed to have been irrevocably withdrawn 6 months after the date on which notice of the relevant claim was given (and no new claim under this Contract may be made in respect of the same facts) unless, on or before that date, legal proceedings have been issued and served in respect of the relevant claim.
- 4.4 The Charity shall not be entitled to make a claim if and to the extent that the facts, matters, events or circumstances giving rise to the claim are within the actual, constructive or imputed knowledge of the Charity, its agents or advisers at the date of this Contract.

- 4.5 Subject to paragraph 4.5, the Charity shall not (and shall procure that no Charity Subsidiary shall) agree any compromise or settlement, or make any payment in relation to, a Third Party Claim without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed, provided that nothing in this clause shall prevent the Charity from agreeing (or permitting to be agreed) any compromise or settlement, or from making any payment in respect of a Third Party Claim if the Charity acting reasonably considers that a failure to do so would be materially prejudicial to its interests.
- 4.6 The provisions of paragraph 4.1 to 4.4 shall not apply in relation to a Third Party Claim if and to the extent that they would render any policy of insurance maintained by or available to the Charity, or any Charity Subsidiary void or voidable, or entitle the relevant insurer to repudiate or rescind any such policy in whole or in part, or in the event that a relevant insurer exercises its right to take over conduct of the Third Party Claim.
- 4.7 The Authority shall have no liability in respect of any claim under this Contract to the extent that the liability pursuant to the relevant claim arises or is increased as a result of the failure by the Charity or any Charity Subsidiary to act in accordance with any reasonable request or direction given by the Authority.
- 4.8 Neither the Charity nor any Charity Subsidiary shall be entitled to recover damages, or obtain payment, reimbursement, restitution or indemnity more than once in respect of the same loss, shortfall, damage, deficiency, breach or other event or circumstance.

SCHEDULE 13: INITIAL AUTHORISATION

DEREGULATION AND CONTRACTING OUT ACT 1994

AUTHORISATION FOR THE ROYAL PARKS LIMITED TO EXERCISE FUNCTIONS OF THE SECRETARY OF STATE IN RELATION TO THE ROYAL PARKS

WHEREAS:

- A. Part II of the Deregulation and Contracting Out Act 1994 (“1994 Act”) allows, if a Minister by order so provides, certain statutory functions to be exercised by, or by employees of, such person as may be authorised in that behalf by the Minister whose function it is.
- B. Pursuant to Part II of the 1994 Act, the Secretary of State has made the Contracting Out (Functions in relation to the Management of Crown Lands) Order 2003 (SI 2003/1908) and the Contracting Out (Functions relating to the Royal Parks) Order 2016 (SI 2016/1039) (the “Contracting Out Orders”).
- C. Under the Contracting Out Orders, the Secretary of State has provided that certain functions of the Secretary of State may be exercised by a person, or by employees of such person, as may be authorised in that behalf by the Secretary of State. Those functions are listed and defined below as the Functions.
- D. The Royal Parks Limited is a company limited by guarantee registered in England and Wales (under company number 10016100, and registered as a Charity under registration number 1172042) whose registered office is at The Old Police House, Hyde Park, London W2 2UH (“the Charity”).
- E. The Secretary of State and the Charity propose to execute a contract on or about the date of this authorisation, under which the Charity will carry out services in relation to the Royal Parks for the Secretary of State (“the Contract”).
- F. Pursuant to the Contracting Out Orders, the Secretary of State wishes to authorise the Charity or its employees to carry out the Functions subject to the terms of the Contract or any other agreement from time to time in place between the Secretary of State and the Charity for the provision of services in relation to the Royal Parks.

FUNCTIONS:

1. The “Functions” means the functions now vested in the Secretary of State, and referred to in the following provisions—
 - (a) section 22 of the Crown Lands Act 1851 (duties of Commissioners of Woods, &c. in relation to Royal Parks, &c., and under the Acts in Schedule, vested in Commissioners of Works), in relation to—
 - (i) Saint James’s Park;

- (ii) Hyde Park;
- (iii) Green Park;
- (iv) Kensington Gardens;
- (v) Regent's Park;
- (vi) Primrose Hill;
- (vii) Greenwich Park;
- (viii) Richmond Park; and
- (ix) Bushy Park.

