

DATED _____

(1) STRATFORD-ON-AVON DISTRICT COUNCIL

(2) [OPERATOR] LIMITED

**LEISURE OPERATING CONTRACT
IN RESPECT OF LEISURE CENTRES IN
THE DISTRICT OF STRATFORD-ON-AVON**

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THIS AGREEMENT is made on

BETWEEN:

- (1) **STRATFORD-ON-AVON DISTRICT COUNCIL** of **Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire CV37 6HX** (the "**Authority**"); and
- (2) **[OPERATOR] LIMITED** (company registration number [REDACTED]) whose registered office is at [REDACTED] (the "**Operator**").

(each a "**party**" and together the "**parties**")

BACKGROUND

- (A) By an advertisement dated 14 January 2020 in the Supplement to the Official Journal of the European Union, the Authority sought proposals for the provision of leisure and associated services at the Facilities.
- (B) On the basis of the Operator's response to the advertisement and a subsequent tender process, the Authority selected the Operator as its preferred supplier. The parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (C) The Authority is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure the delivery of the Services are Best Value functions.

Part 1 – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"1999 Act"	the Local Government Act 1999
"Adjudicator"	has the meaning given to it in Clause 70 (Adjudication)
"Adjusted Amount"	is an amount equal to one twelfth of the amount paid for the relevant Insurance Term in respect of the Contract Year preceding the Contract Year in which such Insurance Term is first unavailable (using a reasonable estimate of such amount where a precise figure is not available), (index linked from the first day of such preceding Contract Year) less any annual amount paid or payable by the Operator to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such term or condition pursuant to Clause 35.8 (Unavailability of Terms or Conditions)
"Adverse Rights"	any interests, rights, covenants, restrictions, stipulations, easements, customary or public rights, local land charges, mining or mineral rights, franchise, manorial rights and any other rights or interests in or over land, in each case whether or not registered that would, if exercised, prevent or disrupt the provision of the Services
"Affected Party"	has the meaning given to it in the definition of Force Majeure Event in this Clause 1.1 (Definitions and Interpretation)

"Affiliate"	in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006
"Agreed Form"	in relation to any document, the form of the document agreed between the parties and initialled by or on behalf of the parties for the purpose of identification
"Agreement"	this agreement (including its Schedules)
"Ancillary Documents"	the documents listed in Part 2 of Schedule 11 (Project Documents and Ancillary Documents)
"Annual Payment"	the annual fee payable under this Agreement calculated in accordance with Schedule 5 (Payment and Performance Monitoring System)
"Annual Service Report"	has the meaning given to it in Clause 23 (Reporting)
"Annual Service Report Date"	the date on which the Annual Service Report is required to be submitted pursuant to the Services Specification
"Approved Purposes"	has the meaning given to it in Clause 54.1 (Project Data)
"Asbestos"	has the meaning given to it in the Control of Asbestos Regulations 2012
"Asbestos Surveys"	the asbestos survey provided by the Authority to the Operator
"As-built Drawings"	drawings, technical information, models, operation and maintenance manuals and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of each Facility in sufficient detail to allow a competent person to understand all material elements of the construction of each Facility and to maintain, dismantle, reassemble, adjust and operate all plant, equipment, fixtures, structures and construction elements thereof
"Assets"	<p>all assets and rights to enable the Authority or a successor operator to own, operate and maintain each Facility in accordance with this Agreement including:</p> <ul style="list-style-type: none"> (a) any land or buildings (b) any equipment (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how) (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred) (e) any revenues and any other contractual rights and (f) any Intellectual Property Rights subject to and in accordance with Clause 54 (Intellectual Property)

but excluding the Sites, the Buildings, any equipment, assets and rights in respect of which the Authority is full legal and beneficial owner, and the Membership Data

"Authority Change"

means a Change requested by the Authority

"Authority Default"

one of the following events:

(a) a failure by the Authority to make payment(s) of an amount of money exceeding (in aggregate) [one month's Monthly Payment (from time to time)][£] that is due and payable by the Authority under this Agreement within twenty (20) Business Days of service of a formal written demand by the Operator, where the amount fell due and payable one (1) (or more) months prior to the date of service of the written demand;

(b) a breach by the Authority of its obligations under this Agreement which substantially frustrates or renders it impossible for the Operator to perform its obligations under this Agreement for a continuous period of [two (2)] months;

(c) a breach by the Authority of Clause 61.1 (Restrictions on Authority)

"Authority Existing Employee"

in relation to any service equivalent to any of the Services, all those persons employed by the Authority under a contract of employment (excluding to avoid doubt (without limitation) any person engaged by the Authority as an independent contractor or persons employed by any sub-contractor engaged by the Authority) who are wholly or substantially engaged in the provision of that service as at the Service Transfer Date

"Authority Insurances"

the insurances described at Part 1 Schedule 13 (Insurances)

"Authority Lifecycle Consents"

has the meaning given in Clause 14.29.1

"Authority Lifecycle Items"

those Lifecycle Assets at the Facilities which are identified as the Authority's responsibility in Appendix 7 (Lifecycle Replacement Responsibility Matrix) and Appendix 8 of the Services Specification

"Authority Lifecycle Items Instruction"

has the meaning given to it in Clause 14.30.2 (Authority Lifecycle Items)

"Authority Maintenance Costs"

means the Operator's reasonable and properly incurred costs in carrying out the maintenance works referred to in the Services Specification in accordance with the requirements of this Agreement

"Authority Policies"

the policies of the Authority being the Carbon Management Plan (or equivalent), the Safeguarding Policy for Vulnerable Adults and the Safeguarding and Child Protection Policy

"Authority Pricing Requirements"

the Authority's pricing requirements, as set out in paragraph 3.6 of the Services Specification

"Authority Related Party"	<p>(a) an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his office or employment and</p> <p>(b) any person visiting a Facility at the invitation (express or implied) of the Authority</p>
	but excluding in each case the Users, the Operator and any Operator Related Parties
"Authority's Representative"	the representative appointed by the Authority pursuant to Clause 16.1 (Representatives)
"Base Date"	means the date hereof
"Beckmann Rights"	any liability that passes to the Operator, any Future Operator or any Sub-Contractor under the Regulations and which relates to a claim or demand in respect of any Relevant Employees or any Returning Employee based directly or indirectly on the decision of the European Court of Justice in the cases of <i>Beckmann v Dynamco Whichloe MacFarlane Limited</i> [2002] or <i>Martin & Others v South Bank University</i> [2003] in respect of any right under or in connection with an occupational pension scheme which relates to any matter, right or claim otherwise than in relation to old age, invalidity or survivor's benefits under such a scheme
"BI Proceeds"	Business Interruption Insurance proceeds
"Building"	any building or other erection at any of the Sites
"Business Day"	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London
"Business Interruption Insurance"	has the meaning given to it in paragraph 2 of Part 2 of Schedule 13 (Insurances)
"Capital Expenditure"	any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time, International Financial Reporting Standards from time to time, or proper accounting practices for local authorities as defined by section 21(2) of the Local Government Act 2003 and Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003
"CDM Regulations"	the Construction (Design and Management) Regulations 2015
"Change"	means a change to the Services or additional works and/or Services that may be made under Schedule 22
"Change in Costs"	<p>in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses (excluding Loss of Revenue) or liabilities of the Operator and/or any Sub-Contractors (without double counting), including, as relevant, the following:</p> <p>(a) the reasonable costs of complying with the requirements of Clauses 28 (Compensation Events), 27 (Change in Law), 18.5 (Step-In without Operator Breach), 37 (Financial Adjustments) and the Change Protocol,</p>

including the reasonable costs of preparation of design and estimates

- (b) the costs of continued employment of, or making redundant, staff who are no longer required
- (c) the costs of employing additional staff
- (d) reasonable professional fees
- (e) the costs to the Operator of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Operator's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Annual Payment
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Operator (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement
- (g) operating costs, lifecycle costs, maintenance costs or replacement costs
- (h) Capital Expenditure
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy and
- (j) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis

"Change in Law"

the coming into effect after the date of this Agreement of:

- (a) Legislation, other than any Legislation which on the date of this Agreement has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper
 - (ii) in a Bill
 - (iii) in a draft statutory instrument or
 - (iv) as a proposal in the Official Journal of the European Communities
- (b) any Guidance or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent

"Change in Ownership"

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Operator

[and/or Holdco] [and/or []] (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends) and/or

	(b)	any other arrangements that have or may have or which result in the same effect as paragraph (a)
"Change in Revenue"		in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Operator and/or any Sub-Contractor save that any Loss of Revenue shall be calculated in accordance with Schedule 21 (Loss of Revenue)
"Change Protocol"		means the procedure set out in Schedule 22 (Change Protocol)
"Commencement Date"		1 July 2021
"Commercially Sensitive Information"		the subset of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 20 (Confidential Information) in each case for the period specified in the respective columns 2 of Parts 1 and 2 of Schedule 2
"Compensation Event"	(a)	the occurrence of a breach by the Authority of the following provisions: <ul style="list-style-type: none"> (i) Clause 7.8 (Compliance with Head Lease) (ii) Clause 8.5.4 (Site Matters) (iii) Clause 10.7 (Fossils and antiquities) (iv) Clause 14.4 (Surveys) (v) Clause 14.25.2 and/or Clause 14.29 (Authority Lifecycle Items) (vi) Clause 32.2 (Obligation on Parties) (vii) Clause 52.2 (Minimisation of Disruption) (viii) Schedule 7 (Review Procedure) and
	(b)	any other event or circumstance identified as a Compensation Event in this Agreement
"Confidential Information"	(a)	information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and includes information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all Personal Data (including special categories of personal data and personal data relating to actual or potential criminal offences and convictions) within the meaning of the Data Protection Legislation; and
	(b)	Commercially Sensitive Information

"Contamination"	all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour)
"Continuation Notice"	has the meaning given to it in Clause 30.5 (Notice to Continue)
"Continuous Improvement Duty"	the duty imposed on the Authority to secure continuous improvement in the exercise of the Authority's functions, having regard to a combination of economy, efficiency and effectiveness in relation to, inter alia, the Services, pursuant to the 1999 Act
"Contract Month"	any month in a Contract Year provided that: <ul style="list-style-type: none"> (a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs and (b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day
"Contract Period"	the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date
"Contract Year"	a period of twelve (12) months commencing on 1 July, provided that: <ul style="list-style-type: none"> (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the immediately following 30 June and (b) the final Contract Year shall be the period commencing on 1 July immediately preceding the last day of the Contract Period and ending on that day
"Controller"	has the meaning given in, and shall be interpreted in accordance with, the Data Protection Legislation
"COSHH"	the Control of Substances Hazardous to Health Regulations 2002
"CPI"	the index published in Table 1 of the monthly Statistical Bulletin "Consumer price indices" published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with Clause 70 (Dispute Resolution) of this Agreement
"Current Annual Payment"	means the aggregate Annual Payment that would have been payable in respect of the period following the commencement date of the Retendered Contract had this Agreement not terminated pursuant to Clause 40 (Termination on Operator Default) or Clause 42 (Termination on Corrupt Gifts and Fraud)

"Data Protection Legislation"

- (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data or marketing activities to which a party is subject, including the EU General Data Protection Regulation 2016/679 ("**GDPR**"), the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and
- (b) any code of practice or guidance published by a competent supervisory authority in relation to the Processing of Personal Data or marketing activities to which a party is subject, from time to time

"Data Subject"

has the meaning in, and shall be interpreted in accordance with, the Data Protection Legislation

"Deductible Cap"

subject to Clause 33.5.1, the sum of £[](index linked)

"Defects"

any defect in any of the Buildings, or any part of them, or anything installed in the Buildings attributable to:

- (a) defective design
- (b) defective workmanship or defective materials (which, for the avoidance of doubt, shall exclude Asbestos), plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of the Building
- (c) the use of materials in the construction of any Building which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of any such Building
- (d) defective installation of anything in or on the Buildings
- (e) defective preparation of the site on which the Building is constructed or
- (f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions

"Design Data"

all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Facilities in each case that is used by or on behalf of the Operator and/or its Sub-Contractors in connection with the provision of the Services or the performance of the Operator's obligations under this Agreement

"Directive"

the EC Transfers of Undertakings Directive 2001/23 as amended

"Direct Losses"

all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether

arising under statute, contract or at common law but excluding Indirect Losses

"Disclosed Data"	information relating to the Services disclosed to the Operator and/or its advisers before the date of this Agreement including: (a) [] (b) the data room located at [INSERT DETAILS] and (c) [others]
"Disclosed Title Matters"	the matters set out in Part 2 of Schedule 12 (Title Matters)
"Disputed Amount"	has the meaning given to it in Clause 36.10 (Disputed Amounts)
"Dispute Resolution Procedure"	the procedure for the resolution of disputes set out in Clause 70 (Dispute Resolution)
"DOTAS"	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
"EIRs"	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations
"Elections"	such local, regional or national elections or referenda that the Authority or its returning office is statutorily required to administer
"Emergency"	an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services
"Employee Costs"	all pay, benefits, PAYE payments/ contributions, national insurance contributions, pension contributions and other amounts (including, without limitation, all wages, holiday pay, bonuses, commission, premiums, and subscriptions) payable to or in respect of the employment or engagement of any person
"Employment Liabilities"	means all liabilities including, but not limited to, claims for redundancy payments, Beckmann Rights, pay including holiday pay, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for discrimination or claims for equal pay, and any other claims whether in tort (including negligence), contract or statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment

	made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations
"Equalities Legislation"	the Racial and Religious Hatred Act 2006, the Civil Partnership Act 2004, the Sex Discrimination (Gender Reassignment) Regulations 1999 the Gender Recognition Act 2004 the Employment Equality (Sex Discrimination) Regulations 2005 the Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008, the Equality Act 2006 and the Equality Act 2010
"Equality Requirements"	the requirements set out in Schedule 19 (Equality Requirements)
"Estimate"	has the meaning given to it in paragraph 2.5.1 of Part 1 of Schedule 22
"European Economic Area"	from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area
"Expiry Date"	30 June 2031
"Exit Plan"	the exit plan as developed between the parties in accordance with Clause 51
"Facilities"	the facilities listed in Schedule 3 (Facilities) being the buildings located on and consisting of the Sites and the other facilities at such Sites to be provided and/or maintained and serviced in accordance with this Agreement; and Facility shall be construed accordingly
"Fees Regulations"	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
"Final Warning Notice"	has the meaning given to it in Clause 41.2 (Final Notice)
"Five Year Maintenance Plan"	the five year maintenance plan provided by the Operator to the Authority in accordance with Clause 14.15 (Schedule of Programmed Maintenance)
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act
"FOIA Code"	has the meaning given to it in Clause 57.2.7 (Freedom of Information)
"Force Majeure Event"	the occurrence after the date of this Agreement of: <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism or

- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act by the Operator or its Sub-Contractors or any breach by the Operator of the terms of this Agreement or
- (c) pressure waves caused by devices travelling at supersonic speeds

which directly causes either party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement

"Forward Funded Amount"	[]
"Fund"	the [] Pension Fund
"Future Operator"	means any successor provider of all or part of the Service following the Operator ceasing to be responsible therefor (whether pursuant to a Change, termination, expiry or otherwise)
"Goods"	all goods and equipment used in the provision of the Services
"Good Industry Practice"	that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator or facilities management contractor (engaged in the same type of undertaking as that of the Operator) or any sub-contractor under the same or similar circumstances
"Guidance"	any applicable guidance or directions with which the Operator is bound to comply
"Handback Requirements"	the requirement that the Facilities have been maintained in accordance with the terms of this Agreement
"Head Lease"	the leases relating to the Sites to be granted by the Authority to the Operator as set out at Schedule 16 (Head Leases)
"Health and Safety File"	has the meaning given to it in the CDM Regulations
"Health and Safety Regime"	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, the Environment Act 1995, the Pollution Prevention and Control Act 1999 and any similar or analogous health, safety or environmental legislation in force from time to time
"Holdco"	[insert details of the Operator's one hundred per cent (100%) holding company if any]
"Holding Company"	has the meaning given to it in Section 1159 of the Companies Act 2006
"Indemnified Party"	has the meaning given to it in Clause 31.5 (Notification of Claims)
"Indemnifying Party"	has the meaning given to it in Clause 31.5 (Notification of Claims)
"Index"	means [RPI/CPI]

"Index-linked" or "Indexed"	has the meaning given to it in Clause 1.4
"Indirect Losses"	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of Revenue
"Information"	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form)
"Instalment Dates"	has the meaning given to it in Clause 50.3 (Instalments)
"Insurance Term"	means any terms and/or conditions required to be in a policy of insurance by Clause 32 (Operator Insurances) and/or Schedule 13 (Insurances) but excluding any risk
"Intellectual Property Rights"	any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Operator or any Operator Related Party for the purposes of providing the Services and/or otherwise for the purposes of this Agreement
"Investment Fund"	means the funding provided by the Authority to the Operator for capital projects as described in paragraph 2.5 of the Services Specification, and which is repayable by the Operator to the Authority on the terms specified herein.
"Irrecoverable VAT"	has the meaning given to it in Clause 27.7 (Payment of Irrecoverable VAT)
"Key Performance Indicators"	means the performance indicators listed in paragraph 2.11 of the Services Specification, as updated from time to time in accordance with Clause 23.7 (Annual Review)
"Legislation"	<p>any one or more of the following:</p> <ul style="list-style-type: none"> (a) any Act of Parliament; (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; (c) any exercise of the Royal Prerogative; and (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, <p>in each case in the United Kingdom</p>
"Leisure Operator's Base Trading Account or LOBTA"	the financial model included at Schedule 23 (LOBTA) and agreed between the parties prior to the date of this Agreement (as updated from time to time in accordance with this Agreement) for the purpose of, amongst other things, calculating the Annual Payment

"Leisure Services"	the services set out in the Services Specification other than the Maintenance Services
"Lifecycle Assets"	each item of building fabric, plant and machinery, furniture, fittings and equipment to be renewed or replaced during the Contract Period as identified in the Lifecycle Replacement Schedule within the Schedule of Programmed Maintenance (in the case of Operator Lifecycle Items) and/or as may be identified by the parties applying Good Industry Practice
"Lifecycle Profile"	the amounts profiled to be spent by the Operator on the replacement or renewal of Operator Lifecycle Items at each Facility as shown in the LOBTA [in row []] as at the Commencement Date as may be adjusted from time to time in accordance with this Agreement
"Lifecycle Replacement Schedule"	the detailed annual Lifecycle Replacement Schedule forming part of the Schedule of Programmed Maintenance, showing when the Operator Lifecycle Items will be renewed or replaced
"Local Authority"	a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to leisure services
"Losses"	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands
"Loss of Revenue"	the decrease in Revenue (whether of a one-off or recurring nature) arising as a direct result of a Loss of Revenue Event or Relevant Event calculated and paid in accordance with Schedule 21 (Loss of Revenue)
"Loss of Revenue Event"	an event occurring pursuant to one or more of the following: <ul style="list-style-type: none"> (a) Clause 17 (Emergencies) (b) Clause 18.5 (Step-In Without Operator Breach) or (c) Clause 30.5.1 (Termination on Force Majeure)
"Maintenance Services"	those services set out in Section 4 and Appendix 7 of the Services Specification
"Maintenance Works"	any works of maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with the Services Specification and Service Delivery Proposals (including, without limitation, the renewal or replacement of any plant and equipment) throughout the Contract Period
"Membership Data"	means the membership data referred to in paragraph 3.13.4 of the Services Specification
"Method Statement"	the Operator's method statements in relation to the Services as included in the Service Delivery Proposals

"Minimum Opening Hours"	the hours of required opening of the Facilities to Users as set out in paragraph 3.2 and Appendix 2 of the Services Specification
"Monthly Payment"	has the meaning given in Schedule 5 (Payment and Performance Monitoring System)
"Necessary Consents"	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Operator's obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party
"New Operator"	the person who has entered or who will enter into the Retendered Contract with the Authority following termination of this Agreement or the person who has entered or will enter into a new contract with the Authority following the expiry of this Agreement
"Notice of Adjudication"	has the meaning given to it in Clause 70.3 (Adjudication)
"Occasion of Tax Non-Compliance"	<p>(a) any tax return of the Operator submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Operator under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Operator was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Operator 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>
"Operating Manual"	has the meaning given to it in Clause 15.2.1 (Maintenance of Manual)
"Operator Change"	means a Change that is initiated by the Operator
"Operator Damage"	any damage to any Facility or Site caused by any omission, default or negligent act by the Operator or an Operator Related Party
"Operator Default"	<p>any one or more of the following:</p> <p>(a) a breach by the Operator of any of its obligations under this Agreement which materially and adversely affects the performance of the Services</p> <p>(b) a failure by the Operator to make payment(s) of an amount of money exceeding (in aggregate) [one month's Monthly Payment (from time to time)][£] that is due</p>

and payable by the Operator under this Agreement within twenty (20) Business Days of service of a formal written demand by the Authority, where the amount fell due and payable one (1) (or more) months prior to the date of service of the written demand;

- (c) a Persistent Breach occurs
- (d) a court makes an order that the Operator [or Holdco] be wound up or a resolution for a voluntary winding-up of the Operator [or Holdco] is passed
- (e) any receiver or receiver manager in respect of the Operator [or Holdco] is appointed or possession is taken by or on behalf of any creditor of any property of the Operator [or Holdco] that is the subject of a charge
- (f) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Operator [or Holdco]
- (g) an administration order is made or an administrator is appointed in respect of the Operator [or Holdco]
- (h) failure to comply with Clauses 61.2 and 61.3 (Restriction on the Operator) or Clause 62 (Change in Ownership)
- (i) in any [twelve (12) consecutive month] period the Operator has incurred [] or more Performance Adjustment Points
- (j) the Operator has incurred [] or more Performance Adjustment Points in the period since the Commencement Date
- (k) in each and every month of any [six (6)] month period the Operator has incurred [] or more Performance Adjustment Points
- (l) subject to Clause 35 (Risks that become Uninsurable) a breach by the Operator of its obligations to take out and maintain any of the Operator Insurances
- (m) the Operator committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by the Authority of its obligations under this Agreement) which results in the criminal investigation, prosecution and conviction of the Operator or any Operator Related Party or the Authority under the Health and Safety Regime (an **H&S Conviction**) provided that an H&S Conviction of an Operator Related Party or the Authority shall not constitute an Operator Default if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Services of each relevant Operator Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Operator Related Party of which that person is a director,

officer or employee) is terminated and a replacement is appointed by the Operator in accordance with Clauses 61.2 and 61.3 (Restriction on the Operator) provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of an Operator Related Party under this limb (m), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (n) the Operator has failed to implement or procure the implementation of measures to address an Occasion of Tax Non Compliance in accordance with Clause 36.21.2(a) or
- (o) the Operator has, at the date of this Agreement, been in one of the situations referred to in regulation 57(1) of The Public Contracts Regulations 2015 (S.I.2015/102), including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015 (S.I.2015/102) and should therefore have been excluded from the procurement proceedings

For the avoidance of doubt, paragraph (b) above includes a failure by the Operator to make any repayments in relation to the Investment Fund referred to in paragraph 2.5.5 of the Services Specification.