(b) section 23 of the Crown Lands Act 1851 (powers as to parts of the parks preserved to Commissioners of Woods &c. under this Act);

(c) sections 45 and 48 of the Burial Act 1852 (which conferred certain functions in relation to Brompton Cemetery on the Commissioners of Works);

(d) section 10 of the Parks Regulation Act 1872 (publication of regulations);

(e) section 1 of the Roosevelt Memorial Act 1946 (erection of statue and laying out of garden);

(f) section 17(1) of the Park Lane Improvement Act 1958 (certain land to become part of Hyde Park);

(g) sections 7(1), (2) and (3) of the Crown Estate Act 1961 (powers of Minister of Works in Regent's Park);

(h) sections 5(1), (3), (5), (6) and (7) of the Royal Parks (Trading) Act 2000 (retention and disposal);

(i) section 147 of the Police Reform and Social Responsibility Act 2011 (authorisation for operation of amplified noise equipment);

(j) the following provisions of the Royal Parks and Other Open Spaces Regulations 1997, other than in relation to The Natural History Museum Gardens; Hampton Court Gardens, Green and Park; and Tower Gardens—

- (i) regulation 2 (restriction on use of a park);
- (ii) regulation 3(4), (5)(b), (9), (12)(a) and (13) (acts prohibited in a park);
- (iii) regulation 3A(3)(c) (acts prohibited in designated parks);
- (iv) regulation 4 (Acts in a Park for which written permission is required); and
- (v) paragraph 2 of Part 1 of Schedule 2 (the driving and riding of vehicles on a park road).

(k) regulation 2 (interpretation) of the Hyde Park and The Regent’s Park (Vehicle Parking) Regulations 1995, in the definitions of “official notice”, “parking place”, “parking permit” and “parking ticket”, and regulation 7(2) (excess charge) of those Regulations; and

(l) regulation 2 (Interpretation) of the Greenwich Park (Vehicle Parking) Regulations 2000, in the definitions of “official notice”, “parking place”, “parking permit” and “parking ticket”, and regulation 6(2) (excess charge) of those Regulations.

AUTHORISATION

2. Pursuant to article 2 of the Contracting Out (Functions in relation to the Management of Crown Lands) Order 2003 and article 3 of the Contracting Out (Functions relating to the Royal Parks) Order 2016, the Secretary of State **HEREBY AUTHORISES** the Charity or its employees to exercise the Functions subject to the terms of the Contract or any other agreement from time to time in place between the Secretary of State and the Charity for the provision of services in relation to the Royal Parks.
3. This authorisation shall have effect from the date of signature and continue for a period of ten years unless otherwise terminated by the Secretary of State.

DATE: 15th March 2017

SIGNED:

Tracey Crouch

TRACEY CROUCH

**Parliamentary Under Secretary of State for Sport, Tourism and Heritage
Department for Culture, Media and Sport**

SCHEDULE 14: RETAINED ASSETS

Assets and location

Brompton Cemetery

Western boundary walls and catacombs (not listed, but significant structure)

Other catacombs and colonnades (Grade II* listed)

Chelsea Pensioners Memorial (Grade II)

Guards Memorial - II

Fulham Road Gates - II

Bushy Park

Old Brew House – II & scheduled monument

Brew House Rebuild– II & scheduled monument

Diana (Arethusa) Fountain – I

Canning Green

Abraham Lincoln statue- II

George Canning statue - II

Green Park

Bomber Command Memorial (funding from the RAF Benevolent Fund)

Devonshire House Gates, Piccadilly - II

Canadian War Memorial fountain (Government of Canada funded)

(Commonwealth) Memorial Gates & Pillars, Constitution Hill
(inaugurated by HM the Queen, 2002)

Greenwich Park

Conduit Head - II

Conduit House - II*

St Mary's Gate and Piers - II

General Wolfe statue – II

Anglo-Saxon cemetery (scheduled monument)

Romano-Celtic temple (scheduled monument)

Grosvenor Square Gardens

FD Roosevelt statue - II (and fountains)

Eagle Squadrons memorial

II September memorial garden (GM messroom)

Hyde Park

Diana Memorial fountain

Diana the Huntress fountain

Prince of Wales Gates – II

Queen Elizabeth (the Queen Mother) Gates including gate lights

Victoria Gate – II

Abbey Spring Monument – II

Achilles statue – I

Boy & Dolphin fountain

Cavalry War Memorial – II*

Decimus Burton screen, Apsley Arch – I

Family of Man statue - II (By Epstein, also known as Rush of Green or the Pan statue)

Little Nell statue – II

Norwegian War Memorial

Holocaust Memorial

Hudson Memorial & Fountain - II

Serpentine Bridge^o – II

Dell Bridge - Serpentine dam (significant structure)

7/7 Memorial

Kensington Gardens

Albert Memorial - I

Queen Caroline's Temple (shelter) - II

Black Lion Gates and Piers - II

Coalbrookdale Gates and Piers – II

Queen's Gate and Piers – II*
Elfin Oak - II
Peter Pan statue – II*
Physical Energy statue – II
Jenner statue – II
Queen Anne's Alcove (shelter) – II*
Silver Thimble shelters, North and South – II
Speke monument – II
Two bears fountain (II)