"Operator Insurances"

the insurances set out at Schedule 13 Part 2 (Insurances) and any insurances required by law

"Operator IPR"

any Intellectual Property Rights created by or on behalf of the Operator in respect of, in each case, their:

- (a) brand names, trademarks, trade names, designs, logos, domain names and name
- (b) know-how and business systems
- (c) quality management procedures and customer care programme
- (d) sales and customer retention products and processes
- (e) corporate policies and training documentation
- (f) intranet, integrated management system and supporting documentation and
- (g) Service Delivery Proposals

but excluding:

	(i) the Operating Manual
	(ii) any User or member database relevant to the Facilities and
	(iii) any booking system used at and in respect of the Facilities
"Operator Lifecycle Items"	those Lifecycle Assets at the Facilities which are not Authority Lifecycle Items
"Operator Notice of Change"	has the meaning given to it in paragraph 1 of Part 2 of Schedule 22
"Operator Physical Damage Policies"	has the meaning given to it in Clause 34.1 (Reinstatement and Change of Requirement after Insured Event)
"Operator Related Party"	<p>(a) an officer, servant or agent of the Operator, or any Affiliate of the Operator and any officer, servant or agent of such a person</p> <p>(b) any Sub-Contractor or other sub-contractor of the Operator of any tier and any of their officers, servants or agents; and</p> <p>(c) any person on or at any of the Facilities at the express or implied invitation of the Operator (other than an Authority Related Party or a User)</p>
"Operator Warranted Data"	the information relating to the Operator and its Affiliates contained in Part 2 of Schedule 10 (Data)
"Operator's Holding Company"	[] or such other person as shall guarantee the obligations of the Operator under this Agreement
"Operator's Representative"	the person to be appointed by the Operator pursuant to Clause 16.6 (Representatives)
"Option Period"	has the meaning given to it in Clause 35.4 (Consequences)
"Outstanding Work"	has the meaning given to it in Clause 52.4 (Maintenance Work)
"Parent Company Guarantee"	the guarantee of the Operator's Holding Company in the Agreed Form
"Payment and Performance Monitoring System"	means the payment and performance monitoring system set out in Schedule 5 (Payment and Performance Monitoring System)
"Payment Period"	each calendar month or (in the case of the first and final Payment Period) part thereof during the Contract Period
"Performance Adjustment Payments"	has the meaning given to it in the Payment and Performance Monitoring System
"Performance Adjustment Points"	has the meaning given to it in the Payment and Performance Monitoring System
"Performance Standards"	the performance standards for the Services as set out in paragraphs 3 and 4 of the Services Specification

"Persistent Breach"	a breach for which a Final Warning Notice has been issued which has continued for more than fourteen (14) days or recurred in three (3) or more months within the six (6) month period after the date on which such Final Warning Notice is served on the Operator
"Personal Data"	personal data as defined in the Data Protection Legislation which is supplied to the Operator by (or on behalf of) the Authority or obtained or otherwise Processed by (or on behalf of) the Operator in the course of performing or providing the Services and for the avoidance of doubt includes the Membership Data, any special categories of personal data and personal data relating to actual or potential criminal offences
"Prescribed Rate"	two per cent (2%) above the base rate from time to time of Lloyds Bank plc
"Processor"	has the definition in, and shall be interpreted in accordance with, the Data Protection Legislation
"Processing"	has the definition in, and shall be interpreted in accordance with, the Data Protection Legislation, and the terms "Process" and "Processing" shall be construed accordingly
"Profit Payment"	the projected loss of profit that would be suffered by the Operator as a result of termination of this Agreement pursuant to Clause 39 (Voluntary Termination by the Authority) or 43 (Termination on Authority Default) for the period of [] months from the date of termination or the period to the Expiry Date (whichever is shorter) (as shown at Schedule 23 (LOBTA)), subject to a cap of []
"Programmed Maintenance"	the maintenance work and lifecycle replacement which the Operator is to carry out in accordance with the Schedule of Programmed Maintenance which, for the avoidance of doubt shall only include Authority Lifecycle Items where required pursuant to an Authority Lifecycle Items Instruction
"Programmed Maintenance Information"	has the meaning given to it in Clause 14.11 (Schedule of Programmed Maintenance)
"Prohibited Act"	<p>(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:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(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 Agreement;</p> <p>(c) an offence:</p> <p>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</p>

	(ii) under Legislation or common law concerning fraudulent acts; or
	(iii) defrauding, attempting to defraud or conspiring to defraud the Authority or any other public body;
	(d) committing any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
	(e) 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
"Project Data"	<p>(a) all Design Data and</p> <p>(b) any other materials, documents or data acquired, brought into existence or used in relation to the Services or this Agreement</p> <p>in each case that is used by or on behalf of the Operator and/or its sub-contractors in connection with the provision of the Services or the performance of the Operator's obligations under this Agreement</p>
"Project Documents"	the documents listed in Part 1 of Schedule 11 (Project Documents and Ancillary Documents)
"Protected Characteristics"	has the meaning given to it in Part 2, Chapter 1 of the Equality Act 2010
"Qualification Criteria"	<p>the criteria that the Authority requires tenderers to meet as part of the Retendering Process, which (subject to compliance with the procurement regulations) shall be:</p> <p>(a) the Retendered Contract terms</p> <p>(b) tenderers should have the financial ability to deliver the Services for the price tendered</p> <p>(c) the tenderer is experienced in providing the Services or similar services</p> <p>(d) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services and</p> <p>any other tender criteria agreed by the Authority and the Operator</p>
"Qualifying Change in Law"	means a Change in Law which was not foreseeable at the date of this Agreement and which requires the Operator to incur Capital Expenditure in relation to the Facilities in order to perform its obligations under this Agreement
"Quest"	the UK Quality Scheme for Sport and Leisure of the same name (supported by, inter alia, Sport England) or any successor scheme thereto that is supported by Sport England (or its successors)
"Recipient"	has the meaning given to it in Clause 36.18 (VAT on Payments)

"Referral Notice"	has the meaning given to it in Clause 70.5 (Referral of the Dispute)
"Referring Party"	has the meaning given to it in Clause 70.3 (Adjudications)
"Relevant Authority"	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union
"Relevant Employees"	the employees who are the subject of a Relevant Transfer and any other Authority Existing Employees who have been offered employment in accordance with clause 59.2 of this Agreement and who accept such employment.
"Relevant Event"	an Authority Change, Qualifying Change in Law, Compensation Event or other matter as a result of which this Agreement provides for an adjustment to the Annual Payment in accordance with Clause 37 (Financial Adjustments)
"Relevant Payment"	has the meaning given to it in Clause 35.4 (Consequences)
"Relevant Requirements"	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"	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Operator is established;
"Relevant Transfer"	has the meaning given in Clause 59.1
"Relief Event"	<p>any of the following:</p> <ul style="list-style-type: none"> (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services (c) any accidental loss or damage to the Sites or any roads servicing them (d) any failure or shortage of power, fuel or transport (e) any blockade or embargo which does not constitute a Force Majeure Event or (f) any: <ul style="list-style-type: none"> (i) official or unofficial strike (ii) lockout (iii) go-slow or (iv) other dispute

generally affecting the facilities management industry or a significant sector of the local authority leisure management industry in the United Kingdom but not including industrial action specific to the Sites or industrial action which affects only the employees of the Operator or its Sub-Contractors

unless any of the events listed in paragraphs (a) to (f) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Operator or any of its Sub-Contractors

"Representative"	the Authority's Representative or the Operator's Representative (as appropriate)
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)
"Required Action"	has the meaning given to it in Clause 18.3 (Action by Authority)
"Required Standard"	has the meaning given to it in Clause 52.3.1 (Results of Survey)
"Responding Party"	has the meaning given to it in Clause 70.5 (Referral of the Dispute)
"Retail Prices Index" or "RPI"	means the Retail Prices Index (All Items) as published by the Office for National Statistics from time to time (the " Index "), or, failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
"Response"	has the meaning given to it in Clause 70.6 (Response to the Referral)
"Retendered Annual Payment"	has the meaning given to it in Clause 46.1.7 (Retendering Process)
"Retendered Contract"	<p>an agreement(s) entered into following the Retendering Process with a replacement operator on substantially similar terms and conditions as and which are no more onerous as regards the Operator than this Agreement and the Head Leases at the Termination Date, but with the following amendments:</p> <ul style="list-style-type: none"> (a) any accrued Performance Adjustment Points and/or warning notices issued pursuant to Clause 41 (Termination for Persistent Breach by the Operator) shall, for the purposes of termination only, and without prejudice to the application of Performance Adjustment Payments, be cancelled (b) the term of such agreements shall be equal to the term from the Termination Date to the Expiry Date <p>any other amendments which do not adversely affect the Operator</p>

"Retendering Costs"	the reasonable and proper costs of the Authority incurred in carrying out the Retendering Process
"Retendering Process"	shall have the meaning given in Clause 46 (Retendering Process)
"Retention Fund Account"	has the meaning given to it in Clause 52.5 (Retention Fund)
"Return Date"	has the meaning given to it in Clause 59.25
"Returning Employees"	those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the Return Date(s) whose employment transfers to the Authority or a Future Operator pursuant to TUPE.
"Revenue"	the revenue or income received by the Operator (or where relevant would have been received but for the occurrence of a Relevant Event or Loss of Revenue Event) from Users of the relevant Facility for the provision of the Leisure Services at the relevant Facility
"Review Procedure"	the procedure set out in Schedule 7 (Review Procedure)
"Schedule of Programmed Maintenance"	the Operator's annual programme for the maintenance of each Facility to satisfy the Services Specification which, for the avoidance of doubt, includes the Lifecycle Replacement Schedule
"Service Delivery Proposals"	the proposals for the method of providing the Services to satisfy the Services Specification set out in Schedule 2 (Service Delivery Proposals)
"Service Transfer Date"	the date on which responsibility for provision of (or procuring the provision by sub-contractors of) the Services in accordance with this Agreement transfers to the Operator
"Services"	the services required to satisfy the Services Specification and includes the carrying out of works to replace and/or renew Authority Lifecycle Items where such works are the responsibility of the Operator pursuant to Clause 14.30.3
"Services Media"	all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus
"Services Specification"	the specification contained in Schedule 1 (Services Specification)
"Shareholder"	any person from time to time holding share capital in the Operator [or Holdco]
"Site Conditions"	the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions
"Site Plans"	the plans of the Sites set out in Schedule 4 (Site Plans)
"Sites"	the area edged red on the relevant Site Plan for each Facility together with the Buildings and the service ducts and media for all utilities and services serving the Buildings

"Sport England"	means the Sport England (or its successors) of First Floor, 21 Bloomsbury Street, London WC1B 3HF
"Sport England Guidance"	means the guidance adopted and published by Sport England at the Commencement Date together with any changes in such guidance which were reasonably foreseeable at the Commencement Date
"Strategic Partnership Board"	has the meaning given in paragraph 2.6 of the Services Specification
"Strategic Priorities"	means the Authority's strategic objectives and strategic priorities as referred to in paragraph 2.2 of the Services Specification (and updated from time to time in accordance with this Agreement)
"Sub-Contractor"	means any person engaged by the Operator from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them). References to sub-contractors means sub-contractors (of any tier) of the Operator
"Sub-Contractor Breakage Costs"	<p>Losses that have been or will be reasonably and properly incurred by the Operator as a direct result of the termination of this Agreement, but only to the extent that:</p> <ul style="list-style-type: none"> (a) the Losses are incurred in connection with the provision of Services, including: <ul style="list-style-type: none"> (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred (ii) any expenditure incurred in anticipation of the provision of Services in the future (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Services; and (iv) redundancy payments (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms (c) the Operator and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses and (d) the Losses do not include any element of Profit Payment
"Sub-Contracts"	the contracts entered into between the Operator and the Sub-Contractors
"Submitted Item"	has the meaning given to it in paragraph 1.2 of Schedule 7 (Review Procedure)
"Subsidiary"	has the meaning given to it in Section 1159 of the Companies Act 2006

"Suitable Third Party"	any person who is not an Unsuitable Third Party
"Supplier"	has the meaning given to it in Clause 36.18 (VAT on Payments)
"Tax"	any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Agreement and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere
"Termination Date"	the date of early termination of this Agreement in accordance with its terms
"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 notice to terminate this Agreement on a specified date and setting out the grounds for termination
"Termination Sum"	any compensation payable by the Authority to the Operator or the Operator to the Authority on an early termination of this Agreement under Clauses 44 (Compensation on Termination for Authority Default/Voluntary Termination), 45 (Compensation on Termination for Operator Default and Corrupt Gifts and Fraud) and 47 (Compensation on Termination for Force Majeure)
"Third Party Claim"	has the meaning given to it in Clause 31.5 (Notification of claims)
"TUPE"	the Transfer of Undertaking (Protection of Employment) Regulations 2006 (246/2006) as amended and/or any other Regulations enacted for the purpose of implementing the Directive into English law
"Uninsurable"	in relation to a risk, either that: <ul style="list-style-type: none"> (a) insurance is not available to the Operator in respect of the Services in the worldwide insurance market with reputable insurers of good standing in respect of that risk or (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by Operators in the United Kingdom
"Uninsured Losses"	losses arising from any risks against which the Operator or any Operator Related Party does not maintain insurance (where not required to maintain insurance for such risk under this Agreement or by law), provided that: <ul style="list-style-type: none"> (a) the amount of any losses that would otherwise be recoverable under any Operator Insurance but for the applicable uninsured deductible in respect of such insurance and (b) any exclusion of loss of insurance proceeds caused by or contributed to by any act or omission of the Operator or any Operator Related Party (c) shall not be treated as Uninsured Loss
"Unsuitable Third Party"	any of:

(a) any person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography

(b) any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of leisure services in the area or

any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security

"Users"

those persons who use, or are entitled to use (whether they have done so or not) the Facilities and/or any or all of the Services from time to time

"Utilities"

each of natural gas, fuel oil, electricity, water and other utilities that may be required in order to provide the Services at the Facilities

"VAT"

value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

Interpretation

1.2 In this Agreement except where the context otherwise requires:

1.2.1 the masculine includes the feminine and vice-versa;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to any Clause, sub-Clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule, recital or annex of and to this Agreement;

1.2.4 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

1.2.7 headings are for convenience of reference only; and

1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

Schedules

1.3 The Schedules to this Agreement form part of this Agreement.

Indexation

1.4 Unless expressly stated otherwise, references to amounts or sums expressed to be "index linked" are references to amounts or sums in Base Date prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured on the relevant calculation

date (which unless expressly provided to the contrary shall be each anniversary of the Commencement Date) by changes in the Index from the Base Date as calculated in accordance with the following formula:

$$\text{Amount or sum in Base Date prices} \times \frac{\text{Index}_d}{\text{Index}_0}$$

Where Index_d is the value of the Index published or determined with respect to the month falling two months prior to the relevant calculation date and Index_0 is the value of the Index on the Base Date.

Precedence of Documentation

- 1.5 In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, or between the Schedules, the inconsistency shall be resolved according to the following descending order of priority:
- 1.5.1 the Clauses of this Agreement and Schedule 5 (Payment and Performance Monitoring System), Schedule 7 (Review Procedure), Schedule 15 (NNDR), and Schedule 22 (Change Protocol);
 - 1.5.2 Schedule 1 (Services Specification);
 - 1.5.3 the Schedules (excluding Schedules referred to under Clause 1.5.1, Schedule 1 (Services Specification) and Schedule 2 (Service Delivery Proposals); and
 - 1.5.4 Schedule 2 (Service Delivery Proposals).

Responsibility for Related Parties

- 1.6 Subject to the provisions of this Agreement, the Operator shall be responsible as against the Authority for the acts and omissions of the Operator Related Parties as if they were the acts and omissions of the Operator and the Authority shall be responsible as against the Operator for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Operator shall, as between itself and the Authority, be responsible for the selection of and pricing by all Operator Related Parties.

Approval

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

Succession

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

2. COMMENCEMENT AND DURATION

- 2.1 Subject to Clause 2.2, this Agreement and the rights and obligations of the parties shall come into force on the Commencement Date and (subject to the provisions for early termination set out in this Agreement) shall continue until the Expiry Date.
- 2.2 The Contract Period may be extended by a period of no more than five years by agreement in writing between the parties.

3. COLLATERAL WARRANTIES AND GUARANTEES

3.1 The Operator shall, on or before the date of this Agreement deliver to the Authority:

3.1.1 certified copies of the Ancillary Documents; and

3.1.2 the Parent Company Guarantee.

4. GENERAL WARRANTIES

Operator Warranties

4.1 The Operator warrants and represents to the Authority that on the date hereof:

- 4.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 4.1.2 it has full capacity and authority to enter into and perform its obligations, and exercise its rights, under the Project Documents;
- 4.1.3 this Agreement is executed by its duly authorised representative;
- 4.1.4 it has all necessary consents and regulatory approvals to enter into Project Documents;
- 4.1.5 the execution, delivery and performance of its obligations under Project Documents does not contravene any provision of:
 - (a) any existing Legislation either in force, or enacted but not yet in force binding on the Operator;
 - (b) the Memorandum and Articles of Association of the Operator;
 - (c) any order or decree of any court or arbitrator which is binding on the Operator; or
 - (d) any obligation which is binding upon the Operator or upon any of its assets or revenues;
- 4.1.6 the Operator Warranted Data is true and accurate in all respects;
- 4.1.7 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under Project Documents;
- 4.1.8 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 4.1.9 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Operator to perform its obligations under Project Documents;
- 4.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Operator, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

- 4.1.11 each of the Ancillary Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto; and
- 4.1.12 the copies of the Project Documents which the Operator has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents,

and the Authority relies upon such warranties and representations.

Operator Undertakings

- 4.2 The Operator undertakes with the Authority that for so long as this Agreement remains in full force:
 - 4.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or within twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Authority notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of this Agreement, the Operator's ability to perform its obligations under this Agreement;
 - 4.2.2 it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Operator to perform its obligations under this Agreement;
 - 4.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom; and
 - 4.2.4 it will not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a Sub-Contractor.

Status of Warranties

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

5. AUTHORITY WARRANTIES

No Warranty by Authority

- 5.1 Subject to Clause 5.3 (Fraudulent Statements), Clause 5.4 (Authority Title Warranty) and Clause 5.5 (Operator's Due Dilligence), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

No Liability to Operator

- 5.2 Subject to Clause 5.3 (Fraudulent Statements), Clause 5.4 (Authority Title Warranty) and Clause 5.5 (Operator's Due Diligence), neither the Authority nor any of its agents or employees shall be liable

to the Operator in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 5.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 5.2.2 any failure to make available to the Operator any materials, documents, drawings, plans or other information relating to this Agreement.

Fraudulent Statements

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

Authority Title Warranty

- 5.4 The Authority warrants to the Operator on the terms set out in Part 1 of Schedule 12 (Title Matters), provided that no inaccuracies or omissions in such information shall be capable of giving rise to an Authority Default. Breach of this warranty shall be deemed to be a Compensation Event.

Operator's Due Diligence

- 5.5 The Operator shall, subject to the terms of this Agreement, be deemed to have:
 - 5.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
 - 5.5.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed including:
 - (a) information as to the nature, location and condition of the Facilities;
 - (b) information relating to areas of natural interest, local conditions and facilities in the Facilities and the quality of existing structures forming part of each Facility; and
 - (c) any other risk or contingency that affects the performance of the Services and/or affects the performance of the Operator's obligations under this Agreement.

No Relief

- 5.6 Subject to Clause 5.3 (Fraudulent Statements), Clause 5.4 (Authority Title Warranty) and Clause 5.5 (Operator's Due Diligence), the Operator shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

Operator acknowledgement

- 5.7 The Operator hereby acknowledges and agrees that it has been provided with copies of all of the Disclosed Title Matters listed in Part 2 of Schedule 12 (Title Matters) and that all such matters that are disclosed within the Disclosed Title Matters are disclosed against the warranties set out in Part 1 of Schedule 12 (Title Matters).

6. DOCUMENTS AND COMMITMENTS

Ancillary Documents

- 6.1 The Operator shall perform its obligations under, and observe all of the provisions of, the Ancillary Documents and shall not:
- 6.1.1 terminate or agree to the termination of all or part of any Ancillary Document;
 - 6.1.2 make or agree to any material variation of any Ancillary Document;
 - 6.1.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or
 - 6.1.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under the Review Procedure and there has been no objection in accordance with paragraph 3 of the Review Procedure within twenty (20) Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the parties, and, in the circumstances specified in Clause 6.1.1 or Clause 6.1.4 (Ancillary Documents), the Operator has complied with Clauses 61 (Assignment and Sub-Contracting) and 62 (Change in Ownership).

Delivery of Changed Ancillary Documents

- 6.2 Without prejudice to the provisions of Clause 6.1 (Ancillary Documents), if at any time an amendment is made to any Ancillary Document, or the Operator enters into a new Ancillary Document (or any agreement which affects the interpretation or application of any Ancillary Document), the Operator shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Operator.

6.3 Operator commitments

- 6.3.1 It is acknowledged that the Operator has committed to:

(a) [incurring Capital Costs as set out in Row [] of the [Base Case/LOBTA] by [set out details];] and

(b) [capture any additional commitments that are relevant on a case by case basis]

and such commitments form part of the Operator's obligations hereunder.

- 6.3.2 The Authority shall be deemed to have agreed to the Operator incurring the Capital Costs as referred to in Clause 6.3.1(a).

Part 2 – LAND AND SITE MATTERS

7. NATURE OF LAND INTERESTS

Grant of the Head Lease

- 7.1 On or before the Commencement Date the Authority shall grant to the Operator, and the Operator shall accept, the Head Lease for each Site.

Exclusion of Security of Tenure for the Head Lease

- 7.2 The Operator hereby confirms that before it became contractually bound to enter into the tenancy created by the Head Lease pursuant to this Agreement:

7.2.1 the Authority served on the Operator a notice dated [] day of [] in relation to the tenancy created by the Head Lease (the **Head Lease Notice**) in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the **Order**);

7.2.2 the Operator, or a person duly authorised by the Operator, in relation to the Head Lease Notice made a statutory declaration (the **Head Lease Declaration**) dated [] day of [] in a form complying with the requirements of Schedule 2 of the Order;

7.2.3 the Operator further confirms that, where the Head Lease Declaration was made by a person other than the Operator, the declarant was duly authorised by the Operator to make the Head Lease Declaration on the Operator's behalf; and

7.2.4 the Authority and the Operator agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Head Lease.

Grant of the Head Lease

- 7.3 The grant of the Head Leases shall take place at the offices of the Authority. The term of the Head Lease relating to the Facilities shall commence on the Commencement Date.

Registration

- 7.4 The Operator shall apply for, and procure, registration of the Head Leases at the Land Registry as soon as reasonably practicable after the relevant Head Lease is completed. The Authority shall use all reasonable endeavours to assist the Operator in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request. The Authority shall be responsible for payment of SDLT.

Early Termination

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

No Compensation

- 7.6 The Operator shall not be entitled to any compensation in respect of any variation of the terms of the Head Leases or the unexpired part of its interest as tenant under the Head Leases on assignment or surrender or automatic determination in accordance with this Clause.

Compliance with Disclosed Title Matters

- 7.7 The Operator shall without prejudice to Clause 5.4 (Authority Title Warranty) procure that:
- 7.7.1 the provision of the Services at the Sites by or on behalf of the Operator shall be carried out in a manner which does not breach any provisions of the Disclosed Title Matters relating to the Sites or the Facilities; and
 - 7.7.2 in providing the Services at the Sites, there shall be no action, or omission to act by the Operator or any Operator Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Sites or any part of them (save in accordance with the terms of this Agreement);

Compliance with Head Lease

- 7.8 The Authority and the Operator shall comply with their respective obligations in the Head Leases.
- 7.9 Without prejudice to the express rights of the Authority under this Agreement and the Head Lease, the Authority (and those nominated by the Authority from time to time) shall be entitled at all reasonable times to access to the Facilities, but not so as to interfere with or impede the provision of the Services.

8. THE SITES

Site Matters

- 8.1 The Operator shall be deemed to have:
- 8.1.1 inspected and examined the Sites and their surroundings and (where applicable) any existing structures on the Sites;
 - 8.1.2 satisfied itself as to the nature of the Site Conditions, the form and nature of the Sites, the risk of injury or damage to property affecting the Sites, and the nature of the works, labour and materials necessary for the execution of the Services;
 - 8.1.3 satisfied itself as to the adequacy of:
 - (a) the means and rights of access to and through the Sites; and
 - (b) its rights under the Head Lease;
 - 8.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority) with access to or use of, or rights in respect of, the Sites with particular regard to the owners of any land adjacent to the Sites; and
 - 8.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.
- 8.2 Subject to the other terms of this Agreement, the Operator accepts full responsibility for all matters referred to in Clause 8.1.
- 8.3 Subject to Clause 8.5, the Authority (Site Matters) shall be responsible for:
- 8.3.1 unforeseen ground conditions; and/or
 - 8.3.2 Contamination existing in any parts of the Sites as at the Commencement Date.
- 8.4 Where the Authority is responsible for any of the matters referred to in Clauses 8.3 (Site Matters) and 8.6 (Site Matters), the following provisions shall apply:

- 8.4.1 such matter shall be deemed to be a Relief Event (save that, notwithstanding Clause 29.4 and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of the relevant part(s) of the affected Facility pursuant to Schedule 5 (Payment and Performance Monitoring System));
- 8.4.2 any work or change to the Services or to the operation of the affected Facility or part thereof as a result or which is required or instructed to be done in consequence of it, shall be deemed to be an Authority Change; and
- 8.4.3 where any such matter is Contamination the Authority shall further hold the Operator harmless from cleaning up and otherwise dealing with such Contamination and shall indemnify the Operator in respect of all Direct Losses incurred by the Operator resulting from such Contamination,

and the Operator shall in carrying out any works referred to in Clause 8.4.2 (Site Matters) do so in accordance with and so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Operator).

- 8.5 Subject to Clauses 8.6 and 8.7, to the extent that, after the Commencement Date, any part(s) of the Sites suffer from or are affected by Contamination arising from a source off Site (whether or not on adjacent land) the Operator shall be responsible for cleaning up or otherwise dealing with such Contamination and for preventing the reoccurrence of such Contamination on the Site and then the following provisions shall apply:

- 8.5.1 such matter shall be deemed to be a Relief Event (save that, notwithstanding Clause 29.4 and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of the relevant part(s) of the affected Facility pursuant to Schedule 5 (Payment and Performance Monitoring System) for a reasonable period (to be agreed between the parties acting reasonably));
- 8.5.2 any work or change to the Services required or instructed to be done in consequence of it, shall be the Operator's responsibility and shall not constitute an Authority Change;
- 8.5.3 the Operator shall:
 - (a) clean up, or otherwise deal with, such Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, all relevant Necessary Consents and Legislation; and
 - (b) other than where Clause 8.5.4(b) (Site Matters) applies and subject to Clause 8.7 hold the Authority harmless from, and indemnify the Authority in respect of, all Direct Losses incurred by the Authority resulting from such Contamination; and
- 8.5.4 the Authority shall, but only to the extent that the Operator is able to demonstrate to the Authority that it does not have the right to take action against third parties in its own name to recover the losses suffered or incurred by the Operator in cleaning up or otherwise dealing with such Contamination, at the Authority's option either:
 - (a) take such action against third parties in its own name as the Operator may (acting reasonably) direct; or
 - (b) permit the Operator to take such action in the name of the Authority at the Operator's own expense in which case the provisions of Clauses 31.6 (Conduct of Claims) and 31.7 (Costs of Claims) shall apply as if the Operator were the Indemnifying Party and the Authority were the Indemnified Party, except that the Operator shall not pay or settle such claims without the prior consent of the Authority,

subject to the Operator indemnifying the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action. Where the Authority takes action under Clause 8.5.4(a) or Clause 8.5.4(b) (Site Matters) (or where it is otherwise obliged to take action against third parties in respect of such losses), the Authority shall be liable to the Operator for all losses suffered or incurred by the Operator as a result of its obligations under this Clause 8 (Site Matters) provided that the Operator's entitlement in respect of any matter to which this Clause 8.5 (Site Matters) applies shall be limited to the amount recovered by or in the name of the Authority from the relevant third party in respect of the losses referred to in this Clause 8.5 (Site Matters).

- 8.6 To the extent that any part(s) of the Sites suffer from or are affected by Contamination arising from a source off Site where such off Site source is land for which the Authority is responsible, the Authority shall be responsible for such Contamination and the provisions of Clause 8.4 shall apply.
- 8.7 The Operator's responsibility and liability under Clause 8.5 shall be limited to the amount recovered by the Operator from the third party responsible for the Contamination arising from the source off the Site subject to the Operator having taken all reasonable steps (including as applicable the operation of Clause 8.5.4) to recover the losses suffered or incurred.
- 8.8 The Operator shall be responsible for any Contamination at the Sites caused or to the extent exacerbated as a direct result of the act or omission of the Operator or any Operator Related Party. The Operator shall:
- 8.8.1 clean up, or otherwise deal with, such Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, all relevant Necessary Consents and Legislation; and
- 8.8.2 hold the Authority harmless from, and indemnify the Authority in respect of, all Direct Losses incurred by the Authority resulting from such Contamination.

No Warranty

- 8.9 Except as otherwise expressly provided in this Agreement the Operator shall take the Sites in their state and condition in all respects as at the date of this Agreement and nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Sites or any part thereof for the Services or for any other purpose.

Third Party Rights

- 8.10 The Operator shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Sites, and the Operator shall ensure that the Services are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

9. DEFECTS AND ASBESTOS

Surveys

- 9.1 The Authority shall provide to the Operator on or before the date of this Agreement:

9.1.1 the Buildings Surveys; and

9.1.2 the Asbestos Surveys.

Defects

- 9.2 The Operator accepts, in relation to the Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for:

9.2.1 any Defects identified in the Buildings Surveys; and

9.2.2 any Defects caused by the Operator.

9.3 The Authority accepts, in relation to the Buildings, entire responsibility for Defects which have not been identified in the Buildings Survey[s] (other than those referred to in Clause 9.2.2 (Defects)) and:

9.3.1 the discovery of any such Defects shall be deemed to be a Relief Event ((save that, notwithstanding Clause 29.4 and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of the relevant part(s) of the affected Facility pursuant to Schedule 5 (Payment and Performance Monitoring System) for the period during which the Defect subsists and/or in respect of which remedial works are being carried out); and

9.3.2 any work or change to the Services or to the operation of the affected Facility or part thereof as a result of which is required or instructed to be done in consequence of it, shall constitute an Authority Change.

Asbestos Liability

9.4 Subject to Clause 9.5 (Asbestos Liability) the Operator accepts, in relation to the Buildings, full responsibility (including any financial and other consequences which result whether directly or indirectly) for:

9.4.1 any Asbestos identified in the Asbestos Surveys

9.5 The Authority accepts, in relation to the Buildings, full responsibility for Asbestos which has not been identified in the Asbestos Surveys and:

9.5.1 the discovery of any such Asbestos shall be deemed to be a Relief Event (save that, notwithstanding Clause 29.4 and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of any relevant part(s) of the affected Facility during which such Asbestos is subsisting and in respect of which removal or remedial works are being carried out); and

9.5.2 any work or change to the Services or to the operation of the affected Facility or part thereof as a result of which is required or instructed to be done in consequence of it, shall constitute an Authority Change.

9.6 Unless the exposure arises directly or indirectly as a result of any negligent act or omission of the Operator or any Operator Related Party, the Authority accepts, in relation to the Buildings, full responsibility (including any financial and other consequences which result whether directly or indirectly) for death and personal injury in respect of exposure to Asbestos in such Buildings.

10. FOSSILS AND ANTIQUITIES

10.1 As between the parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Sites are or shall become, upon discovery, the absolute property of the Authority.

10.2 Upon the discovery of such item during the course of the Services, the Operator shall:

10.2.1 immediately inform the Authority's Representative of such discovery;

10.2.2 take all steps not to disturb the object and, if necessary, cease any Services insofar as the carrying out of such Services would endanger the object or prevent or impede its excavation; and

10.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

- 10.3 The Authority shall procure that the Authority's Representative promptly, and in any event within ten (10) Business Days, issues an instruction to the Operator specifying what action the Authority's Representative requires to be taken in relation to such discovery provided that if no such instruction is forthcoming within such period the Operator may continue to carry out the Services.
- 10.4 The Operator shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in Clause 10.3 (Fossils and Antiquities) at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to Clause 10.6 (Fossils and Antiquities) in which case the provisions of the Change Protocol shall apply).
- 10.5 If directed by the Authority's Representative, the Operator shall allow representatives of the Authority to enter the Sites for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Facility from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Operator's Representative from time to time.
- 10.6 If any instruction referred to in Clause 10.3 (Fossils and Antiquities) includes a requirement for the Operator to suspend the carrying out of the Services and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in any Facility) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be deemed to be an Authority Change and the provisions of the Change Protocol shall apply.
- 10.7 The Authority shall act promptly and diligently in dealing with its obligations in this Clause **10** (Fossils and Antiquities) in relation to any find so as to mitigate any effect on the Operator and the Services.

Part 3 – THE SERVICES

11. SERVICES

11.1 The Operator shall provide the Services for the Contract Period.

Standard of Services

11.2 Subject to Clause 11.4 (Discrepancies), the Operator shall provide the Services in accordance with (and so as to comply with):

11.2.1 the terms of this Agreement;

11.2.2 the Services Specification;

11.2.3 the Service Delivery Proposals;

11.2.4 Good Industry Practice;

11.2.5 Quest;

11.2.6 Sport England Guidance; and

11.2.7 all applicable Authority Policies and Legislation.

Operator covenants

11.3 In performing its obligations under this Agreement, the Operator shall:

11.3.1 apply such time, attention, resources, trained personnel and skill as may be necessary for the due and proper performance of the Services;

11.3.2 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;

11.3.3 ensure that neither it, nor any Operator Related Party, 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 Operator's obligations under this Agreement;

11.3.4 ensure, and shall procure that any Operator Related Party shall ensure, that the Services are carried out in compliance with the Equality Requirements;

11.3.5 ensure that only new materials or recycled materials that are in accordance with British Standards and/or Good Industry Practice will be used in carrying out the Services (unless the Authority agrees otherwise in writing or the contrary is set out in the Services Specification);

11.3.6 ensure that all Goods will be of satisfactory quality; and

11.3.7 ensure that there will not be used in the provision of the Services or included in the Buildings:

(a) any of those products and materials listed in Schedule 8 (Prohibited Materials);
nor

(b) any products or materials which:

- (i) are generally known at the time of specification or use to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; or
- (ii) are not in accordance with British or European standard or codes of practice or Building Research Establishment Digests (in each case current at the time of specification or use) or, where no such standard exists do not conform with a British Board of Agreement Certificate; or
- (iii) do not comply with the guidance set out in Good Practice in the Selection of Construction Materials 2011 published by the British Council of Offices (as updated from time to time).

Discrepancies

- 11.4 Subject to Clause 11.5, in the event of a conflict or potential conflict between the standards listed in Clause 11.2, the Operator shall, as soon as reasonably practicable, notify the Authority in writing of the same and the Operator shall submit proposals to the Authority for review through Schedule 7 (Review Procedure) as to how it proposes to deal with such inconsistency or conflict and, after such review, the standards shall be amended accordingly and any amendment shall be made without adjustment to the Annual Payment. The Authority may not withhold its approval (or impose conditions in giving its approval) where the purpose of such withholding or such conditions is to deal with matters other than the correcting of any such inconsistency or conflict.
- 11.5 The Services Specification shall at all times have priority over the Service Delivery Proposals. Any changes to the Service Delivery Proposals may only be made in accordance with the Review Procedure.

Ordering of Goods and Services

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

12. CONSENTS

- 12.1 The Operator shall:
- 12.1.1 obtain and maintain all Necessary Consents which may be required for the performance of the Services;
 - 12.1.2 be responsible for implementing each Necessary Consent within the period of its validity in accordance with its terms;
 - 12.1.3 supply free of charge to the Authority's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained;
 - 12.1.4 comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Operator to carry out the Services; and
 - 12.1.5 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Authority under this Agreement (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the date of this Agreement) or of any condition attached to it but, subject to the compliance by the Operator with its obligations under this Clause 12.1 (Consents), references in this

Agreement to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

13. USE OF THE FACILITIES

Priority

- 13.1 The Facilities shall be made available for use in the provision of the Services during the Contract Period as set out in the Services Specification.

Use of the Facilities

- 13.2 The Operator may enter into arrangements for alternative use of the Facilities provided that:

- 13.2.1 any such use is in accordance with Legislation;
- 13.2.2 the use cannot reasonably be expected to impair the provision of the Services and such use is not incompatible with the use of the Facilities as community leisure centres;
- 13.2.3 the proposal has been submitted to the Authority pursuant to the Review Procedure and the Authority has not objected to or made comments in respect of such proposal;
- 13.2.4 the use does not involve sponsorship, advertisement or other direct involvement by any organisation, entity or person engaged, or with substantial interest in the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons; and
- 13.2.5 the use is not one which could be expected to involve undue violence (provided that the provision of organised sport shall not be considered undue violence) or otherwise be incompatible with the ethos of the Authority.

Third Party Use

- 13.3 Subject to the Authority Pricing Requirements and the Services Specification, the Operator shall be entitled to charge for, and be paid by, each User, a fee determined by the Operator for the use made of the Facilities.

Elections

- 13.4 The Operator will allow the Authority to use the Facilities for the purpose of Elections provided reasonable prior notice has been given to the Operator and the Authority agrees to pay for the use of the relevant parts of the Facilities for such purposes, with terms to be agreed between the parties acting reasonably. In exercising its right to use the Facilities pursuant to this Clause only the Authority shall be regarded as a User.

14. CONDITION OF THE FACILITIES

Maintenance

- 14.1 The Operator shall ensure on a continuing basis that at all times its maintenance and operating procedures set out in the Service Delivery Proposals are and remain sufficient to ensure that:
- 14.1.1 Facilities meet the requirements of this Agreement and the Services Specification;
 - 14.1.2 the Facilities are kept in good structural and decorative order (subject to fair wear and tear) in accordance with this Agreement, the Services Specification and the Service Delivery Proposals;
 - 14.1.3 the Operator can deliver the Services in accordance with this Agreement and the Services Specification; and

- 14.1.4 the Facilities are handed back to the Authority on the Expiry Date in a condition complying with Handback Requirements.

Surveys

- 14.2 If the Authority reasonably believes that the Operator is in breach of its obligations under Clause 14.1 (Maintenance) then it may carry out or procure the carrying out of a survey of the Facilities to assess whether the Facilities have been and are being maintained by the Operator in accordance with its obligations under Clause 14.1 (Maintenance). This right may not be exercised more than once a year.
- 14.3 The Authority shall notify the Operator in writing a minimum of ten (10) Business Days in advance of the date it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Operator for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Operator (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Operator's ability to provide the Services.
- 14.4 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Operator. The cost of the survey, except where Clause 14.5 (Surveys) applies, shall be borne by the Authority. The Operator shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.
- 14.5 If a survey shows that the Operator has not complied or is not complying with its obligations under Clause 14.1 (Maintenance), the Authority shall:
- 14.5.1 notify the Operator of the standard that the condition of the Facilities should be in to comply with its obligations under Clause 14.1 (Maintenance) and this Agreement generally;
 - 14.5.2 specify a reasonable period within which the Operator must carry out such rectification and/or maintenance work; and
 - 14.5.3 if the survey shows a material non-compliance by the Operator with its obligations under Clause 14 (Maintenance), be entitled to be reimbursed by the Operator for the cost of the survey and any administrative costs incurred by the Authority in relation to the survey other than where the costs of the rectification and/or maintenance work are less than the costs of the survey in which case the cost of the survey shall be shared equally between the Authority and the Operator.
- 14.6 The Operator shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.
- 14.7 In the event of any failure by the Operator to comply with Clause 14.6 (Surveys) or if the Authority is or becomes aware of a breach by the Operator of its obligations under Clause 14.6 (Surveys) then the Authority shall be entitled to exercise its right of access and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred in so doing from the Operator as a debt.

Programmed Maintenance

- 14.8 The Operator shall undertake Programmed Maintenance of the Facilities in accordance with a Schedule of Programmed Maintenance which has been approved or not commented on by the Authority.

Schedule of Programmed Maintenance

- 14.9 The Operator shall implement the initial Schedule of Programmed Maintenance for each Facility in the Agreed Form for the period from the Commencement Date to the expiry of the first Contract Year.

- 14.10 Not later than two (2) months prior to the commencement of each subsequent Contract Year the Operator shall submit to the Authority's Representative in accordance with Schedule 7 (Review Procedure) a Schedule of Programmed Maintenance for that Contract Year.
- 14.11 Each Schedule of Programmed Maintenance shall contain the following information (the **Programmed Maintenance Information**):
- 14.11.1 details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of work (including any proposed closures of the Facilities or any element therein);
 - 14.11.2 details of any effect of the Programmed Maintenance on the delivery of any of the Services;
 - 14.11.3 a proposed Lifecycle Replacement Schedule, including details of when Operator Lifecycle Items are proposed to be replaced; and
 - 14.11.4 where known, details of any works to replace and/or renew any Authority Lifecycle Items which have been notified pursuant to Clause 14.28 and/or which are the Operator's responsibility pursuant to Clause 14.30.3.
- 14.12 Not later than twenty (20) Business Days prior to the commencement of any Contract Month, the Operator may submit to the Authority's Representative in accordance with Schedule 7 (Review Procedure) a revision to the Schedule of Programmed Maintenance for the Contract Year in which the relevant Contract Month falls showing the effect of the proposed changes to the Programmed Maintenance Information. If the Authority's Representative does not raise comments on such proposed revision in accordance with Schedule 8 (Review Procedure), the Schedule of Programmed Maintenance as revised shall become the Schedule of Programmed Maintenance in respect of that Contract Year.
- 14.13 Where the Authority's Representative raises comments in respect of any Programmed Maintenance periods and/or hours of work shown in a Schedule of Programmed Maintenance in accordance with Schedule 7 (Review Procedure), he shall indicate whether, and if so when, the Programmed Maintenance can be re-scheduled and the Operator shall amend the relevant Schedule of Programmed Maintenance accordingly.
- 14.14 The Operator shall not carry out any Programmed Maintenance save in accordance with a Schedule of Programmed Maintenance to which no objection has been made under Schedule 7 (Review Procedure) or, where comment has been raised in respect of the Programmed Maintenance periods and/or time, the Schedule of Programme Maintenance has been amended pursuant to this Clause 13 (Condition of the Facilities).
- 14.15 [The Operator shall deliver to the Authority's Representative not less than two (2) months prior to the Commencement Date and two (2) months prior to the commencement of each subsequent Contract Year the latest version of the Five Year Maintenance Plan.]

Unprogrammed Maintenance Works

- 14.16 If during the Minimum Opening Hours, the need arises for Maintenance Works which are not scheduled to be carried out as part of Programmed Maintenance (Unprogrammed Maintenance Works), the Operator may carry out such Unprogrammed Maintenance Works provided that the Operator shall notify the Authority's Representative as soon as reasonably possible (and in any event, within two (2) Business Days of the occurrence) of the extent of the necessary Unprogrammed Maintenance Works and the reasons for them. The Operator shall take all reasonable steps to minimise the duration of such Unprogrammed Maintenance Works.
- 14.17 For the avoidance of doubt, there shall be no restrictions on the performance of Unprogrammed Maintenance Works carried out outside of the Minimum Opening Hours.

- 14.18 Nothing in Clause 14.16 or 14.17 (Unprogrammed Maintenance Works) shall prevent the allocation of Performance Adjustment Points and/or Performance Adjustment Payments in accordance with this Agreement.

Programmed Replacement – Operator Lifecycle Items

- 14.19 The Operator shall or shall procure the replacement of Operator Lifecycle Items in accordance with the Lifecycle Profile, the Five Year Maintenance Plan and the relevant Schedule of Programmed Maintenance (or if Operator Lifecycle Items require replacing earlier than anticipated in the Lifecycle Profile, the Five Year Maintenance Plan or relevant Schedule of Programmed Maintenance, at the time required by applying Good Industry Practice).
- 14.20 No later than forty (40) Business Days before each occasion on which any of the Operator Lifecycle Items are due for replacement (as identified in the Lifecycle Replacement Schedule), where the Operator does not believe it is necessary to undertake such replacement, the Operator shall submit to the Authority (under the Review Procedure) a written statement detailing:
- 14.20.1 the replacement(s) which the Lifecycle Replacement Schedule records as being due; and
- 14.20.2 why the Operator does not believe it is necessary to undertake such replacement having regard to the condition of the relevant part and the Operator's obligations under this Agreement.
- 14.21 If the Authority approves in accordance with the Review Procedure (or it is determined in accordance with the Dispute Resolution Procedure) that the replacement should be deferred, the Operator shall amend the Lifecycle Replacement Schedule to reflect such deferral.
- 14.22 Without prejudice to Clause 14.21 (Programmed Replacement - Operator Lifecycle Items) the Operator shall replace any items listed in the Lifecycle Replacement Schedule with parts of at least equivalent standard to those at the Commencement Date so that as a minimum any replacement part should have an equivalent or greater anticipated lifespan at the same quality as the original part.
- 14.23 In the event that the Operator fails to either:
- 14.23.1 replace any Operator Lifecycle Item by the date that it is due for replacement (as identified in the Lifecycle Replacement Schedule), or earlier applying Good Industry Practice; or
- 14.23.2 comply with Clause 14.19 (Programmed Replacement - Operator Lifecycle Items),
- and such failure is not remedied within one (1) month of receipt of written notice of such failure from the Authority, the Authority may remedy such failure itself and recover the cost from the Operator.
- 14.24 For the avoidance of doubt, the Operator is responsible for all costs of replacing the Operator Lifecycle Items.

Authority Maintenance Costs and Authority Lifecycle Items

- 14.25 Subject to the remaining provisions of this Clause 14, the Authority shall be responsible for:
- 14.25.1 the Authority Maintenance Costs; and
- 14.25.2 procuring and carrying out all works for replacement and/or renewal of the Authority Lifecycle Items, at the time required by applying Good Industry Practice.
- 14.26 The Operator shall co-operate with the Authority in connection with the carrying out of works for the replacement and/or renewal of Authority Lifecycle Items and shall perform its obligations under this Agreement so as not to hinder or impede the Authority (or any Authority Related Party) in carrying out works for the replacement and/or renewal of Authority Lifecycle Items.

14.27 The Authority and Authority Related Parties shall be entitled to access to the Facilities for the purposes of:

14.27.1 inspecting the Authority Lifecycle Items; and

14.27.2 carrying out works for the repair and/or replacement of Authority Lifecycle Items.

Save where carried out by or on behalf of the Operator pursuant to an Authority Lifecycle Items Instruction, the carrying out of works for the replacement and/or renewal of Authority Lifecycle Items shall be deemed to be a Compensation Event.

14.28 The Authority shall notify the Operator in writing in advance of carrying out any works for the replacement and/or renewal of Authority Lifecycle Items and, to the extent practicable, the Authority shall provide the Operator with details of any such works that may be proposed in good time to allow such works to be reflected in the draft Schedule of Programmed Maintenance to be submitted pursuant to Clause 14.10. The Authority and the Operator shall liaise as regards the proposed timing of works for the replacement and/or renewal of Authority Lifecycle Items and the Authority shall have regard to the Operator's representations in respect of such proposed timing.