Poet's Corner

George V statue - II

Regent's Park & Primrose Hill

Bronze Eagle monument – II
Chester Road Gates – II
Garden railings to Gloucester Gate – II
Hylas and the nymph statue – II
Jubilee Gates – II
Boy with Frog Fountain - II
Lost Bow statue – II
Mighty Hunter statue – II
Shepherdess statue – II

Macclesfield Bridge - II
St Mark's Bridge – II*
Primrose Hill Bridge – II
Clarence Bridge (significant structure)
Long Bridge (significant structure)
The Goetze (Triton) Fountain - II
Ready Money fountain - II
St John's garden pier & steps - II
Charlbert Street Bridge – II
York Bridge – II

Richmond Park

Richmond Gates & folly - II

St James's Park

Australia Piers – II

Bali Memorial (responsibility of the FCO)

Blue Bridge, St James's park lake (significant structure)

Boy Fountain - II

Queen Victoria Memorial - I

Canada, Marlborough, Queen Anne's Gates – II

Buckingham Gate and lodge – II* (this "lodge" is a gatekeeper's lodge)

Cook memorial – II

Duke of York Column - I

Duke of York steps - I

Lord Kitchener statue – II

Lord Roberts statue – II

Guards memorial - I

Guards gates & railings

George VI memorial – II

Queen Elizabeth the Queen Mother memorial

Queen Mary plaque (Marlborough House Wall)

Malay States Column

Newfoundland Column

Mountbatten statue

The Police Memorial (responsibility of the Police Memorial Trust)

Royal Naval Division Memorial, Horse Guards Parade - II* (responsibility of the Royal Navy)

South Africa Artillery Memorial – II

South Africa Pillar – I

Spanish (Cadiz) Mortar II

Viscount Wolsley statue – II

West Africa Pillar – I

Royal Marines Memorial, The Mall – II

Cascade Fountain – I

Round Del Retaining Walls – I (Also known as the Harbour Wall)

Swire Fountain

Tiffany Fountain

Turkish Gun (on loan from the Royal Armouries)

Galleon Lamps - II

Victoria Tower Gardens

Burghers of Calais statue – II

Emmeline Pankhurst statue – II

Buxton memorial – II

Spicer's memorial

Riverside Wall

ANNEX 1: NOTICE EXCLUDING THE PROVISIONS OF SECTIONS 24-28 OF THE LTA 1954

FORM OF NOTICE THAT SECTIONS 24 TO 28 OF THE LANDLORD AND TENANT ACT 1954 ARE NOT TO APPLY TO A BUSINESS TENANCY

To: **THE ROYAL PARKS LIMITED** which is a company limited by guarantee registered in England and Wales (under company number 10016100 and whose registered office is at The Old Police House, Hyde Park, London W2 2UH (“the Charity”).

From: **THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT** (“Authority”) whose office is at 100 Parliament Street, London SW1A 2BQ.

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

- You will have **no right** to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days’ notice, you will need to sign a “statutory” declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

ANNEX 2: STATUTORY DECLARATION OF THE CHARITY

AGREEMENT TO EXCLUDE SECURITY OF TENURE – STATUTORY DECLARATION BY TENANT

I, Nicole Claire Reed of . . . *Stone King UP* do solemnly and sincerely declare that –

1. **THE ROYAL PARKS LIMITED** (the “tenant”) proposes to enter into a tenancy of premises at the Royal Parks, gardens, recreation grounds, open spaces and other land listed in Schedule 8 to the Contract for Services (a form of which is annexed hereto) which are owned, controlled or occupied by the **SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT** (the “landlord”) for a term commencing on the provided for in the Contract for Services.
2. The tenant proposes to enter into an agreement with the **SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT** that the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to the tenancy.
3. The landlord has served on the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.
4. The tenant has read the notice referred to in paragraph 3 above and accepts the consequences of entering into the agreement referred to in paragraph 2 above.
5. I am duly authorised by the tenant to make this declaration.

To: **THE ROYAL PARKS LIMITED** of The Old Police House, Hyde Park, London W2 2UH

From: The **SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT** of 100 Parliament Street, London SW1A 2BQ.

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

- You will have **no right** to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the

rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days' notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

DECLARED at on *Kingsley Napley LLP on the 13th of March 2017*

Before me

Tanya Langridge

KINGSLEY NAPLEY
KNIGHTS QUARTER
14 ST. JOHN'S LANE
LONDON EC1M 4AJ

A solicitor empowered to administer oaths.

ANNEX 3: WAYS OF WORKING DOCUMENT