14.29 Subject to Clause 14.30, the Authority shall:

14.29.1 be responsible for procuring any necessary permits, permissions, licences, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the carrying out of any works for replacement and/or renewal of Authority Lifecycle Items ("**Authority Lifecycle Consents**");

14.29.2 carry out (or procure the carrying out of) works for the replacement and/or renewal of Authority Lifecycle Items in compliance with Legislation, the Authority Lifecycle Consents, the Necessary Consents and Good Industry Practice (provided that the Authority shall have the right (acting reasonably) to defer the replacement and/or renewal of an Authority Lifecycle Item if such non-replacement/non-renewal will not have an adverse impact on the Services); and

14.29.3 take reasonable steps to minimise the duration of such works.

14.30 **Authority Lifecycle Items Instructions**

14.30.1 The Authority may serve a notice requiring the Operator to provide a quotation to carry out any works for replacement and/or renewal of Authority Lifecycle Items. Following receipt of such a notification, the Operator shall, within twenty (20) Business Days (or such other period as the parties may agree), provide the Authority in writing with a fixed price quotation for the relevant works, accompanied with such supporting evidence (including specifications and programme) as the Authority may reasonably require to assess the quotation.

14.30.2 Following receipt of such quotation, the parties shall meet to discuss its terms and the Authority may (within the period of sixty (60) Business Days (or such longer period as the parties may agree) instruct the Operator to carry out the relevant works in accordance with such quotation (as may have been varied by agreement of the parties) ("**Authority Lifecycle Items Instruction**").

14.30.3 Following receipt of an Authority Lifecycle Items Instruction, the Operator shall be responsible for carrying out the relevant works of replacement and/or renewal in accordance with the requirements of this Agreement at its own risk.

14.30.4 In the event that the Operator fails to comply with Clause 14.30.3, and such failure is not remedied within one (1) month of receipt of written notice of such failure from the Authority, the Authority may remedy such failure itself and shall be entitled to invoice the Operator for the costs reasonably and properly incurred by the Authority in so doing, to the extent such

costs exceed the accepted quotation for such works (as such quotation may have been varied by agreement of the parties).

14.31 If the Operator is unable to demonstrate to the Authority (acting reasonably) that the Operator has maintained an Authority Lifecycle Item to the standard required by this Agreement, then when such item requires to be replaced and/or renewed (applying Good Industry Practice), the Operator shall be responsible for the costs of such replacement and/or renewal.

14.32 Subject to Clause 14.31, when the Authority is satisfied (acting reasonably) that the relevant works have been carried out in accordance with the Operator's obligations under this Agreement, the Operator may issue an invoice to the Authority for:

14.32.1 its costs of replacement and/or renewal of Authority Lifecycle Items (to the extent such costs have been incurred pursuant to an Authority Lifecycle Item Instruction); and

and in either case, subject to Clause 36.7, the Authority shall pay such invoice within twenty (20) Business Days of receipt of a valid VAT invoice.

Lifecycle Records

14.33 The Operator shall upon written request permit the Authority access to all the Operator's records, receipts, invoices, reports, drawings, technical specifications and performance logs relating to any Lifecycle Asset, so as to enable the Authority to obtain an accurate assessment of the figures quoted and Programmed Maintenance undertaken. The Operator shall provide all reasonable co-operation and assistance to the Authority to allow it access to such documents and information and shall in a bona fide manner respond promptly to all reasonable requests for further documents and information made by the Authority in respect of any Lifecycle Asset and the condition of the same, provided always that such access shall not in any way obstruct, hinder or prevent the Operator in the provision of the Services. The Operator shall maintain all documents and information relating to any Lifecycle Asset.

15. FURTHER REQUIREMENTS

15.1 Fire Folder

The parties shall each act reasonably and in good faith to procure that an up-to-date fire folder is maintained for each Facility in accordance with government guidance referring to the Regulatory Reform (Fire Safety) Order 2005. In particular the Operator shall:

15.1.1 provide information relating to the operation of the fire alarm system and emergency lighting;

15.1.2 maintain maintenance/test records for the fire alarm systems and emergency lighting; and

15.1.3 prepare risk assessments for emergency events including fires;

15.1.4 prepare and communicate the evacuation procedures including instruction to staff and visitors at the Facilities on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;

15.1.5 prepare notices/signs reinforcing the evacuation procedures; and

15.1.6 take all reasonable steps to ensure and maintain discipline of the occupants of the Facilities to prevent fires and deliberate and/or accidental activation of the system.

15.2 Operating Manual

15.2.1 The Operator shall throughout the Contract Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services (the **Operating Manual**).

- 15.2.2 The Operator shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Operator has complied with its obligation to maintain and update the Operating Manual under Clause 15.2.1 (Maintenance of Manual).

15.3 Hazardous Substances

- 15.3.1 The Operator shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at the Sites and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.
- 15.3.2 The Operator shall maintain a COSHH register in relation to each Facility and shall ensure that a copy of each register is held at the relevant Facility, at the Operator's registered office and that a copy is given to the Authority. The Authority shall notify the Operator of any items which it or any Authority Related Party is using or storing at any of the Sites and which requires to be included in such register.

15.4 CDM Regulations

Responsibility for Design

- 15.4.1 As between the Operator and the Authority, the Operator shall be entirely responsible for the safety of any design which forms part of the Services and for the adequacy, stability and safety of all site operations and methods of construction.

The Operator as Client

- 15.4.2 In accordance with the CDM Regulations, the Authority and the Operator have elected that the Operator shall be, and shall be treated as the only client in respect of the Services pursuant to Regulation 4(8) of the CDM Regulations. The Operator shall not, prior to the completion of the Services, seek in any way to withdraw, terminate or derogate from such election.

Duties under the CDM Regulations

- 15.4.3 The Operator shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations requirements and duties arising under the CDM Regulations in connection with the Services (other than those that remain with the Authority pursuant to Regulation 4(8) of the CDM Regulations). The Operator shall ensure that any Health and Safety File is revised as often as may be appropriate to incorporate any relevant new information in relation to the Services during the Contract Period.

Authority to Co-operate and Provide Information

- 15.4.4 Upon the Operator's reasonable request the Authority shall provide to the Operator such information and documents as may be in the Authority's possession or which the Authority may reasonably obtain which may be required by the Operator to fulfil its duties as client for the purposes of the CDM Regulations.
- 15.4.5 Notwithstanding the election made under Clause 15.4.2 (The Operator as Client) the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 4(8) of the CDM Regulations, to remain with the Authority, notably those duties under Regulations 4(4), 8(4) and 8(6).

16. REPRESENTATIVES

Representatives of the Authority

- 16.1 The Authority's Representative shall be its Head of Community and Operational Services or such other person appointed pursuant to this Clause 16. The Authority's Representative shall exercise the functions and powers of the Authority in relation to this Agreement which are identified in this Agreement as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Agreement as may be notified to the Operator from time to time.
- 16.2 The Authority's Representative shall be entitled at any time, by notice to the Operator, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Authority's Representative and all references to the **Authority's Representative** in this Agreement (apart from this Clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 16.3 The Authority may by notice to the Operator change the Authority's Representative. The Authority shall (as far as practicable) consult with the Operator prior to the appointment of any replacement for the Authority's Representative, taking account of the need for liaison and continuity in respect of this Agreement. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Operator in the execution of its obligations under this Agreement).
- 16.4 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.
- 16.5 Save where notified in writing by the Authority before such act or instruction, the Operator and Operator's Representative shall be entitled to treat any act or instruction of the Authority's Representative in connection with this Agreement as being expressly authorised by the Authority and the Operator and the Operator's Representative shall not be required to determine whether authority has in fact been given.

Representative of the Operator

- 16.6 The Operator's Representative shall be [REDACTED] or such other person appointed pursuant to this Clause 16. The Operator's Representative shall have full authority to act on behalf of the Operator for all purposes of this Agreement. Except as previously notified in writing before such act by the Operator to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Operator's Representative in connection with this Agreement as being expressly authorised by the Operator and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 16.7 The Operator may by notice to the Authority, change the Operator's Representative. Where the Operator wishes to do so it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of this Agreement. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

Appointment of Representatives

- 16.8 At any time the Authority may appoint more than one Authority's Representative and the Operator may appoint more than one Operator's Representative provided in each case the appointor provides written confirmation to the Operator or Authority as appropriate of the extent of its Representative's authority.

Liaison

- 16.9 The parties shall give effect to the liaison provisions set out in the Services Specification including the formation of the Strategic Partnership Board.

17. EMERGENCIES

- 17.1 If an Emergency arises which cannot be dealt with by performance of the Services, the Authority may instruct the Operator to use its best endeavours to procure that such additional or alternative services are undertaken by the Operator as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Facility resumes as soon as is reasonably practicable provided that the Operator shall not be obliged to provide any service which it is neither qualified nor competent to provide.
- 17.2 The properly incurred costs of the Operator of any additional or alternative services provided to the Authority under Clause 17.1 and/or any Loss of Revenue (if any) arising as a direct result of the Operator providing any additional or alternative services shall be borne by the Authority (unless the Emergency was caused by the Operator, in which case such costs and/or Loss of Revenue shall be borne by the Operator). The Operator shall be entitled to issue an invoice in respect of any such properly incurred costs and/or Loss of Revenue which are to be borne by the Authority, and subject to Clause 36.7, the Authority shall pay such invoice within twenty (20) Business Days of receipt of such invoice.
- 17.3 Notwithstanding the provisions of clauses 17.1 and 17.2 above, in the event of a civil emergency, the Operator will allow the Authority to use the Facilities for the purpose of responding to the emergency (including as a rest centre or safe temporary shelter for evacuees). The Authority will endeavour to give as much notice as is reasonably possible for this purpose.

18. AUTHORITY STEP-IN

Right to Step-In

- 18.1 If the Authority reasonably believes that it needs to take action in connection with the Services:
- 18.1.1 because a serious risk exists to the health or safety of persons or property or to the environment;
 - 18.1.2 to discharge a statutory duty; and/or
 - 18.1.3 because an Emergency has arisen,
- then the Authority shall be entitled to take action in accordance with Clauses 18.2 (Notice to the Operator) to 18.6 (Step-In on Operator Breach).

Notice to the Operator

- 18.2 If Clause 18.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Operator in writing of the following:
- 18.2.1 the action it wishes to take;
 - 18.2.2 the reason for such action;
 - 18.2.3 the date it wishes to commence such action;
 - 18.2.4 the time period which it believes will be necessary for such action; and
 - 18.2.5 to the extent practicable, the effect on the Operator and its obligation to provide the Services during the period such action is being taken.

Action by Authority

- 18.3 Following service of such notice, the Authority shall take such action as notified under Clause 18.2 (Notice to the Operator) and any consequential additional action as it reasonably believes is necessary (together, the Required Action) and the Operator shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Operator with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- 18.4 Where the Required Action has been taken otherwise than as a result of a breach by the Operator, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Operator against all Direct Losses where it fails to do so.

Step-In without Operator Breach

- 18.5 If the Operator is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Operator from providing any part of the Services:
- 18.5.1 the Operator shall be relieved from its obligations to provide such part of the Services; and
- 18.5.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Payment shall not be adjusted and, provided the Operator provides the Authority with reasonable assistance in connection with the Required Action, the Authority shall:
- (a) account to the Operator for all, if any, revenue received by the Authority in respect of the Services affected by the Required Action and compensate the Operator for any resulting net Loss of Revenue that arises as a direct result of the Authority taking the Required Action (so that the Operator is in a no worse position in respect of the amount of revenue and Loss of Revenue received or paid);
 - (b) compensate the Operator for its net additional costs (having regard to any savings realised as a result of the Operator being relieved from its obligations to provide the relevant part of the Services) reasonably and properly incurred in providing reasonable assistance in respect of the Required Action.

Step-In on Operator Breach

- 18.6 If the Required Action is taken as a result of a breach of the obligations of the Operator under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Operator from providing any part of the Services:
- 18.6.1 the Operator shall be relieved of its obligations to provide such part of the Services; and
- 18.6.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Payment shall not be adjusted but, provided the Operator provides the Authority with reasonable assistance in connection with the Required Action, the Authority shall account to the Operator for all, if any, revenue received by the Authority in respect of the Services affected by the Required Action, under deduction of the Authority's costs of operation in taking the Required Action. To the extent that such costs are in excess of the revenue received by the Authority in respect of the Services affected by the Required Action, the Operator shall be liable to reimburse the Authority on demand in respect of such excess, within twenty (20) Business Days of written demand.

Part 4 – PERFORMANCE, REPORTING AND RECORDS

19. PERFORMANCE MONITORING

- 19.1 Without prejudice to the operation of Schedule 5 (Payment and Performance Monitoring System), the Authority and the Operator will commit themselves to the achievement of continuous, measurable and measured improvement in the delivery of the Services by:
- 19.1.1 agreeing quantitative and qualitative targets (pursuant to the Services Specification) and Clause 23.7 (Annual Review) below which relate to the Strategic Priorities and Performance Standards and which:
 - (a) are specific;
 - (b) are challenging; and
 - (c) add value;
 - 19.1.2 measuring and reviewing contractual performance against the Strategic Priorities and the Performance Standards in accordance with this Agreement; and
 - 19.1.3 identifying and following best practice.
- 19.2 The Operator shall regularly monitor and report to the Authority on the performance of the Operator under this Agreement in accordance with the Services Specification, the Service Delivery Proposals and Clause 23.2. The Operator shall provide such information as is reasonably requested by the Authority to enable the Authority to comply with its Environmental Management Audit Systems (EMAS).

Authority Monitoring

- 19.3 The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during the Contract Period for any purpose, including in order to ensure that the Services are being provided in accordance with this Agreement. The Operator will use its reasonable endeavours to assist the Authority in such an exercise. The Authority shall be entitled to notify the Operator of the outcome of the performance monitoring exercise, and the Operator shall have due regard to the Authority's comments in relation to the future provision of the Services.
- 19.4 Without prejudice to the Authority's rights under Clause 40 (Termination on Operator Default) and to any other express rights under this Agreement, where the Operator has been found to:
- 19.4.1 be fraudulent in the submission of monitoring reports or reports pursuant to Clause 36.3 (Payment); or
 - 19.4.2 have submitted at least two (2) materially erroneous monitoring reports or reports pursuant to Clause 36.3 (Payment), within a six (6) month period,
- the Authority may by notice to the Operator increase the level of its monitoring of the Operator, and/or (at the Authority's option), of the Operator's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Service or Services the subject of such fraudulent or erroneous reporting until such time as the Operator shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement.
- 19.5 For the purposes of Clause 19.4 (Authority Monitoring), the Authority acknowledges that if the Operator has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority as required by Clause 19.4 (Authority Monitoring) but:
- 19.5.1 the Operator has removed the person or persons responsible for the fraudulent reporting; or

19.5.2 (under Clause 19.4.2) (Authority Monitoring), in the following three (3) month period following the Authority notice (if it has not already been established) there have been no further erroneous reports of any kind,

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

19.6 If the Authority issues a notice under Clause 19.4 (Authority Monitoring), the Operator shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under Clause 19.4.2 (Authority Monitoring).

20. CONTINUOUS IMPROVEMENT

Authority's Continuous Improvement Duty

20.1 The Operator acknowledges that:

20.1.1 the Authority is subject to the Continuous Improvement Duty;

20.1.2 the provisions of this Clause 20 (Continuous Improvement) are intended to assist the Authority in discharging its Continuous Improvement Duty in relation to the Services; and

20.1.3 the provisions of this Clause 20 (Authority's (Continuous Improvement Duty) shall apply in respect of the obligations of the Operator and the Authority concerning the Continuous Improvement Duty and the 1999 Act generally.

20.2 The Operator shall, throughout the Contract Period, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

20.3 The Operator shall use reasonable endeavours to assist the Authority in demonstrating that the Authority is meeting its Continuous Improvement Duty in respect of this Agreement including:

20.3.1 complying with requests for information, data or other assistance made by the Authority in pursuance of its Continuous Improvement Duty in order to:

- (a) facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Continuous Improvement Duty in respect of the Services, including any inspection undertaken with a view to verifying the Authority's compliance with its Continuous Improvement Duty;
- (b) assist the Authority in relation to any action taken by the Secretary of State;
- (c) enable the Authority to comply with any Government departmental direction; and
- (d) enable the Authority to report on its performance to Relevant Authorities.

20.3.2 complying with all requests by the Authority to procure the attendance of specific officers or employees of the Operator or any Sub-Contractor (or to procure the attendance of any of its or their sub-contractors) at any meetings of the Authority at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one year); and

20.3.3 co-operating in audits and/or other inspections by Relevant Authorities.

21. QUALITY ASSURANCE

21.1 The Operator shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the date of this Agreement a quality manager, who may be directly involved in the day-to-day performance of the Services and who shall, in respect of the Services:

21.1.1 implement and monitor a quality assurance system; and

21.1.2 liaise with the Authority on all matters relating to quality assurance.

21.2 At all times complying with the requirements of paragraph [] of the Services Specification, the Authority may carry out periodic audits of the aforementioned quality assurance system and Quest at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Operator's quality system. The Operator shall procure that the Authority shall have a like right in respect of any relevant sub-contractors. The Operator shall co-operate and shall procure that any relevant sub-contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its right under this Clause 21(Quality Assurance).

22. OPERATOR'S RECORDS

Records and Open Book Accounting

22.1 The Operator shall (and shall procure that each sub-contractor shall):

22.1.1 at all times maintain a full record of particulars of the costs of performing the Services;

22.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in Clause 22.1.1 (Records and Open Book Accounting), including details of any funds held by the Operator specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Operator of its obligations under this Agreement;

22.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause 22.1 (Records and Open Book Accounting); and

22.1.4 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication.

Books of Account

22.2 Compliance with Clause 22.1 (Records and Open Book Accounting) shall require the Operator to keep (and where appropriate to procure that each sub-contractor shall keep) books of account in accordance with best accountancy practices with respect to this Agreement, showing in detail:

22.2.1 administrative overheads;

22.2.2 payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;

22.2.3 capital and revenue expenditure; and

22.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement,

and the Operator shall have (and procure that its sub-contractors shall have) the books of account evidencing the items listed in sub-Clauses 22.2.1 to 22.2.4 (Books of Account) inclusive, available for inspection by the Authority (and its advisers) upon reasonable notice, and shall provide a copy of these to the Authority as and when requested from time to time.

Maintenance of Records

22.3 The Operator shall maintain or procure that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice, the requirements of Clause 21 (Quality Assurance) and any applicable Legislation.

22.4 Without prejudice to Clause 22.3 (Maintenance of Records), the Operator shall maintain or shall procure that the following are maintained:

22.4.1 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement;

22.4.2 full records of all maintenance procedures carried out during the term of this Agreement; and

22.4.3 full records of all staff matters including turnover, pay and disciplinary matters,

and the Operator shall have the items referred to in Clauses 22.4.1 (Maintenance of Records) to 22.4.3 (Maintenance of Records) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall provide copies of these to the Authority as and when requested from time to time.

Termination or Expiry

22.5 Upon termination or expiry of this Agreement, and in the event that the Authority wishes to enter into another agreement for the operation and management of a Facility/Facilities the same as or similar to Services provided under this Agreement, the Operator shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the Authority to provide information relating to the Operator's costs of delivering the Services.

Provision of Information

22.6 The Operator shall use all reasonable endeavours to assist the Authority in its preparation of any report required by the Department of Digital, Culture, Media and Sports or HM Treasury, from time to time.

Confidentiality

22.7 All information referred to in this Clause 22 (Operator's Records) is subject to the obligations set out in Clause 56 (Freedom of Information and Confidentiality).

23. REPORTING

23.1 The Operator shall report in relation to its performance of this Agreement, in accordance with the requirements of paragraph 5 of the Services Specification, Clause 19.2 and this Clause 23.

23.2 Without prejudice to any other provision in this Agreement, the Operator shall on the Annual Service Report Date at its own cost, provide to the Authority a written report (the "**Annual Service Report**") in accordance with the relevant requirements of the Services Specification. Furthermore, the Operator shall provide to the Authority a written report on a quarterly basis (the "**Quarterly Performance Report**") in accordance with paragraph 5.2 of the Services Specification.

23.3 If any change is made to the Annual Service Report or the Quarterly Performance Report pursuant to the procedure in Clause 23.6, then references to report shall be read as references to the report

as updated or amended by agreement with the Operator or as a result of agreement or determination pursuant to the Dispute Resolution Procedure.

23.4 The Authority shall be entitled to require information and/or clarification from the Operator in relation to the Annual Service Report and the Quarterly Performance Report.

23.5 The Operator shall upon a written request from the Authority promptly provide such written evidence or other supporting information as may be reasonably required to verify and audit the information and other material contained in the Annual Service Report and/or the Quarterly Performance Report.

23.6 Any dispute in relation to the accuracy or completeness of the Annual Service Report or the Quarterly Performance Report shall be resolved by reference to the Dispute Resolution Procedure.

23.7 **Annual Review**

23.7.1 In each year, as soon as reasonably practicable after receipt of the Annual Service Report and in any event not later than one (1) month thereafter (or failing receipt of the Annual Service Report, within two (2) months after the Annual Service Report Date in that year), the Authority and the Operator will hold a formal annual review (the "**Annual Review**") of the operation of this Agreement and the Operator's performance in the context of the Key Performance Indicators and the Performance Standards.

23.7.2 The requirements in relation to the content and conduct of the review will be agreed from time to time by the Parties. However as part of this review:

- (a) the Authority will review the Annual Service Report and the Operator's performance and the Authority and the Operator shall seek to agree, in good faith, any key findings from such review together with the implications thereof in relation to the Operator's future activities; and
- (b) the Authority and the Operator will consider whether the Key Performance Indicators remain the most appropriate measure of the Operator's support of the Strategic Priorities, having regard in particular to:
 - (i) the principle that a continuous improvement in the Operator's performance should be incentivised through the Key Performance Indicators; and
 - (ii) the requirement to comply with prevailing Legislation and applicable governmental policy,

and shall make recommendations to the Parties in this regard.

23.7.3 The Authority and the Operator shall act reasonably in seeking to agree any amendment to the Key Performance Indicators and consequential changes to the Service Delivery Proposals to give effect to any recommendations pursuant to Clause 23.7.2.

24. **CO-OPERATION FOR INVESTIGATION AND SECURITY**

24.1 The Operator shall co-operate with any investigation relating to a breach of security relating to this Agreement which is carried out by or on behalf of the Authority and:

24.1.1 shall use its reasonable endeavours to make its employees (and other Operator Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and

24.1.2 shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation. The Authority shall have the right to retain copies of any such material for use in connection with the investigation.

24.2 The Authority shall, insofar as is practical, inform the Operator of any specific or general security information which would reasonably be expected to affect the security of the Operator or any Operator Related Party or their property.

24.3 The Operator shall comply with the Authority's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Operator.

25. AUDIT

25.1 The Operator shall keep and maintain until twelve (12) years after the end of the Contract Period full and accurate records of this Agreement including the Services supplied under it, and specifically those records detailed at Clause 22 . The Operator shall on request afford the Authority or the Authority's Representative such access to those records as may be requested by the Authority in connection with this Agreement.

25.2 Except where an audit is imposed on the Authority by a Relevant Authority, the Authority may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:

25.2.1 to verify the accuracy of the Annual Payments in respect of the Services (and proposed or actual Changes to this in accordance with the Agreement) or the costs of all suppliers (including Sub-Contractors) of the Services;

25.2.2 to review the integrity, confidentiality and security practices in relation to the Processing of Personal Data;

25.2.3 to review the Operator's compliance with the Data Protection Legislation, FOIA and other Legislation applicable to the Services;

25.2.4 to review the Operator's compliance with its obligations under the Agreement;

25.2.5 to review any records created during the provision of the Services;

25.2.6 to review any books of account kept by the Operator in connection with the provisions of the Services;

25.2.7 to carry out the audit and certification of the Authority's accounts;

25.2.8 to carry out an examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy efficiency and effectiveness with which the Authority has used its resources; and

25.2.9 to verify the accuracy and completeness of any management information delivered or required by this Agreement.

25.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Operator or delay the provision of the Services.

25.4 Subject to the Authority's obligation of confidentiality, the Operator shall on demand provide the Authority and any other Relevant Authority (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:

25.4.1 all Information requested within the permitted scope of the audit;

25.4.2 reasonable access to any premises or sites controlled by the Operator and to any Assets used (whether exclusively or non-exclusively) in the performance of the Services;

25.4.3 access to relevant staff;

25.4.4 access to software owned or licenced to the Operator including software which is or will be used by the Operator for the purposes of providing the Services; and

25.4.5 accommodation (including desks) at the Operator's premises as reasonably required to conduct the audit.

25.5 The Authority shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

25.6 If an audit identifies that:

25.6.1 the Operator has committed an Operator Default which is capable of remedy, the Operator shall correct such Operator Default as soon as reasonably practicable and implement a Remediation Plan in accordance with the Remediation Plan Process; and

25.6.2 the Authority has not been paid or allowed such amounts which are properly due in respect of any Performance Adjustment Points, the Operator shall pay or allow to the Authority the amount outstanding within twenty (20) Business Days of receipt of the Authority's invoice therefor,

and the Operator shall reimburse the Authority for the cost of the audit incurred by the Authority, within twenty (20) Business Days of receipt of the Authority's invoice therefor.

Exceptional Audit

25.7 The Operator shall permit the Authority and/or its appointed representatives access to conduct an audit (an "**Exceptional Audit**") of the Operator in any of the following circumstances:

25.7.1 actual or suspected impropriety or fraud

25.7.2 there are reasonable grounds suspect that:

(a) the Operator has committed an Operator Default; or

(b) the Operator is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Operator financial distress and result in a risk of the Operator becoming insolvent or bankrupt.

25.8 If the Authority notifies the Operator that it wishes to conduct an Exceptional Audit, the Operator shall provide access in accordance with clause 25.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours of the request having been made.

Audit Costs

25.9 Without prejudice to Clause 25.6, the parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 25.2 to 25.7 unless an audit identifies an Operator Default, impropriety or fraud on the part of the Operator, in which case the Operator shall reimburse:

25.9.1 the Authority for all the Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and

25.9.2 where the Authority, a Relevant Authority and/or the Auditor General appoint another contracting body to conduct an audit, the Authority shall be able to recover on demand from the Operator the identifiable, reasonable and properly incurred costs and expenses of the relevant contracting body.

Exploitation of Information

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

Information about Users and Authority Related Parties

- 25.11 Without prejudice to Clause 55 and Clause 56, where the Operator, in carrying out its obligations under this Agreement, is provided with information relating to Users and Authority Related Parties, the Operator shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Operator has sought the prior written consent of that User or Authority Related Party and has obtained the prior written consent of the Authority.

Disclosure by Audit Commission

- 25.12 The parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 25.13 The provisions of this Clause 25 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

Part 5 – SUPERVENING EVENTS

26. CHANGE CONTROL PROCEDURE

- 26.1 The provisions of Schedule 22 (Change Protocol) shall have effect in respect of Changes except as otherwise expressly provided in this Agreement.

27. CHANGE IN LAW

- 27.1 The Operator shall take all steps necessary to ensure that the Services are performed in accordance with the terms of this Agreement following any Change in Law.

Qualifying Change in Law

- 27.2 If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 27.2.1 any necessary change to the Services;
- 27.2.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;
- 27.2.3 whether relief from compliance with obligations is required, including the obligation of the Operator to meet the Services Specification and/or the Service Delivery Proposals during the implementation of any relevant Qualifying Change in Law;
- 27.2.4 any Change in Revenue that will result from the relevant Qualifying Change in Law;
- 27.2.5 any estimated Change in Costs that directly result from the Qualifying Change in Law; and
- 27.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law,

in each case giving in full detail the procedure for implementing the change in the Services. Responsibility for the costs of implementation (and any resulting variation to the Annual Payment) shall be dealt with in accordance with Clauses 27.3 (Parties to Discuss) to 27.6 (Adjustment to Annual Payment).

Parties to Discuss

- 27.3 As soon as practicable after receipt of any notice from either party under Clause 27.2 (Qualifying Change in Law), the parties shall discuss and agree the issues referred to in Clause 27.2 (Qualifying Change in Law) and any ways in which the Operator can mitigate the effect of the Qualifying Change in Law, including:
- 27.3.1 providing evidence that the Operator has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs or decrease in Revenue and maximise any reduction in costs or increase in Revenue;
 - 27.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Operator;
 - 27.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses, including similar businesses in which the shareholders or their Affiliates carry on business; and

- 27.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 27.2.5 (Qualifying Change in Law) and/or 27.2.6 (Qualifying Change in Law);

Change Agreed

- 27.4 Where it is agreed or determined that the Qualifying Change in Law has resulted or will result in:
- 27.4.1 a Change in Costs (other than to the extent such Change in Costs is attributable to additional Capital Expenditure being incurred by the Operator); and/or
- 27.4.2 a Change in Revenue (with any Loss in Revenue being calculated in accordance with Schedule 21),

the Annual Payment shall be adjusted to reflect such agreed or determined Change in Costs and/or Change in Revenue (as the case may be).

Financing

- 27.5 If the parties agree or it is determined under the Dispute Resolution Procedure that the Operator is required to incur additional Capital Expenditure due to a Qualifying Change in Law, then the Operator shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it. If the Operator has used reasonable endeavours to obtain funding for such Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that agreement or determination pursuant to Clause 27.4 (Change Agreed) occurred, then the Authority shall pay to the Operator an amount equal to that Capital Expenditure in a lump sum after the Capital Expenditure has been incurred. Payments under this Clause 27.5 shall, subject to Clause 36.7, be made within twenty (20) Business Days of the Authority's receipt of the Operator's invoice therefor.

Adjustment to Annual Payment

- 27.6 Any compensation payable under this Clause 27 (Changes in Law) by means of an adjustment to or reduction in the Annual Payment shall be determined and made in accordance with Clause 37 (Financial Adjustments).

Payment of Irrecoverable VAT

- 27.7 The Authority shall pay to the Operator from time to time as the same is incurred by the Operator sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law that is unforeseeable as at the date of this Agreement. Subject to Clause 36.7, any such payment shall be made within twenty (20) Business Days of the delivery by the Operator to the Authority of the Operator's invoice therefor, accompanied by written details of the amount involved and details as to the grounds for and computation of the amount claimed. For the purposes of this Clause 27.7, **Irrecoverable VAT** means input VAT incurred by the Operator on any supply which is made to it which is used or to be used exclusively in performing the Services or any of the obligations or provisions under this Agreement (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Operator is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

28. COMPENSATION EVENTS

Effect of a Compensation Event

- 28.1 If, for any Facility, as a direct result of the occurrence of a Compensation Event the Operator:
- 28.1.1 is or will be unable to comply with its obligations under this Agreement; and/or

28.1.2 has incurred or will incur costs and/or has lost or will lose Revenue,

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

Procedure for Relief and Compensation

28.2 Subject to Clause 32.4 (Late Provision of Notice or Information), to obtain relief and/or claim compensation the Operator must:

28.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it became aware that the Compensation Event has caused or is likely to cause breach of an obligation under this Agreement and/or the Operator to incur costs or lose Revenue, give to the Authority a notice of its claim for payment of compensation and/or relief from its obligations under this Agreement;

28.2.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in Clause 28.2.1 (Procedure for Relief and Compensation), give full details of the Compensation Event and the relief from its obligations under this Agreement and/or any estimated Change in Costs and/or any estimated Change in Revenue claimed; and

28.2.3 demonstrate to the reasonable satisfaction of the Authority that:

(a) the Compensation Event was the direct cause of:

(i) the estimated Change in Costs; and/or

(ii) the estimated Change in Revenue; and/or

(iii) breach of the Operator's obligations under this Agreement; and

(b) the estimated Change in Costs, estimated Change in Revenue and/or relief from the obligations under this Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Operator acting in accordance with Good Industry Practice.

Giving of Relief and Compensation

28.3 In the event that the Operator has complied with its obligations under Clause 28.2 (Procedure for Relief and Compensation), then:

28.3.1 in the case of an additional cost being incurred or Change in Revenue, the Authority shall compensate the Operator for the estimated Change in Costs as adjusted to reflect the actual Change in Costs reasonably incurred and/or, without double counting, for any Change in Revenue (to the extent it could not reasonably have been mitigated) in accordance with Clause 28.6 (Method of Calculating Compensation) by an adjustment to the Annual Payment in accordance with Clause 37 (Financial Adjustments); and/or

28.3.2 the Authority shall give the Operator such relief from its obligations under this Agreement as is reasonable for such a Compensation Event.

Late Provision of Notice or Information

28.4 In the event that information is provided after the dates referred to in Clause 28.2.1 (Procedure for Relief and Compensation), then the Operator shall not be entitled to any compensation or relief from its obligations under this Agreement in respect of the period for which the relevant information is delayed.

Failure to Agree

- 28.5 If the parties cannot agree the extent of any compensation, relief from the Operator's obligations under this Agreement, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Operator is entitled to relief under this Clause 28 (Compensation Events), the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

Method of Calculating Compensation

- 28.6 Any payment of compensation referred to in Clause 28.3.1 (Giving of Relief and Compensation) shall be calculated in accordance with Clause 37 (Financial Adjustments) (and, in the case of Loss of Revenue, Schedule 21 (Loss of Revenue)) and paid in accordance with Clause 36 (Payment).

29. RELIEF EVENTS

Occurrence

- 29.1 If and to the extent that a Relief Event adversely affects the ability of the Operator to perform any of its obligations under this Agreement, then the Operator shall be entitled to apply for relief from any rights of the Authority arising under Clause 40 (Termination on Operator Default) and from its affected obligations under this Agreement.

Relief

- 29.2 To obtain relief, the Operator must:

- 29.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Relief Event is likely to adversely affect the ability of the Operator to perform its obligations give to the Authority a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- 29.2.2 within five (5) Business Days of receipt by the Authority of the notice referred to in Clause 29.2.1 (Relief), give full details of the relief claimed; and
- 29.2.3 demonstrate to the reasonable satisfaction of the Authority that:
- (a) the Operator and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - (b) the Relief Event directly caused the need for relief from obligations;
 - (c) the relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or dealt with by the Operator acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - (d) the Operator is using reasonable endeavours to perform its obligations under this Agreement.

Consequences

- 29.3 In the event that the Operator has complied with its obligations under Clause 29.2 (Relief), then the Authority shall not be entitled to exercise its right to terminate this Agreement under Clause 40 (Termination on Operator Default) and, subject to Clause 29.4 (Performance Adjustment Points and Performance Adjustment Payments), shall give such other relief as is reasonable.

Performance Adjustment Points and Performance Adjustment Payments

- 29.4 The Authority shall not be entitled to apply Performance Adjustment Points and/or Performance Adjustments under Clause 36 (Payment) and Schedule 5 (Payment and Performance Monitoring System) during the period in which the Relief Event is subsisting.

Information

- 29.5 In the event that information required by Clause 29.2 (Relief) is provided after the dates referred to in that Clause, then the Operator shall not be entitled to any relief during the period for which the information is delayed.

Notice

- 29.6 The Operator shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

Disputes

- 29.7 If the parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Operator is entitled to relief from obligations under this Agreement, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

30. FORCE MAJEURE

Obligations

- 30.1 No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Agreement for an Operator Default if such Operator Default arises from a Force Majeure Event.

Notification for Force Majeure

- 30.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

Consultation

- 30.3 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

Unable to Agree

- 30.4 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, either party may terminate this Agreement by giving twenty (20) Business Days' written notice to the other party.

Notice to Continue

- 30.5 If the Operator gives notice to the Authority under Clause 30.4 (Unable to Agree) that it wishes to terminate this Agreement, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Agreement to continue. If the Authority gives the Operator such notice (the **Continuation Notice**), then:

- 30.5.1 the Operator shall pay the Authority the Monthly Payments as if the Services were being fully provided, less any Loss of Revenue from the day after the date on which this

Agreement would have terminated under Clause 30.4 (Unable to Agree) (to the extent that such Loss of Revenue arises as a direct result of the Force Majeure Event); and

- 30.5.2 this Agreement will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Operator that it wishes this Agreement to terminate.

Mitigation

- 30.6 The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Operator shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

Cessation of Force Majeure Event

- 30.7 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

Part 6 – LIABILITY AND RISK MANAGEMENT

31. INDEMNITIES, GUARANTEES AND CONTRACTUAL CLAIMS

Operator's Indemnity

31.1 The Operator shall, subject to Clause 31.3 (Operator not Responsible), be responsible for, and shall release and indemnify the Authority on demand from and against:

31.1.1 all Direct Losses incurred as a result of Operator Damage to the Facilities and/or the Sites (other than any assets the repair, reinstatement and/or replacement of which are the responsibility of the Operator under Clause 34.1); and

31.1.2 all liability for Direct Losses arising from:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Authority or for which it is responsible) but excluding the land, buildings, plant, equipment and other assets which are the responsibility of the Operator to provide under this Agreement and which form part of the Facilities; and
- (c) third party actions, claims and/or demands other than those which are the subject of the indemnity in Clause 31.2,

which may arise out of, or in consequence of, the operation or maintenance of the Sites and/or Facilities or the performance or non-performance by the Operator of its obligations under this Agreement or the presence on the Authority's property of the Operator or an Operator Related Party or the presence on the land or buildings forming part of a Facility of any User.

31.2 The Operator shall, subject to Clause 31.3 (Operator not Responsible), be responsible for, and shall release and indemnify the Authority or any Authority Related Party, on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in Clause 31.1.2(c)) brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Operator of its obligations under this Agreement to the extent that there are no other remedies available to the Authority under this Agreement.

Operator not Responsible

31.3 The Operator shall not be responsible or be obliged to indemnify the Authority for:

31.3.1 any matter referred to in Clause 31.1 (Operator's Indemnity) which arises as a direct result of the Operator acting on a written notice issued by the Authority (and for the purposes of this Clause 31.3.1, Clause 1.6 (Responsibility for Related Parties) shall not apply);

31.3.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Operator of its obligations under this Agreement) or by the breach of the Authority of its obligations under this Agreement; or

31.3.3 any liability under Clause 31.1.1 for the occurrence of risks against which and to the extent to which the Authority is obliged to insure under Clause 33 (Authority Insurances) (but for the avoidance of doubt, the Operator shall be liable pursuant to Clause 31.1.1 for the applicable deductible (to the extent it does not exceed the Deductible Cap) and for any sum which the Authority is unable to recover under such insurances as a result of breach by the Operator of Clause 32.2).

Limitation of Indemnity

- 31.4 An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any other provision of this Agreement.

Notification of Claims

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

Conduct of Claims

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

Costs of Claims

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

Mitigation

- 31.8 The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

Sub-Contractor Losses

- 31.9 Where:
- 31.9.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Operator under the Sub-Contracts; and
- 31.9.2 the Operator subsequently makes a claim against the Authority under this Agreement in relation to such compensation and/or relief,

the Authority waives any right to defend the Operator's claim on the ground that the Operator is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority.

32. OPERATOR INSURANCES

Requirement to Maintain

- 32.1 The Operator shall in relation to each Facility during the Contract Period take out and maintain or procure the maintenance of the Operator Insurances.

Obligation on Parties

- 32.2 Neither party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.

Evidence of Policies

32.3 The Operator shall provide to the Authority:

- 32.3.1 copies on request of all insurance policies referred to in Clause 32.1 (Requirement to Maintain) (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
- 32.3.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 32 (Operator Insurances) and Schedule 13 (Insurances).

Renewal Certificates

32.4 Renewal certificates in relation to any of the Operator Insurances shall be obtained by the Operator as and when necessary and copies (certified in a manner acceptable to the Authority acting reasonably) shall be forwarded by the Operator to the Authority as soon as possible but in any event on or before the renewal date.

Breach

32.5 If the Operator is in breach of Clause 32.1 (Requirement to Maintain), the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Operator on written demand.

Notification of Claims

32.6 The Operator shall give the Authority notification within ten (10) Business Days after any claim in excess of twenty thousand pounds (£20,000) (index-linked) on any of the Operator Insurances or which, but for the application of the applicable insurance policy excess, would be made on any of the Operator Insurances and (if required by the Authority) give full details of the incident giving rise to the claim.

Limit of Liability

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

Premia

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

Authority Approval

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

33. AUTHORITY INSURANCES

33.1 The Authority shall take out and maintain the Authority Insurances.

33.2 The Authority shall notify the Operator of the type of insurance it has obtained including relevant deductibles and premia.

- 33.3 In relation to the Authority Insurances the Operator shall:
- 33.3.1 comply with all reasonable requirements of the insurers;
 - 33.3.2 comply with all requirements of the fire authority as to fire precautions relating to the Facilities or the Sites; and
 - 33.3.3 give notice to the Authority of any requirements and recommendations of the fire authority as to fire precautions relating to the Facilities or the Sites or any requirements or recommendations of the insurers.
- 33.4 Claims under the Authority Insurances shall be pursued by the Authority at its discretion. Where the Authority pursues such claims, the Operator shall give its full co-operation in assisting the Authority including providing all such documents, data and information as may be reasonably required by the Authority.
- 33.5 To the extent that the premium levels and/or deductible levels in respect of the Authority's Insurances have increased as a result of a change in the Authority's claims made under the Authority's Insurances caused by Operator Damage then:
- 33.5.1 the Deductible Cap shall be increased by an amount equal to such part of the increase in the deductible level as is attributable to Operator Damage; and
 - 33.5.2 the Authority shall be entitled to claim:
 - (a) the increased premia attributable to such Operator Damage; and
 - (b) without prejudice to Clause 31.1.1, in respect of each claim on the Authority's Insurances made by the Authority for which the Authority carries deductible risk, the amount by which the deductible applying under the Authority's Insurances at the relevant time has increased as a result of Operator Damage,
- in each case as a debt due or exercise its rights of set off pursuant to Clause 36.15,
- provided always that in each case the Authority shall provide written confirmation from the insurance broker responsible for the Authority's Insurances that the increases in premia and/or deductibles (and the amount of such increases) have been caused by Operator Damage claims in accordance with this Agreement.

34. REINSTATEMENT AND CHANGE OF REQUIREMENT AFTER INSURED EVENT

- 34.1 The Operator shall be responsible for repairing, reinstating and/or replacing all damage to the assets which are (or are required to be) insured under any policy referred to in paragraph 1 of Part 2 of Schedule 13 (Insurances) (the **Operator Physical Damage Policies**). All insurance proceeds received under the Operator Physical Damage Policies shall be applied to repair, reinstate and replace each part or parts of the assets in respect of which such proceeds were received.
- 34.2 In the event of any damage to the Facility or the Site which damage is covered or would be covered by the Authority Insurances, the Authority shall in consultation with the Operator carry out or procure the carrying out of reinstatement works to repair or replace property or assets so damaged and, save to the extent attributable to Operator Damage, the occurrence of such damage (and any such reinstatement works carried out) to the extent it affects the Services and/or the operation of the Facility shall be treated as an Authority Change.

35. RISKS THAT BECOME UNINSURABLE

Uninsurable Risks

- 35.1 Nothing in Clause 32 (Insurance) or this Clause 35 (Risks that Become Uninsurable) shall oblige the Operator to take out insurance in respect of a risk which is Uninsurable save where the predominant

cause of the risk being Uninsurable is an act or omission of the Operator or an Operator Related Party.

Risks Become Uninsurable

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

35.2.1 the Operator shall notify the Authority within five (5) Business Days of the risk becoming Uninsurable; and

35.2.2 if both parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:

(a) the risk being Uninsurable is not caused by the actions, breaches, omissions or defaults of the Operator or a Sub-Contractor; and

(b) the Operator has demonstrated to the Authority that the Operator and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by the Operator would in similar circumstances (in the absence of the type of relief envisaged by this Clause 35) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

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

Consequences

35.3 If the requirements of Clause 35.2 (Risks that Become Uninsurable) are satisfied, but the parties cannot agree as to how to manage or share the risk, then:

35.3.1 in respect of such third party liability insurance only, the Authority shall (at the Authority's option) either pay to the Operator an amount equal to the amount set out in Clause 47 (Compensation on Termination for Force Majeure) and this Agreement will terminate or elect to allow this Agreement to continue and Clause 35.3.2 (Consequences) shall thereafter apply in respect of such risk;

35.3.2 in respect of such property damage insurance or third party liability insurance (if the Authority elects to allow the Agreement to continue in accordance with Clause 35.3.1) business interruption (but not loss of profits), delay in start up (but not loss of profits) or statutory insurances this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Operator an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Agreement will continue, or an amount equal to the amount calculated in accordance with Clause 47 (Compensation on Termination for Force Majeure) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon this Agreement will terminate;

35.3.3 where pursuant to Clauses 35.3.1 and/or 35.3.2 (Consequences) this Agreement continues then the Annual Payment shall be increased in each Contract Year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Operator in respect of the relevant risk in the Contract Year prior to it

becoming Uninsurable (index-linked from the first day of the Contract Year in which such risk became Uninsurable) from the date that the risk became Uninsurable;

35.3.4 where the risk is Uninsurable for part of a Contract Year only the increase in the Annual Payment shall be pro rated to the number of months for which the risk was Uninsurable; and

35.3.5 where pursuant to Clauses 35.3.1 and/or 35.3.2 (Consequences) this Agreement continues the Operator shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Operator is aware that the risk is no longer Uninsurable, the Operator shall take out and maintain and procure the taking out and maintenance of insurance (to be incepted as soon as reasonably practicable) for such risk in accordance with this Agreement.

35.4 If, pursuant to Clause 35.3.2 (Consequences), the Authority elects to make payment to the Operator (such that the Agreement will terminate) (the Relevant Payment) the Operator shall have the option (exercisable within twenty (20) Business Days of the date of such election by the Authority (the Option Period)) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the risk not become Uninsurable, in which case this Agreement will continue (and the Relevant Payment will not be made by the Authority), and the Operator's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

Increase in Insured Amounts

35.5 The limit of indemnity and the maximum deductibles for each of the Operator Insurances shall be index-linked, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the limit that is index-linked becomes equal to or exceeds the next whole insurable amount or deductible (as the case may be) available in the insurance market.

Unavailability of Terms or Conditions

35.6 If, upon the renewal of any insurance which the Operator is required to maintain or to procure the maintenance of pursuant to this Agreement:

35.6.1 any Insurance Term is not available to the Operator in the worldwide insurance market with reputable insurers of good standing; and/or

35.6.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by Operators in the United Kingdom,

(other than, in each case, by reason of one or more actions or omissions of the Operator and/or any Sub-Contractors) then Clause 35.7 (Unavailability of Terms or Conditions) shall apply.

35.7 If it is agreed or determined that Clause 35.6 (Unavailability of Terms or Conditions) applies then the Authority shall waive the Operator's obligations in Clause 32 (Operator Insurances) and/or Schedule 13 (Insurances) in respect of that particular Insurance Term and the Operator shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 35.6 (Unavailability of Terms or Conditions) continue to apply to such Insurance Term.

35.8 To the extent that the parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Operator in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Operator's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which Contractors in the UK are (at such time) generally prepared to pay, the Operator shall

maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Agreement whatsoever, the costs of such insurance shall be for the account of the Operator.

- 35.9 Where the Authority has exercised the waiver pursuant to Clause 35.7 (Unavailability of Terms or Conditions), then for so long as the relevant circumstances described in Clause 35.6 (Unavailability of Terms or Conditions) continue to apply to such Insurance Term, the Monthly Payment shall be increased by the Adjusted Amount for the relevant Contract Year.
- 35.10 The Operator shall notify the Authority as soon as reasonably practicable and in any event within five days of becoming aware that Clause 35.6.1 and/or 35.6.2 (Unavailability of Terms or Conditions) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Operator shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 35.11 In the event that Clause 35.6.1 and/or 35.6.2 (Unavailability of Terms or Conditions) apply in respect of an Insurance Term (irrespective of the reasons for the same) the Operator shall approach the insurance market at least every four months to establish whether Clause 35.6.1 and/or 35.6.2 (Unavailability of Terms or Conditions) remain applicable to the Insurance Term. As soon as the Operator is aware that Clause 35.6.1 and/or 35.6.2 (Unavailability of Terms or Conditions) has ceased to apply to the Insurance Term, the Operator shall take out and maintain or procure the taking out and maintenance of the insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement and any amount of Annual Payment adjusted pursuant to Clause 35.9 (Unavailability of Terms and Conditions) shall cease to apply.

Part 7 – PAYMENT

36. PAYMENT

Payment of the Monthly Payment

- 36.1 Following the Commencement Date, the Operator shall pay the Monthly Payment calculated in accordance with Schedule 5 (Payment and Performance Monitoring System).
- 36.2 Where applicable in accordance with Schedule 5 (Payment and Performance Monitoring System), the Monthly Payment shall be increased in each relevant Payment Period by Performance Adjustment Payments calculated in accordance with Schedule 5 (Payment and Performance Monitoring System).

Report and Invoice

- 36.3 On the first Business Day of each Payment Period the Operator shall submit to the Authority:
- 36.3.1 a report showing the Monthly Payment and any Performance Adjustment Payments for the previous Contract Month and, individually, each item taken into account in calculating such Monthly Payment and Performance Adjustment Payments pursuant to Schedule 5 (Payment and Performance Monitoring System); and
- 36.3.2 a statement showing the Monthly Payment payable by the Operator to the Authority, so as to permit the Authority to issue an invoice to the Operator for such amount plus any VAT (if any) payable in respect of that amount.

(together the "**Application**"). The Authority shall issue its invoice to the Operator, taking account of the Application (but not being bound by it).

Final Payment Period

- 36.4 The following provisions shall apply in respect of expiry of this Agreement and during any period prior to termination of this Agreement, after a termination notice has been served.
- 36.4.1 in the final two Payment Periods, in addition to the amounts referred to in Clause 36.2 (Report and Invoice) the Operator shall pay to the Authority an amount equivalent to the average per Payment Period of the sum of the Performance Adjustment Payments applicable to the previous twelve (12) Payment Periods; and
- 36.4.2 following the Authority's receipt of the Operator's reports in respect of those Payment Periods containing the information set out in Clause 36.3.1 (Report and Invoice), if it is agreed or determined that:
- (a) the Operator has paid more pursuant to Clause 36.4.1 than the amount of the Performance Adjustment Payments properly payable pursuant to Schedule 5 (Payment and Performance Monitoring System) in respect of those Payment Periods, Authority shall pay the excess to the Operator; or
 - (b) the Operator has paid less pursuant to Clause 36.4.1 than the amount of the Performance Adjustment Payments properly payable pursuant to Schedule 5 (Payment and Performance Monitoring System) in respect of those Payment Periods, the Operator shall pay the balance to the Authority,

in each case with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from:

- (i) the date on which the amounts paid under Clause 36.4.1 exceeded the amount of the Performance Adjustment Payments properly payable pursuant to

Schedule 5 (Payment and Performance Monitoring System) in respect of those Payment Periods (in the case of Clause 36.4.2(a); or

- (ii) the date of expiry or termination of this Agreement (as applicable), in the case of Clause 36.4.2(b),

until all relevant monies have been paid in full and whether before or after judgement.

Payment

- 36.5 Subject to the remaining provisions of this Clause, the Operator shall pay the amounts stated in any invoices submitted by the Authority pursuant to Clause 36.3 on the final Business Day of the Payment Period in question.
- 36.6 The amount of any Performance Adjustment Payments calculated in accordance with Schedule 5 (Payment and Performance Monitoring System) shall be paid at the same time as the Monthly Payment in respect of the relevant Payment Period is paid.

Disputed Amounts

- 36.7 If one party (Disputing Party) disputes the other Party's (Claiming Party) entitlement to any part of the amount invoiced pursuant to Clause 36.3 (Report and Invoice) in respect of any Payment Period and/or any amount invoiced under another provision of this Agreement, the following provisions shall apply.
- 36.8 At least five (5) Business Days before the final date for payment due to the Claiming Party, the Disputing Party shall give notice to the Claiming Party of the following:
 - 36.8.1 any amounts claimed by the Claiming Party that the Disputing Party objects to and is seeking to withhold; or
 - 36.8.2 any amounts that the Disputing Party is owed by the Claiming Party (including any amounts previously overpaid to the Claiming Party) which the Disputing Party is seeking to withhold; or
 - 36.8.3 any amount pursuant to Clause 36.4 that the Disputing Party is seeking to withhold or retain.
- 36.9 Any notice shall set out the sum or sums proposed to be withheld, grounds for withholding payment and the amount attributable to each ground.
- 36.10 The Disputing Party shall notify the Claiming Party in writing within ten (10) Business Days of receipt by the Disputing Party of the relevant invoice of that part of the amount (insofar as at the time of such notice the Disputing Party is reasonably able to quantify it) which the Disputing Party (acting in good faith) disputes (a "**Disputed Amount**") and submit to the Claiming Party such supporting evidence as the Disputing Party may have.
- 36.11 The Disputing Party may withhold payment of any Disputed Amount pending agreement or determination of the Claiming Party's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.

Response to Disputing Party Notice

- 36.12 Within ten (10) Business Days following receipt by the Claiming Party of any notice served by the Disputing Party pursuant to Clause 36.8 (Disputed Amounts), the Claiming Party shall respond by notifying the Disputing Party as to whether or not it agrees with the statements made in that notice.

If the Claiming Party indicates that it does agree, or if the Claiming Party fails to make such a response within that time limit, the Disputing Party shall be entitled:

36.12.1 to retain on a permanent basis any amounts withheld pursuant to Clause 36.11 (Disputed Amounts); and

36.12.2 to reclaim from the Claiming Party the amount of any over-payment which may have been made to the Claiming Party together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

Dispute

36.13 If the Claiming Party responds (pursuant to Clause 36.12 (Response to Disputing Party Notice)) that it does not agree with all or any of the statements made in any notice served by the Disputing Party pursuant to Clause 36.8 (Disputed Amounts), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

Determination of Dispute

36.14 If the determination of any dispute conducted pursuant to Clause 36.13 (Dispute) shows that:

36.14.1 the Disputing Party has withheld any amount which the Claiming Party was entitled to be paid; or

36.14.2 the Claiming Party has claimed under Clause 36.3 (Report and Invoice) any amount which it was not entitled to be paid,

the Disputing Party shall pay such amount to the Claiming Party or the Claiming Party shall repay such amount to the Disputing Party with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Disputing Party) or from the date on which over payment was made (in the case of excessive claims by the Claiming Party) until all relevant monies have been paid in full and whether before or after judgment.

Rights of Set Off

36.15 Each party shall be entitled to retain or set off any amount owed to it by the other party under this Agreement which has fallen due and payable against any amount due to the other party under this Agreement.

Set Off and Disputed Amounts

36.16 If the payment or deduction of any amount referred to in Clause 36.15 (Rights of Set Off) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

VAT on Payments

36.17 All amounts due under this Agreement are exclusive of VAT.

36.18 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the Recipient) shall in addition pay the person making the supply (the Supplier) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

36.19 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the

extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

- 36.20 The Operator shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Operator.

Promoting Tax Compliance

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

36.21.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and

36.21.2 promptly provide to the Authority:

- (a) details of the steps which the Operator 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.

Indexation

- 36.22 The Annual Payment shall be adjusted for inflation in accordance with paragraph [] of Schedule 5 (Payment and Performance Monitoring System).

[NNDR]

- 36.23 The parties shall comply with the provisions of Schedule 15 (NNDR)].

Business Improvement District levy

- 36.24 The Operator shall pay any Business Improvement District levy that is due in respect of the Facilities for the duration of this Agreement.

37. FINANCIAL ADJUSTMENTS

Updating the LOBTA

- 37.1 Whenever a Relevant Event or Loss of Revenue Event occurs, the financial consequence shall (save where otherwise provided in this Agreement or where the parties mutually agree otherwise) be determined in accordance with this Clause 37 (Financial Adjustments). Where for the purposes of this Clause 37 (Financial Adjustments) the LOBTA is to be adjusted by reference to a Relevant Event or Loss of Revenue Event, this shall be carried out by the Operator, in consultation with the Authority, to reflect the cumulative impact of any prior Relevant Event or Loss of Revenue Event on the version of the LOBTA applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event or Loss of Revenue Event in respect of which such adjustment is being undertaken. In calculating the Change in Costs and Change in Revenue (in respect of Relevant Events) and in calculating the Loss of Revenue (in respect of Loss of Revenue Events) and in assessing other adjustments to be made to the LOBTA arising from a Relevant Event or Loss of Revenue Event, the Operator shall be entitled to take into account, inter alia:

37.1.1 in respect of a Relevant Event, any Change in Costs and Change in Revenue;

37.1.2 in respect of a Loss of Revenue Event, any Loss of Revenue;

37.1.3 reasonable economic assumptions prevailing at the time; and

37.1.4 changes in the prospective technical performance of Services arising as a result of the Relevant Event or Loss of Revenue Event,

provided that the Authority shall not be required (and the Operator shall not be entitled) to take into account the financial impact up to the date of the Relevant Event or Loss of Revenue Event of those risks which the Operator bears under the terms of this Agreement, including (to the extent so borne by the Operator under this Agreement) changes in VAT rates, taxation rates, CPI and the impact of Performance Adjustment Payments.

Application to the LOBTA

37.2 Where, pursuant to this Agreement, either party is entitled to payment of any sum the assessment of which properly requires reference to the LOBTA, the adjustment to the Annual Payment due shall be that required to ensure that, by reference to the LOBTA adjusted under this Clause 37 (Financial Adjustments), the Operator is left in a no better and no worse position than under the version of the LOBTA applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Annual Payment required to maintain the financial position of the Operator with that in which it would have been under the version of the LOBTA applicable immediately prior to the relevant adjustment.

No Better and no Worse

37.3 Subject to Clause 37.4, any reference in this Agreement to no better and no worse or to leaving the Operator in a no better and no worse position shall be construed by reference to the Operator's:

37.3.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement and the Head Lease; and

37.3.2 ability to perform its obligations and exercise its rights under this Agreement and the Head Lease,

so as to ensure that:

37.3.3 the Operator is left in a position which is no better and no worse in relation to the [Base Profit, Base Head Office Costs and Base Modelled Costs (as defined in Schedule 17 (Benchmarking))] by reference to the version of the LOBTA applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

37.3.4 the ability of the Operator to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

37.4 In respect of any Loss of Revenue, the sum calculated pursuant to Schedule 21 (Loss of Revenue) and compensated by way of a lump sum payment, in instalments or by way of an adjustment to the Annual Payment shall be deemed to leave the Operator in a "no better and no worse position".

Replacement of LOBTA and Loss of Revenue Schedule

37.5 Any LOBTA produced following adjustments in accordance with this Clause 37 (Financial Adjustments) shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the LOBTA for the purposes of this Agreement until its further amendment in accordance with this Agreement.

37.6 When an LOBTA is updated for the purposes of this Clause 37 (Financial Adjustments), an updated Schedule 21 (Loss of Revenue) shall also be prepared. When the updated Schedule 21 (Loss of Revenue) is approved by the Authority (such approval not to be unreasonably withheld), it shall become Schedule 21 (Loss of Revenue) for the purposes of this Agreement until its further amendment in accordance with this Agreement.

Amendments to Logic and/or Formulae

37.7 Where it is necessary to amend the logic or formulae incorporated in the LOBTA to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.

37.7.1 Where any amendment is made to the logic or formulae incorporated in the LOBTA, the LOBTA, shall first be run as at the date immediately prior to amendment to ensure that the key ratios from the LOBTA are maintained at no lower or no higher levels than the key ratios immediately post the amendment.

Copies of the Revised LOBTA and Loss of Revenue Schedule

37.8 Following any change to the LOBTA and/or Schedule 21 (Loss of Revenue) under the provisions of this Clause 37 (Financial Adjustments), the Operator shall promptly deliver a copy of the revised LOBTA and/or Schedule 21 (Loss of Revenue) to the Authority in the same form as is established at the date of this Agreement or in such other form as may be agreed between the parties.

38. NOT USED

Part 8 – TERMINATION AND CONSEQUENCES OF TERMINATION

39. VOLUNTARY TERMINATION BY THE AUTHORITY

- 39.1 The Authority may terminate this Agreement at any time on or before the Expiry Date by issuing a Termination Notice to the Operator in accordance with this Clause 39.
- 39.2 A Termination Notice pursuant to this Clause 39 must state the following:
- 39.2.1 that the Authority is terminating this Agreement under this Clause 39 (Voluntary Termination by the Authority);
 - 39.2.2 that this Agreement will terminate on the date specified in the notice, which must be a minimum of sixty (60) Business Days after the date of receipt of the notice; and
 - 39.2.3 whether the Authority requires the Operator to transfer its rights, title and interest in and to all or part of the Assets to the Authority (or as directed by the Authority) in accordance with Clause 48.
- 39.3 This Agreement will terminate on the date referred to in Clause 39.2.2.

40. TERMINATION ON OPERATOR DEFAULT

- 40.1 The Authority shall be entitled to terminate this Agreement by notice in writing to the Operator if an Operator Default has occurred. Any such Termination Notice must specify:
- 40.1.1 the type and nature of Operator Default that has occurred, giving reasonable details; and
 - 40.1.2 that in the case of any Operator Default falling within limbs (b) (material breach), (h) (assignment, subcontracting and change of control) and (l) (insurance) of the definition of Operator Default this Agreement will terminate on the day falling forty (40) Business Days after the date the Operator receives the Termination Notice, unless:
 - (a) in the case of a breach under limb (b) (material breach) of the definition of Operator Default the Operator puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Operator receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Operator Default in accordance with the programme); or
 - (b) in the case of any Operator Default falling within limbs (b) (material breach), (h) (assignment, subcontracting and change of control) and (l) (insurance) of the definition of Operator Default the Operator rectifies the Operator Default within forty (40) Business Days after the date the Operator receives the Termination Notice; or
 - 40.1.3 that in the case of any other Operator Default (not being limbs (a) (non payment) (b) (material breach), (h) (assignment, subcontracting and change of control) and (l) (insurance)), this Agreement will terminate on the date falling forty (40) Business Days after the date the Operator receives the Termination Notice.
- 40.2 Where Clause 40.1.2 applies, if the Operator either rectifies the Operator Default within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Agreement will continue.
- 40.3 If either in the case of an Operator Default within limb (b) (material breach) of the definition of that term where no acceptable rectification programme has been put forward pursuant to Clause 40.1.2(a) or in the case of an Operator Default falling within limbs (h) (assignment, subcontracting and change of control) and (l) (insurance) of the definition of Operator Default, the Operator fails to rectify the Operator Default within the time period specified in the Termination Notice, the Authority

may give notice stating that this Agreement will terminate on the date falling five (5) Business Days after the date of receipt of such notice.

40.4 If the Operator fails to implement any rectification programme (in the case of an Operator Default within limb (b) (material breach) of the definition of that term) in accordance with its terms, this Agreement will terminate on the date falling thirty (30) Business Days after the date of notification by the Authority to the Operator of such failure to implement the rectification programme in accordance with its terms.

40.5 On termination the Authority may require the Operator to transfer all of its rights, title and interest in and to the Assets to the Authority (or as directed by the Authority) in accordance with Clause 48.

41. TERMINATION FOR PERSISTENT BREACH BY THE OPERATOR

Warning Notice

41.1 If a particular breach, other than any breach for which Performance Adjustment Points and/or Performance Adjustment Payments could have been applied, has continued for more than fourteen (14) days or occurred more than three (3) times in any six (6) month period then the Authority may serve a notice on the Operator:

41.1.1 specifying that it is a formal warning notice;

41.1.2 giving reasonable details of the breach; and

41.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

Final Notice

41.2 If, following service of a warning notice the breach specified has continued beyond thirty (30) days or recurred in three (3) or more months within the six (6) month period after the date of service, then the Authority may serve another notice (a **Final Warning Notice**) on the Operator:

41.2.1 specifying that it is a Final Warning Notice;

41.2.2 stating that the breach specified has been the subject of a warning notice served within the six(6) month period prior to the date of service of the Final Warning Notice; and

41.2.3 stating that if the breach continues for more than fourteen (14) days or recurs in three (3) or more months within the six (6) month period after the date of service of the Final Warning Notice, this Agreement may be terminated.

Currency of Warning Notices

41.3 A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.

42. TERMINATION ON CORRUPT GIFTS AND FRAUD

42.1 The Operator represents and warrants that neither it, nor to the best of its knowledge any Operator Related Party, have at any time prior to the Commencement Date:

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

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

- 42.2 The Operator shall not during the term of this Agreement:
- 42.2.1 commit a Prohibited Act; and/or
 - 42.2.2 do or suffer anything to be done which would cause the Authority or any Authority Related Party to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 42.3 The Operator shall during the term of this Agreement:
- 42.3.1 establish, maintain and enforce, and require that any 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; and
 - 42.3.2 keep appropriate records of its compliance with its obligations under Clause 42.3.1 and make such records available to the Authority on request.
- 42.4 The Operator shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 42.1 and/or 42.2, or has reason to believe that it has or any Operator Related Party have:
- 42.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 42.4.2 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
 - 42.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 42.5 If the Operator make a notification to the Authority pursuant to Clause 42.4, the Operator shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for twelve (12) calendar years following the expiry or termination of this Agreement.
- 42.6 If the Operator is in breach of Clause 42.1 and/or 42.2, the Authority may by notice:
- 42.6.1 require the Operator to remove from performance of this Agreement any Operator Related Party whose acts or omissions have caused the breach; or
 - 42.6.2 immediately terminate this Agreement.
- 42.7 Any notice served by the Authority under Clause 42.6 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 Agreement shall terminate).
- 42.8 Where the Authority serves a notice under Clause 42.6.1, the Operator shall comply with such notice within ten (10) Business Days, failing which the Authority shall be entitled to terminate this Agreement with immediate effect by serving written notice on the Operator.
- 43. TERMINATION ON AUTHORITY DEFAULT**
- 43.1 If an Authority Default has occurred and the Operator wishes to terminate this Agreement, the Operator must serve a Termination Notice on the Authority within thirty (30) Business Days of becoming aware of the Authority Default.

- 43.2 Unless the Authority rectifies the Authority Default within twenty (20) Business Days of receipt of the Termination Notice, this Agreement will terminate on the day falling forty (40) Business Days after the date the Authority receives the Operator Termination Notice.

44. COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT/VOLUNTARY TERMINATION

- 44.1 On termination of this Agreement pursuant to Clauses 39 (Voluntary Termination by the Authority) or 43 (Termination on Authority Default), the Authority shall pay the Operator in accordance with Clauses 49 (Miscellaneous Compensation Provisions) and 50 (Method of Payment) an amount equal to the aggregate of (without double counting):

- 44.1.1 such amounts properly due to the Operator and invoiced in accordance with Clause 36 (Payment) or otherwise in accordance with this Agreement, in respect of the period prior to such termination but which have not been previously paid;
- 44.1.2 any amount that may be calculated in accordance with Clause 36 as properly due to the Operator in respect of the period ending on the Termination Date and/or such other amounts as may be properly due to the Operator in accordance with this Agreement in respect of the period ending on the Termination Date which, in either case, are uninvoiced at the Termination Date;
- 44.1.3 any Sub-Contractor Breakage Costs;
- 44.1.4 the Profit Payment;
- 44.1.5 [any Forward Funded Amount],

LESS to the extent it is a positive amount, the aggregate of (without double counting):

- 44.1.6 all, if any, amounts that may be calculated in accordance with Clause 36 as properly due to the Authority in respect of the period ending on the Termination Date and/or such other amounts as may be properly due to the Authority in accordance with this Agreement in respect of the period ending on the Termination Date, which, in either case, have not been previously paid (under deduction of amounts which the Operator is entitled to set off pursuant to Clause 36.15 (Rights of set off));
- 44.1.7 amounts which the Authority is entitled to set off pursuant to Clause 36.15 (Rights of set off); and
- 44.1.8 BI Proceeds, to the extent that they compensate the Operator in respect of any of the items listed at Clauses 44.1.1 to 44.1.5.

45. COMPENSATION ON TERMINATION FOR OPERATOR DEFAULT AND CORRUPT GIFTS AND FRAUD

- 45.1 On termination of this Agreement in accordance with Clause 40 (Termination on Operator Default) or Clause 42 (Termination on Corrupt Gifts and Fraud), the Operator shall be liable to and shall pay the Authority an amount equal to the aggregate of (without double counting):

- 45.1.1 the reasonable costs incurred by the Authority in the rectification of any part of any Facility which is necessary due to any failure of the Operator to comply with its obligations under this Agreement;
- 45.1.2 where the Authority carries out a Retendering Process, the Retendering Costs;
- 45.1.3 where the Authority carries out a Retendering Process, such amount (if any) as is necessary to compensate the Authority for the difference, if any, between the aggregate Retendered Annual Payment and the Current Annual Payment;

- 45.1.4 all, if any, amounts that may be calculated in accordance with Clause 36 as properly due to the Authority in respect of the period ending on the Termination Date and/or such other amounts as may be properly due to the Authority in accordance with this Agreement in respect of the period ending on the Termination Date, which, in either case, have not been previously paid (under deduction of amounts which the Operator is entitled to set off pursuant to Clause 36.15 (Rights of set off)); and
- 45.1.5 all other Direct Losses which the Authority suffers or incurs arising out of any breach of this Agreement or as a result of the termination of this Agreement including (without limitation) any liability to any third party,

LESS, without double counting and subject to the Authority's right of set off under Clause 36.15 (Rights of Set Off):

- 45.1.6 such amounts properly due to the Operator and invoiced in accordance with Clause 36 (Payment) or otherwise in accordance with this Agreement in respect of the period prior to such termination but which have not been previously paid;
- 45.1.7 any amount that may be calculated in accordance with Clause 36 as properly due to the Operator in respect of the period ending on the Termination Date and/or such other amounts as may be properly due to the Operator in accordance with this Agreement in respect of the period ending on the Termination Date which, in either case, are uninvoiced at the Termination Date;
- 45.1.8 [any Forward Funded Amount].

46. RETENDERING PROCESS

- 46.1 If the Authority elects to retender the Services following termination under Clauses 40 (Termination on Operator Default) or 42 (Termination on Corrupt Gifts and Fraud), then the following provisions shall apply (the Retendering Process):
 - 46.1.1 the objective of the retendering process shall be to retender the Services and enter into a Retendered Contract with a replacement operator;
 - 46.1.2 the Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Retendering Process as soon as practicable;
 - 46.1.3 the Authority shall notify the Operator of the Qualification Criteria and the other requirements and terms of the Retendering Process, including the timing of the Retendering Process, and shall act reasonably in setting such requirements and terms;
 - 46.1.4 the Operator authorises the release of any information by the Authority under the Retendering Process which would otherwise be prevented under Clause 56 (Freedom of Information and Confidentiality) that is reasonably required as part of the Retendering Process provided that the Authority shall not release information which is commercially sensitive as described or referred to in Clause 51.5.5;
 - 46.1.5 the Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under any material damage insurance policies;
 - 46.1.6 as soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine which (if any) of the tenderers it wishes to enter into a Retendered Contract with;
 - 46.1.7 the replacement operator shall be required to set out in its tender submission the proposed annual payment amount (the **Retendered Annual Payment**); and
 - 46.1.8 the tenderers will be required to tender on the basis that the successful tenderer shall take the benefit of all existing bookings and any membership fees relating to each Facility.

47. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

47.1 On termination of this Agreement under Clause 30 (Force Majeure), the Authority shall pay to the Operator in accordance with Clauses 49 (Miscellaneous Compensation Provisions) and 50 (Method of Payment) an amount equal to the aggregate of (without double counting):

47.1.1 such amounts properly due to the Operator and invoiced in accordance with Clause 36 (Payment) or otherwise in accordance with this Agreement in respect of the period prior to such termination but which have not been previously paid;

47.1.2 any amount that may be calculated in accordance with Clause 36 as properly due to the Operator in respect of the period ending on the Termination Date and/or such other amounts as may be properly due to the Operator in accordance with this Agreement in respect of the period ending on the Termination Date which, in either case, are uninvoiced at the Termination Date;

47.1.3 any Sub-Contractor Breakage Costs;

47.1.4 [any Forward Funded Amount],

LESS to the extent it is a positive amount, the aggregate of (without double counting):

47.1.5 all, if any, amounts that may be calculated in accordance with Clause 36 as properly due to the Authority in respect of the period ending on the Termination Date and/or such other amounts as may be properly due to the Authority in accordance with this Agreement in respect of the period ending on the Termination Date, which, in either case, have not been previously paid (under deduction of amounts which the Operator is entitled to set off pursuant to Clause 36.15 (Rights of set off));

47.1.6 amounts which the Authority is entitled to set off pursuant to Clause 36.15 (Rights of set off); and

47.1.7 BI Proceeds, to the extent that they compensate the Operator in respect of any of the items listed at Clauses 47.1.1 to 47.1.4.

48. ASSETS

48.1 Where this Agreement expires due to effluxion of time or terminates earlier, the Authority shall have the option, exercisable by written notice, to require the Operator to transfer to the Authority (or as directed by the Authority) its rights, title and interest in and to all or any part of the Assets at nil cost to the Authority.

48.2 Transfer of Assets that are subject to an agreement of hire or hire purchase

48.2.1 If this Agreement is terminated prior to the Expiry Date or expires due to the effluxion of time at the Expiry Date, the Authority is entitled to instruct the Operator to assign or novate any agreement of hire or hire purchase which relates to Assets to the Authority (or as the Authority directs) and the Operator shall:

(a) use all reasonable endeavours to procure such assignation or novation; and

(b) forthwith deliver up to the Authority such Assets.

48.2.2 If the Authority elects to exercise its rights to transfer the benefits of any agreement of hire or hire purchase, the Authority reserves its right to take action against the Operator should the Authority be obliged to take on a hire/hire purchase agreement on terms that are unreasonably restrictive or expensive compared to normal market rates for agreements of that nature in order to maintain the Services.

49. MISCELLANEOUS COMPENSATION PROVISIONS

Gross Up of Termination Payments

- 49.1 If any amount of compensation payable by the Authority or the Operator (whether payable as a lump sum or in instalments) under Clauses 44 (Compensation on Termination for Authority Default/Voluntary Termination), 45 (Compensation on Termination for Operator Default and Corrupt Gifts and Fraud) or 47 (Compensation on Termination for Force Majeure) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Operator or the Operator shall pay to the Authority (as appropriate) such additional amount as will put the receiving party in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Operator or the Authority to reduce the Tax to which the payment is subject.

Exclusivity of Remedy

- 49.2 Any and all sums irrevocably paid by the Authority to the Operator or the Operator to the Authority under this Part 8 or Clause 35 (as applicable) shall be in full and final settlement of each party's rights and claims against the other for breaches and/or termination of this Agreement or any Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:
- 49.2.1 any antecedent liability of the Operator to the Authority which the Authority has been unable to set off pursuant to this Agreement;
- 49.2.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Termination Sum or other payment of compensation on termination pursuant to this Agreement; and
- 49.2.3 any liabilities arising in respect of any breach by either party of their obligations under Clause 53 (Continuing Obligations) which arises or continues after the Termination Date to the extent not taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Agreement.

50. METHOD OF PAYMENT

Termination Sum

- 50.1 All amounts payable by a party to the other party pursuant to Clauses 44 (Compensation on Termination for Authority Default/Voluntary Termination) to 47 (Compensation on Termination for Force Majeure) of this Agreement shall (save where the Authority elects to pay in instalments pursuant to Clause 50.3) be paid within forty (40) Business Days of receipt of an invoice demanding payment of the relevant amount. In the event of failure to make payment in accordance with this Clause interest shall accrue on any unpaid element of the Termination Sum at the Prescribed Rate from the Termination Date until the date payment is made and any unpaid amount of the Termination Sum and accrued interest thereon shall be recoverable as a debt from the party that is liable to make payment, and the provisions of Clause 36.14 shall be construed accordingly.
- 50.2 For the avoidance of doubt, if the calculation of any Termination Sum produces a negative figure, then such sum shall not be paid by the party described as paying such sum pursuant to Clauses 44 to 47, but shall instead be paid by the party described as receiving such sum pursuant to Clauses 44 to 47 to the other party.

Instalments

- 50.3 Where the Termination Sum is due to the Operator the Authority may elect to pay:

50.3.1 in pro-rated instalments for a period of two (2) years from the Termination Date, on the dates (the **Instalment Dates**) that the Monthly Payment would have been paid had the Termination Date not occurred; or

50.3.2 as the parties may otherwise agree.

Interest

50.4 Where the Authority elects to pay the Termination Sum in instalments pursuant to Clause 50.3 (Instalments) above, from the Termination Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Prescribed Rate and shall be payable on the next occurring Instalment Date.

50.5 Payment of outstanding element

If the Authority has elected to pay in accordance with Clause 50.3 (Instalments) it may (on twenty (20) Business Days' prior written notice to the Operator) elect to pay any outstanding element of the Termination Sum in full.

51. EXIT MANAGEMENT

51.1 Without prejudice to Clause 48 (Assets), upon and prior to expiry or termination of all or any part of this Agreement, the Operator shall at no cost to the Authority:

51.1.1 perform its obligations under the Exit Plan and this Clause 51; and

51.1.2 without prejudice to the foregoing generality, provide such cooperation, information and assistance to the Authority and/or as may be reasonably required by the Authority to transfer and to enable a smooth migration of the Services being supplied by the Operator to the Authority and/or a New Operator including:

(a) enabling the Authority and/or its New Operator to perform services the same as or substantially the same as the Services in a similar manner as required under this Agreement; and

(b) ensuring a full transfer (in a manner compliant with Legislation) of all Membership Data to the Authority (or as it directs).

51.2 The Operator shall, within 40 Business Days of the Commencement Date, produce an Exit Plan for the orderly transition of the Services from the Operator to the Authority and/or any New Operator in the event of termination or expiry of this Agreement. Any Exit Plan shall, as a minimum, comply with the provisions of this Clause 51. Within twenty (20) Business Days after the submission of the Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Clause 51.5. If the parties are unable to agree the contents of the Exit Plan within that twenty (20) Business Day period, the principles set out in Clause 51.5 shall apply and either party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure.

51.3 The Operator shall be responsible for keeping the Exit Plan up to date and shall submit any updates to the Authority from time to time or on request from the Authority.

51.4 In addition to its obligations under Clause 51.1 to 51.3, the Operator shall, on receipt or service of a Termination Notice or twelve (12) months prior to expiry of this Agreement (whichever is the sooner):

51.4.1 appoint a transition manager to be the point of contact in relation to the Exit Plan and to manage the implementation of the provisions of the Exit Plan; and

51.4.2 update the Exit Plan taking into account the then current circumstances, any amendments to the Exit Plan shall be developed jointly by parties and any agreed changes to the Exit

Plan will be incorporated into it. No amendment to the Exit Plan shall be effective until signed by the Authority.

51.5 Any Exit Plan provided under this Agreement shall, as a minimum, include:

- 51.5.1 provisions to ensure that the Operator and the Authority shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Authority or a New Operator;
- 51.5.2 provisions to ensure that the Operator is complying with its obligations under Clause 59 and Clause 60;
- 51.5.3 provisions to ensure the transfer of all Operator rights, title and interest in and to the Assets to the New Operator or Authority with effect on and from the Termination Date or Expiry Date (as applicable) at nil cost to the Authority (subject always to Clause 48.2);
- 51.5.4 provisions to ensure that the any New Operator shall have the right to access (at reasonable times and on reasonable notice) the Facilities, but not so as to interfere with or impede the provision of the Services;
- 51.5.5 an option for the Authority and/or New Operator to take an assignment or novation (to the extent reasonably required to ensure service continuity) of any sub-contracts with Sub-Contractors entered into by the Operator in connection with this Agreement without cost;
- 51.5.6 provisions to ensure that any Necessary Consents are provided to the Authority and/or New Operator in a timely manner;
- 51.5.7 provisions ensuring that that the Authority and/or any New Operator have the right to use any Intellectual Property Rights and Confidential Information in accordance with the terms of this Agreement following expiry or termination (as applicable);
- 51.5.8 provisions ensuring that that the Authority and/or any New Operator receive, and have the right to use all Membership Data (and any other Personal Data) following the Expiry Date or Termination Date (as applicable);
- 51.5.9 providing to the Authority and/or to any New Operator all and any information concerning the Facilities and the Services which is reasonably required for the efficient transfer of responsibility for their performance, including a complete and up-to-date copy of the Operating Manual.

51.6 The Operator shall not knowingly do or omit to do anything which may adversely affect:

- 51.6.1 the Authority's ability to provide or procure the provisions of the Services (or services similar to the Services); or
- 51.6.2 the cost to the Authority of ensuring an orderly transfer of responsibility for the provision of the Services (or services similar to the Services)

on termination or expiry of this Agreement.

51.7 Without prejudice to the generality of Clause 51.6, the Operator shall not, and shall procure that its Sub-Contractors shall not, in the twelve month period prior to the Expiry Date (or such period remaining where a Termination Notice has been issued) (the "**Applicable Period**") do any of the following in relation to the Services and/or the Assets except with the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:

- 51.7.1 dispose of or agree to dispose of or grant any option in respect of any part of the Assets other than stock in the ordinary course of trading;

- 51.7.2 materially vary the terms of any contracts already entered into with any provider of goods and/or services to the extent such variation would have effect after the Expiry Date or Termination Date (as applicable);
- 51.7.3 enter into any long-term (being 12 months or longer), unusual or abnormal contract or commitment which would form part of the Assets, to the extent to such contract or commitment would have effect after the Expiry Date or Termination Date (as applicable);
- 51.7.4 enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
- 51.7.5 grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets forming part of the Assets or otherwise affecting this Agreement and/or the provision of the Services;
- 51.7.6 permit any of the Operator Insurances to lapse or do anything which would make any policy of insurance relating to this Agreement and/or the provision of the Services void or voidable;
- 51.7.7 in any way depart from the ordinary course of its day to day business, either as regards the nature or scope or the manner of conducting the same;
- 51.7.8 release, waive or modify any warranty or guarantee given by any supplier of goods or services;
- 51.7.9 cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Operator and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the Data Protection Legislation or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
- 51.7.10 terminate the employment of any of the Relevant Employees for any reason whatsoever without first obtaining the consent of the Authority to such termination save where, in the reasonable opinion of the Operator, termination is justified for cause due to the actions of such Relevant Employee(s);
- 51.7.11 alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees (whether with or without the consent of such Relevant Employee(s)) other than for wage or salary awards which are in line with those offered generally for similar individuals within the Operator's workforce or as is required by law (for the avoidance of doubt, the Operator will provide upon request by the Authority evidence that any such wage or salary award is in line with those offered generally for similar individuals);
- 51.7.12 relocate or assign to new duties any of the Relevant Employees, or assign to the provision of the Services any employee not so assigned at the commencement of the Applicable Period, or increase to any significant degree the proportion of working time spent on the Services by any such employee, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed; or
- 51.7.13 make any other alterations to the structure or composition of the Relevant Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Authority or another service provider.

In the event that the Authority fails to respond within five (5) Business Days of the Operator's request for consent, the Authority shall be deemed to have given consent.

52. SURVEYS ON EXPIRY AND RETENTION FUND

52.1 Final Survey

- 52.1.1 No later than the date eighteen (18) months prior to the Expiry Date, the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Sites to assess whether they have been and are being maintained by the Operator in accordance with its obligations under Clause 14 (Maintenance).
- 52.1.2 The Authority shall notify the Operator in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Operator for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Operator (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Operator's ability to provide the Services.

52.2 Minimisation of Disruption

When carrying out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Operator. The Operator shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.

52.3 Results of Survey

If the final survey shows that the Operator has not complied with or is not complying with its obligations under Clause 14 (Maintenance) the Authority shall:

- 52.3.1 notify the Operator of the rectification and/or maintenance work which is required to bring the condition of the Facilities to the standard it would have been in if the Operator had complied or was complying with its obligations under Clause 14 (Maintenance) (the **Required Standard**);
- 52.3.2 specify a reasonable period within which the Operator must carry out such rectification and/or maintenance work; and
- 52.3.3 if the survey shows a material non-compliance by the Operator with its obligations under Clause 14 (Maintenance), recover the cost of the survey from the Operator by means of a withdrawal from the Retention Fund Account.

52.4 Maintenance Work

The Operator shall carry out such rectification and/or maintenance work notified pursuant to Clause 52.3.1 (the **Outstanding Work**) in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

52.5 Retention Fund

If the Operator has been notified under Clause 52.3.1 (Results of Survey) that rectification and/or maintenance work is required, twelve (12) months prior to the Expiry Date (to the extent the Outstanding Works have not been carried out by the Operator in the interim), the Operator shall pay the costs of that work as quantified by the survey referred to in Clause 52.1 (Final Survey) into an interest bearing account in the joint names of the Operator and the Contractor (the "**Retention Fund Account**") (subject to Clause 52.6 (Costs)).

52.6 Costs

If and to the extent that the Operator carries out the Outstanding Work, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, the Operator shall be entitled to be reimbursed its costs of so doing by withdrawing amounts from the Retention

Fund Account. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Operator's costs the Operator shall bear the balance of such costs itself.

52.7 Failure to Carry Out Work

If and to the extent that the Operator fails to carry out the Outstanding Work within the period specified in Clause 52.3.2 (Results of Survey), the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Operator's expense and shall be entitled to make withdrawals from the Retention Fund Account or, where there are insufficient funds in the Retention Fund Account, shall be entitled to recover such amounts from the Operator as a debt payable on demand.

52.8 Balance of Fund

If:

52.8.1 all the rectification and/or maintenance work identified by the Authority or the person the Authority procures to carry out the final survey has been carried out to the Required Standard;

52.8.2 all such rectification and/or maintenance work has been paid for by the Operator; and

52.8.3 no termination notice given in accordance with this Agreement is outstanding,

then the Operator shall be entitled to payment of any balance on the Retention Fund Account as soon as practicable.

53. CONTINUING OBLIGATIONS

53.1 Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Agreement, and notwithstanding the provisions of Clause 49.2 (Exclusivity of Remedy) and 71 (Sole Remedy):

53.1.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination;

53.1.2 termination of this Agreement shall not affect the continuing rights and obligations of the Operator and the Authority under Clause 7 (Nature of Land Interests), Clause 22 (Operator's Records), Clause 31 (Indemnities, Guarantees and Contractual Claims) in respect of any claim arising prior to the Termination Date, Clause 32 (Operator Insurances), Clause 34 (Reinstatement and Change of Requirement after Insured Event), Clause 35 (Risks that Become Uninsurable), Clause 36 (Payment), Part 8 (Compensation on Termination), Clause 51 (Exit Management), Clause 54 (Intellectual Property), Clause 55 (Data Protection), Clause 56 (Confidentiality), Clause 57 (Freedom of Information) Clause 59 (TUPE and Employees), Clause 60 (Pensions), Clause 69 (Notices), Clause 70 (Dispute Resolution), Clause 71 (Sole Remedy), Clause 72 (No Double Recovery), Clause 74 (Capacity), Clause 75 (Interest on Late Payment), Clause 76 (Governing Law and Jurisdiction) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination; and

53.1.3 in the event that this Agreement is terminated earlier than the Expiry Date for any reason, the Operator shall be required to pay to the Authority any outstanding amount in relation to the repayment of the Investment Fund on demand.

Part 9 – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

54. INTELLECTUAL PROPERTY

Project Data

54.1 The Operator shall make available to the Authority free of charge (and hereby irrevocably licences the Authority to use) all Project Data that might reasonably be required by the Authority and the Operator shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Project Data available to the Authority on these terms, for the purposes of:

54.1.1 the Authority providing the Facilities for leisure and ancillary purposes, its duties under this Agreement and/or any statutory duties which the Authority may have; and

54.1.2 following termination or expiry of this Agreement, the operation, maintenance or improvement of the Facilities and/or the provision of services the same as or similar to the Services (by the Authority or New Operator),

(together, the **Approved Purposes**), and in this Clause **use** shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

Licence in respect of Intellectual Property Rights

54.2 The Operator:

54.2.1 hereby grants to the Authority, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in the Operator; and

54.2.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in Clause 54.2.1 to the Authority,

in both cases, solely for the Approved Purposes.

Vesting of Intellectual Property Rights

54.3 The Operator shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in the Operator and the Operator shall enter into appropriate agreements with any Operator Related Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

Maintenance of data

54.4 To the extent that any of the data, materials and documents referred to in this Clause are generated by or maintained on a computer or similar system, the Operator shall:

54.4.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Operator

may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

54.4.2 enter into the National Computing Centre's then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

54.5 The Operator shall ensure the back up and storage in safe custody of the data, materials and documents referred to in Clause 60.4 in accordance with Good Industry Practice. Without prejudice to this obligation, the Operator shall submit to the Authority's Representative for approval its proposals for the back up and storage in safe custody of such data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Operator shall comply, and shall cause all Operator Related Parties to comply, with all procedures to which the Authority's Representative has given its approval. The Operator may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority's Representative, who shall be entitled to object on the basis set out above.

Indemnity

54.6 Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Services infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Operator shall indemnify the Authority at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings and the provisions of Clause 31 (Indemnities, Guarantees and Contractual Claims) shall apply.

54.7 Where a claim or proceeding is made or brought against the Operator which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Services infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement and otherwise than as a result of a breach of this Clause 54 by the Operator then the Authority shall indemnify the Operator at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings.

Licence to Operator

54.8 The Authority hereby grants to the Operator a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement only and only for purposes directly relating to this Agreement any Intellectual Property Rights relating to the Services which are or become vested in the Authority.

Intellectual Property Rights on expiry or termination of this Agreement

54.9 The rights referred to in Clause 54.1 (Project Data) and Clause 54.2 (Licence in respect of Intellectual Property Rights) shall not apply to the Operator IPR upon or following termination or expiry of this Agreement provided that where a replacement item (for any item (or any Intellectual Property Rights in any item comprised in Operator IPR)) is necessary for the operation and/or maintenance of the Facilities by the Authority and/or any New Operator and is not available to the Authority and/or any New Operator on reasonable commercial terms following such expiry or termination from any third party, then the Operator may grant to the Authority, an irrevocable, non-exclusive and transferable licence (carrying the right to grant sub-licences) to use the relevant

elements of such Operator IPR for the Approved Purposes on reasonable commercial terms and rates.

55. DATA PROTECTION

55.1 In relation to all Personal Data that is Processed in connection with the Services, the Operator shall, and shall procure that any Sub-Contractor that may Process Personal Data shall, at all times comply with the Data Protection Legislation and not by act or omission cause the Authority to breach the Data Protection Legislation.

55.2 The parties acknowledge that the factual arrangements between them dictate the role of each (or any) party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Authority and the Operator shall act as Controllers individually (and in common from time to time) of any Personal Data Processed in connection with the Agreement.

55.3 The parties do not envisage that either party will Process any Personal Data for or on behalf of the other party as a Processor or as joint Controllers, under or in connection with this Agreement. Where and to the extent that in undertaking the obligations in connection with this Agreement, the Operator anticipates that either party will Process the Personal Data for and on behalf of the other party as a Processor, or as joint Controller, it shall:

55.3.1 notify the Authority immediately; and

55.3.2 agree a Change to this Agreement to incorporate appropriate provisions in accordance with articles 28 or 26 of the GDPR as appropriate, or as otherwise required by the Data Protection Legislation.

55.4 The Operator shall (and shall procure that any Sub-Contractor shall) in connection with the Processing undertaken in connection with the Agreement:

55.4.1 only Process the Personal Data for the purposes set out in this Agreement and not for any incompatible purposes;

55.4.2 maintain valid and up to date records of Processing and records of consents (where consent is the relevant lawful processing ground, including suppression and consent withdrawal lists) which as a minimum meet the requirements of the Data Protection Legislation, including but not limited to articles 7 and 30 of the GDPR;

55.4.3 maintain valid and up to date registrations and notifications under the Data Protection Legislation with a competent supervisory authority;

55.4.4 ensure that it is not prevented or restricted from disclosing, permitting access or transferring any Personal Data to the Authority;

55.4.5 ensure appropriate fair processing notices have been provided to Data Subjects (and/or, as applicable, consents obtained), in relation to any Personal Data Processed ensuring they:

(a) comply with the Data Protection Legislation; and

(b) are sufficient in scope to allow the Authority to lawfully Process the Personal Data for the purposes and rights envisaged by this Agreement including in relation to:

(i) any data sharing or access by the Authority from time-to-time; and

- (ii) any exit or transition provisions under this Agreement, including the use of Personal Data for direct marketing by the Authority or any New Operator;
- 55.4.6 provide copies of all fair processing notices and consents on demand and take such steps as the Authority reasonably instructs to ensure that the Authority is able to lawfully Process the Personal Data;
- 55.4.7 implement reasonable measures to ensure that any Personal Data made available to the Authority is accurate, adequate and not excessive, implementing procedures to ensure the principles of privacy by design and default under the GDPR are upheld;
- 55.4.8 ensure that appropriate operational and technical measures are in place and suitably maintained, reviewed and refreshed to safeguard against any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, corruption or unavailability of the Personal Data Processed (a **"Personal Data Breach Incident"**);
- 55.4.9 promptly and independently:
 - (a) respond to any request to exercise any Data Subject rights, any correspondence or complaints from or on behalf of a Data Subject, third party or supervisory authority;
 - (b) and in any event within twenty-four (24) hours, notify the Authority upon becoming aware of any actual or suspected Personal Data Breach Incident and shall in particular:
 - (i) implement any measures necessary to restore the security of compromised Personal Data, investigate and mitigate the impacts of the incident and its cause(s);
 - (ii) if requested, promptly provide the Authority with a report containing details about the nature, extent and impact, of the Personal Data Breach Incident; and proposed mitigation steps; and
 - (iii) not refer to the Authority in any statement in relation to the Personal Data Breach Incident without the Authority's prior written consent;
- 55.4.10 take reasonable steps to ensure the reliability, integrity and appropriate training in the Data Protection Legislation and the terms of this Agreement of any personnel or approved Sub-Contractor who have access to the Personal Data;
- 55.4.11 not transfer or permit the Processing of any Personal Data outside the United Kingdom except as approved by the Authority in writing (such approval shall not be unreasonably withheld, but may be subject to conditions to ensure compliance with Data Protection Legislation prior to the transfers and Processing taking place);
- 55.4.12 not transfer or permit the Processing of any Personal Data to or by a third party, unless expressly authorised by the Authority, which may be subject to conditions, including, but without prejudice to Clause 61:
 - (a) due diligence being undertaken by the Operator in respect of the proposed third party's data protection practices to the Authority's reasonable satisfaction;

- (b) the Operator ensuring that appropriate contractual terms which comply with the Data Protection Legislation shall be agreed with an approved third party; and
 - (c) the Operator remaining liable to the Authority for any act or omission of the third party's Processing operations;
- 55.4.13 hold the Personal Data confidentially and separately from any other personal data Processed by the Operator;
- 55.4.14 not do anything or omit to do anything in relation to the Personal Data which shall damage the reputation of the Authority with any party;
- 55.4.15 permit the Authority access free of charge during normal business hours on reasonable notice to conduct compliance monitoring of the Operator of its obligations set out in this Clause 55;
- 55.4.16 shall indemnify on demand and keep indemnified the Authority against any Direct and Indirect Losses incurred by, awarded against or agreed to be paid by the Authority to the extent arising from the Operator's failure to comply with the Data Protection Legislation or this Clause 55.
- 55.5 Any material breach of this Clause 55 shall entitle the Authority to terminate this Agreement with immediate effect.
- 55.6 On expiry or earlier termination of the Agreement, the Operator shall ensure that any Personal Data is:
 - 55.6.1 at the Authority's direction either provided to the Authority or a nominated replacement; and
 - 55.6.2 any remaining copies are securely destroyed, unless the Operator notifies the Authority of a legal or regulatory duty to retain the Personal Data, and the Authority provides written consent for the ongoing retention of the Personal Data.

56. CONFIDENTIALITY

Duty of Confidentiality

- 56.1 The parties agree that the terms of this Agreement and each Project Document shall, subject to Clause 56.2 (Duty of Confidentiality), not be treated as Confidential Information and may be disclosed without restriction.
- 56.2 Clause 56.1 (Duty of Confidentiality) shall not apply to terms of this Agreement or a Project Document designated as Commercially Sensitive Information and listed in Part 1 of Schedule 20 (Commercially Sensitive Contractual Provisions) to this Agreement, which shall, subject to Clause 56.4 (Permitted Disclosure), be kept confidential for the relevant periods specified in that Part.
- 56.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and the Project Documents and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Confidential Information.

Permitted Disclosure

- 56.4 Clauses 56.2 and 56.3 (Duty of Confidentiality) shall not apply to:

- 56.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
- 56.4.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Agreement;
- 56.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Operator or any of its Sub-Contractors;
- 56.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 56.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 56.4.6 any provision of information to the parties' own professional advisers or insurance advisers or funders (or to their funder's professional advisers or insurance advisers) or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Operator [and/or Holdco] to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the Operator [and/or Holdco] in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- 56.4.7 any disclosure by the Authority of information relating this Agreement and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new operator, its advisers and lenders should the Authority decide to re-tender this Agreement;
- 56.4.8 any registration or recording of the Necessary Consents and property registration required;
- 56.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisors or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Agreement; and
- 56.4.10 any disclosure for the purpose of:
 - (a) the examination and certification of the Authority's or the Operator's accounts; or
 - (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - (c) complying with a proper request from either party's insurance advisers or insurers on placing or renewing any insurance policies; or

- (d) (without prejudice to the generality of Clause 56.4.4) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clauses 56.4.10(d) (Permitted Disclosure) or 56.4.4 (Permitted Disclosure) shall permit disclosure of Confidential Information otherwise prohibited by Clause 56.3 (Duty of Confidentiality) where that information is exempt from disclosure under section 41 of the FOIA.

Obligations Preserved

- 56.5 Where disclosure is permitted under Clause 56.4 (other than Clauses 56.4.2, 56.4.4, 56.4.5, 56.4.8 and 56.4.10 (Permitted Disclosure)) the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

57. FREEDOM OF INFORMATION

- 57.1 The Operator acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the EIRs.

- 57.2 Where the Authority receives a Request for Information in relation to Information that the Operator is holding on its behalf the Authority shall transfer to the Operator such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Operator shall:

- (a) provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- (b) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.

- 57.2.2 Following notification under Clause 57.2 (Freedom of Information) and up until such time as the Operator has provided the Authority with all the Information specified in Clause 57.2(a) (Freedom of Information), the Operator may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

- (a) whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- (b) whether the Information is to be disclosed in response to a Request for Information,

and in no event shall the Operator respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so in writing by the Authority.

- 57.2.3 The Operator shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six (6) years (from the date it is acquired)

and shall permit the Authority to inspect such Information as requested from time to time.

57.2.4 The Operator shall transfer to the Authority any Request for Information received by the Operator and relating to Information that the Operator is holding on behalf of the Authority; including Information relating to this Agreement, as soon as practicable and in any event within two (2) Business Days of receiving it.

57.2.5 The Operator acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Operator. The Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

57.2.6 In the event of a request from the Authority pursuant to Clause 57.2 (Freedom of Information), the Operator shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Operator's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Authority shall inform the Operator in writing whether or not it still requires the Operator to comply with the request and where it does require the Operator to comply with the request the ten (10) Business Days' period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Operator of such additional days as soon as practicable after becoming aware of them and shall reimburse the Operator for such costs as the Operator incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

57.2.7 The Operator acknowledges that (notwithstanding the provisions of this Clause 57) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the **FOIA Code**), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Operator or the Services:

- (a) in certain circumstances without consulting with the Operator; or
- (b) following consultation with the Operator and having taken their views into account,

provided always that where Clause 57.2.7(a) (Freedom of Information) applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Operator prior to any disclosure.

58. PUBLICITY AND BRANDING

58.1 The Operator shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:

58.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

58.1.2 use the Authority's name or brand in any promotion or marketing or announcement; or

58.1.3 exhibit or attach to any part of the Sites any notice or advertisement;

without the prior written approval of the Authority.

58.2 No permission to photograph or film in or upon any property used in relation to the Services shall be given unless the Authority has given its prior written approval (such approval not to be unreasonably withheld or delayed).

Part 10 – GENERAL

59. TUPE AND EMPLOYEES

Relevant Transfers

59.1 The parties agree that the following events:

59.1.1 the commencement of the Services on the Service Transfer Date; and

59.1.2 the commencement of the Services where the identity of a provider (including the Authority) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Agreement or not,

shall constitute a "**Relevant Transfer**" and that the contracts of employment of any employees who are the subject of a Relevant Transfer shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider.

59.2 Notwithstanding the agreement in Clause 59.1 above, and in recognition of the possibility that the transaction contemplated by this Agreement may be determined not to be a Relevant Transfer by a court or tribunal, the Operator shall with effect from the Service Transfer Date, offer employment to or shall procure that the relevant Sub-Contractor offer to each Authority Existing Employee employment on like terms to the terms on which they would have become employed prior to the Transfer Date had there been a Relevant Transfer.

Emoluments and Outgoings

59.3 The Authority shall be responsible for all Employment Costs in respect of the Relevant Employees, which are attributable in whole or in part to the period up to and including up to the Service Transfer Date.

59.4 The Operator shall be responsible for or shall procure that any relevant Sub-Contractor is responsible for all Employment Costs in respect of the Relevant Employees which are attributable in whole or in part to the period from and including the Service Transfer Date.

Employee List

59.5 The Authority has supplied to the Operator the information, as at the date of this Agreement, which is contained in Schedule 10 Part 1 (the "**Employee List**") affecting each of those employees of the Authority and of any sub-contractor of the Authority who it is expected, if they remain in the employment of the Authority or of the sub-contractor of the Authority as the case may be until immediately before the Service Transfer Date, would be Relevant Employees but the Authority gives no warranty as to the accuracy or completeness of this information.

Proposed Workforce Information

59.6 The Operator has provided to the Authority, and the Authority has agreed, the details set out in Schedule 11 Part 3 (Proposed Workforce Information) which show, in respect of each of the Services, the information detailed in clauses 59.7 to 59.9 below.

59.7 The workforce which the Operator proposes to establish to provide the Services (the "**Proposed Workforce**") classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements.

- 59.8 The monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs (the "**Remuneration Costs**") have been calculated on the basis of (amongst other things) the information contained in the Employee List.
- 59.9 The costs, including any lump sum payments, which have been agreed between the parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce. These costs (the "**Reorganisation Costs**") have been calculated by the Operator and the Sub-Contractors on the basis of (amongst other things) the information contained in the Employee List.

Price Adjustment Mechanism

- 59.10 No later than one month after the Transfer Date the Operator shall provide to the Authority in writing details of any inaccuracies in or omissions from the Employment List that was supplied prior to the Transfer Date clearly identifying which information was inaccurate; what is the correct information; and the impact of the correct information on the Remuneration Costs and/or the Reorganisation Costs (the "**Revised Employment Information**").
- 59.11 The Operator shall produce such evidence relating to the accuracy of the Revised Employment Information as the Authority may reasonably require and in any event no later than 21 days following the receipt of such a request.
- 59.12 The Operator warrants that the Revised Employee Information will be a fair and accurate representation and interpretation of the position in respect of the relevant employment and related costs as at the Service Transfer Date.
- 59.13 Where following the Service Transfer Date the Operator provides reasonable evidence to the Authority that the Revised Employee Information is inaccurate and that any differences between the information in the Employment List and the position on the Transfer Date as reflected in the Revised Employee Information results in reasonable additional costs to the Operator then a reasonable adjustment to the Annual Payment shall be made to meet such reasonable additional costs that the Operator incurs as a result of such differences provided that such differences are not as a result of an act or omission of the Operator and provided that the Operator and any relevant Sub-Contractor shall take all reasonable steps to mitigate any such additional costs and any adjustment to the Annual Payment shall be calculated as if they had done so.
- 59.14 Where, following the Transfer Date, the Authority provides reasonable evidence to the Operator that any differences between the information in the Employment List and the position on the Transfer Date as reflected in the Revised Employment Information results in a reasonable reduction in costs to the Operator then a reasonable adjustment to the Annual Payment to reflect any reasonable reduction in costs that the Operator incurs as a result of such differences shall be made.
- 59.15 To avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Operator has been or will be compensated as a result of any Indexation of the Annual Payment under this Agreement or if any indemnity given by the Authority under any other provision of this Agreement would apply.

Union Recognition

- 59.16 The Authority shall and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall supply to the Operator no later than five (5) Business Days prior to the Service Transfer Date true copies of its union recognition agreement(s) and the Operator shall and shall procure that each and every Sub-Contractor shall in

accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor) after the transfer to the same extent as they were recognised by the Authority or the Authority's relevant sub-contractor before the Service Transfer Date.

- 59.17 The Operator shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services at the Authority's premises.

Information and Consultation

- 59.18 The Operator shall comply (and shall procure that any Sub-Contractor complies) with its obligations under Regulation 13 of the TUPE during the period prior to the Service Transfer Date.
- 59.19 The Authority shall comply with its obligations under Regulations 13 and 14 of TUPE during the period prior to the Service Transfer Date, save where the Authority is unable to do so as a result of the failure of the Operator and/or any Sub-Contractor to comply with their duties under Regulation 13 of TUPE.

Authority Indemnity

- 59.20 The Authority shall indemnify the Operator both for itself and any Sub-Contractor against Employment Liabilities incurred by the Operator and/or any Sub-Contractor in connection with or as a result of the following:
- 59.20.1 any act, fault or omission (arising directly or indirectly) of the Authority in respect of any Relevant Employee in the period on and before the Transfer Date;
- 59.20.2 any failure by the Authority to comply with its obligations under Regulations 13 and 14 of TUPE, or any award of compensation under Regulation 15 of TUPE, save where such failure arises from the failure of the Operator and/or any Sub-Contractor to comply with its or their duties under Regulation 13 of TUPE; and
- 59.20.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Relevant Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.

Operator Indemnity

- 59.21 The Operator shall indemnify the Authority against Employment Liabilities incurred by the Authority in connection with or as a result of the following:
- 59.21.1 any failure by the Operator or any Sub-Contractor to comply with its obligations under Clause 60 (Pensions) in respect of the Relevant Employees;
- 59.21.2 any act, fault or omission (arising directly or indirectly) of the Operator or any Sub-Contractor in respect of any Relevant Employee on or after the Transfer Date;
- 59.21.3 any failure by the Operator or any Sub-Contractor to comply with its obligations under Regulation 13 of TUPE;

- 59.21.4 any claim (including any individual entitlement of an Relevant Employee under or consequent on such claim) by any trade union or other body or person representing the Relevant Employees arising from or connected with any failure by the Operator or any Sub-Contractor to comply with any legal obligation to such trade union, body or person;
- 59.21.5 any change or proposed change in the terms and conditions of employment or working conditions of the Relevant Employees on or after their transfer to the Operator on the Service Transfer Date;
- 59.21.6 any change of identity of employer occurring by virtue of TUPE and/or this Agreement being significant and detrimental to any of the Relevant Employees, or to any person who would have been a Relevant Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Transfer Date as a result of the change in employer;
- 59.21.7 any proposal by the Operator and/or a Sub-Contractor to change the terms and conditions of employment or working conditions or place of work of the Relevant Employees on or after the Transfer Date, or to change the terms and conditions of employment or working conditions or place of work of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of any such proposed changes; and
- 59.21.8 any proposal by the Operator and/or a Sub-Contractor to make redundant any Relevant Employee on or after the Transfer Date or to make redundant person who would have been a Relevant Employee but for their resignation (or decisions to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of any such proposed redundancy.

Retendering

- 59.22 The Operator shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the Expiry Date, or as a consequence of the Authority notifying the Operator of its intention to retender this Agreement, or as otherwise reasonably requested:
 - 59.22.1 on receiving a request from the Authority provide in respect of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Operator or of any Sub-Contractor as the case may be until immediately before the Termination Date or Expiry Date (as appropriate), would be Returning Employees (the "**Retendering Information**");
 - 59.22.2 provide the Retendering Information promptly and at no cost to the Authority;
 - 59.22.3 notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 59.22.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;

- 59.22.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent; and
- 59.22.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent.
- 59.23 Without prejudice to clauses 59.22 and 59.24 (Retendering) the Operator shall provide and shall procure that any Sub-Contractor shall provide the Employee Liability Information to the Authority at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.
- 59.24 The Operator shall and shall keep indemnified in full the Authority and at the Authority's request any Future Operator against all Direct Losses arising from any claim by any party as a result of the Operator or Sub-Contractor failing to provide or promptly to provide the Authority and/or any Future Operator where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.

Termination of Agreement

- 59.25 Upon all or part of the Services ceasing to be provided by the Operator for any reason (such date(s) being termed "**Return Date(s)**"), the parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to all or part of a Service but the position shall be determined in accordance with Legislation at the Expiry Date or Termination Date as the case may be and Clauses 59.25 to 59.29 (Termination of Agreement) is without prejudice to such determination.
- 59.26 Upon the Return Date(s), the provisions of Clauses 59.27 and 59.28 (Termination of Agreement) will apply.
- 59.27 The Operator shall or shall procure that all Employee Costs of the Returning Employees and other employees or former employees of the Operator or the Sub-Contractors (who had been engaged in the provision of the Services) up to the Return Date(s) are satisfied.
- 59.28 Without prejudice to Clause 59.27 (Termination of Agreement), the Operator shall:
 - 59.28.1 remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Operator's or Sub-Contractor's employees (other than the Returning Employees) on or after the Return Date(s) and shall indemnify the Authority and any Future Operator against all Direct Losses incurred by the Authority or any Future Operator resulting from any claim whatsoever whether arising before on or after the Return Date(s) by or on behalf of any of the Operator's or Sub-Contractor's employees who do not constitute the Returning Employees; and
 - 59.28.2 in respect of the Returning Employees the Operator shall indemnify the Authority and any Future Operator against all Direct Losses incurred by the Authority or any Future Operator resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date(s) (whether any such claim, attributable to the period up to and on the Return Date(s), arises before, on or after the Return Date(s))

including but not limited to any failure by the Operator or any Sub-Contractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such Legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Operator.

- 59.29 The Authority shall be entitled to assign the benefit of this indemnity to any Future Operator.

Offer of Employment on Expiry or Termination

- 59.30 If TUPE does not apply on the expiry or earlier termination of this Agreement, the Authority shall ensure that each relevant Future Operator (including where applicable the Authority) shall offer employment to the persons employed by the Operator or a Sub-Contractor who are wholly or mainly engaged in the provision of the relevant Services immediately before the Return Date(s).
- 59.31 If an offer of employment is made in accordance with Clause 59.30, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with Clause 60 (Pensions) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or Future Operator may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of Clause 59.22 to 59.24 (Retendering).
- 59.32 Where any such offer as referred to in Clause 59.30 is accepted, the Operator shall indemnify and keep indemnified in full the Authority and/or any Future Operator on the same terms and conditions as those set out in Clause 59.20 (Authority Indemnity) of this Agreement as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this Clause 59 (TUPE and Employees) each and every such employee shall be treated as if they were a Returning Employee.
- 59.33 For the avoidance of doubt, where any such offer as referred to in clause 59.30 is not accepted and TUPE does not apply, the employee shall remain an employee of the Operator or Sub-Contractor as appropriate.

Redundancy on Expiry or Termination

- 59.34 If, on the expiry or earlier termination of this Agreement, all or any of the Services cease to be required by the Authority such that any person employed by the Operator or Sub-Contractor who is wholly or mainly assigned to such Services is redundant, the Authority will bear Redundancy Costs associated with such person's redundancy subject to the Operator or Sub-Contractor complying with the obligations described in Clause 59.35.
- 59.35 The Operator shall, and shall procure that any Sub-Contractor shall, use all reasonable endeavours to redeploy any person who is redundant in circumstances described in Clause 59.34.

Sub-Contractors

- 59.36 In the event that the Operator enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to Clause 59 (TUPE and Employees), Clause 60 (Pensions) and shall procure that the Sub-Contractor complies with such terms. The Operator shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred or by the Authority or any Future Operator as a result of or in

connection with any failure on the part of the Operator to comply with this Clause 59.36 (Sub-Contractors) and/or the Sub-Contractor's failure to comply with such terms.

60. PENSIONS

- 60.1 Schedule 24 of this Agreement sets out the obligations and liabilities of the Authority and the Operator in respect of the provision of pension benefits to the Relevant Employees.

61. ASSIGNMENT AND SUBCONTRACTING

Restrictions on Authority

- 61.1 The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:
- 61.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
 - 61.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement; or
 - 61.1.3 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Operator) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

Restrictions on Operator

- 61.2 Subject to Clause 61.3, the Operator shall not subcontract, assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement in whole or in part except with the prior written consent of the Authority.
- 61.3 Nothing in this Agreement shall prohibit the Operator from providing or procuring the provision of the Services from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract provided that:
- 61.3.1 such Sub-Contractor's identity has been notified to the Authority and the Authority has approved it in writing;
 - 61.3.2 such Sub-Contractor's terms of Sub-Contract have been notified to the Authority by the Operator and the Authority has approved them in writing;
 - 61.3.3 the Operator provides the Authority with a certified copy of the Sub-Contract within ten (10) Business Days of the Sub-Contract being completed;
 - 61.3.4 if required by the Authority, the Operator procures a parent company guarantee or bond from the Sub-Contractor;

61.3.5 the Operator shall remain primarily and directly liable for the Operator's obligations under this Agreement; and

61.3.6 if required by the Authority, the Sub-Contractor provides collateral warranties to the Authority.

Operator's Obligations

61.4 The Operator shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

Sub-Contractors

61.5 Nothing in this Agreement shall prohibit or prevent any Sub-Contractor employed by the Operator from being employed by the Authority at any establishments of the Authority.

62. CHANGE IN OWNERSHIP

Restricted Share Transfer

62.1 A Change in Ownership may only occur to a Suitable Third Party.

Notification

62.2 The Operator shall provide the Authority with at least ten (10) Business Days' prior written notice of any Change in Ownership contemplated by Clause 62.1 (Restricted Share Transfer).

62.3 The Authority may, not more than twice in any Contract Year, or at any time when an Operator Default is outstanding, request that the Operator inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority's request for details of any Change in Ownership.

62.4 The Operator's obligation under Clause 62.2 shall, except where a legal transfer of shares is proposed, be limited to the extent of the Operator's awareness.

62.5 The Operator's obligation under Clause 62.3 shall, except where a legal transfer of shares has occurred, be limited to the extent of the Operator's awareness having made all reasonable enquiry.

62.6 For the purposes of this Clause 62 any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) shall be disregarded.

63. WAIVER AND CUMULATIVE REMEDIES

63.1 The rights and remedies under this Agreement may be waived only by notice 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 Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

63.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

64. RELATIONSHIP OF THE PARTIES

- 64.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the parties pursuant to this Agreement, 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.

65. SEVERANCE

- 65.1 If any provision of this Agreement (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 Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 65.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the parties shall immediately commence negotiations in good faith to remedy this invalidity.

66. FURTHER ASSURANCES

- 66.1 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 reasonably necessary to give effect to the meaning of this Agreement.
- 66.2 Each party agrees to co-operate, at its own expense (but without being compelled to incur material expenditure), with the other party in the fulfilment of the purposes and intent of this Agreement. Neither party shall be under any obligation to perform any of the other's obligations under this Agreement.

67. ENTIRE AGREEMENT

- 67.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 67.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 67.3 Nothing in this Clause 67 shall exclude any liability in respect of misrepresentations made fraudulently.

68. THIRD PARTY RIGHTS

- 68.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

69. NOTICES

Form and Service of Notices

- 69.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, or leaving the same at:

Operator	Authority
[INSERT NAME]	Head of Community and Operational Services
[INSERT ADDRESS]	Stratford-on-Avon District Council, Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire CV37 6HX

Provision of Information to Representatives

- 69.2 Where any information or documentation is to be provided or submitted to the Authority's Representative or the Operator's Representative it shall be provided or submitted by sending the same by first class post, email or by hand, or leaving the same at:

Operator's Representative	Authority's Representative
[INSERT NAME]	Head of Community and Operational Services
[INSERT ADDRESS]	Stratford-on-Avon District Council, Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire CV37 6HX
[INSERT EMAIL ADDRESS]	[INSERT EMAIL ADDRESS]

Change of Details

- 69.3 Either party to this Agreement (and either Representative) may change its nominated address or email address by prior notice to the other party.

Effectiveness of Notices

- 69.4 Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Information given by email shall be deemed to have been received:

- 69.4.1 at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the email address specified in Clause 69.2 or as notified from time to time under Clause 69.3) if on a Business Day between the hours of 9am and 4pm; or
- 69.4.2 by 11am on the next following Business Day, if the email enters the intended recipient's Information System other than between the hours of 9am and 4pm on a Business Day,

and provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail signed by or on behalf of the person giving it is sent by post or delivered by hand to the intended recipient in accordance with the provisions of Clause 69.2.

70. DISPUTE RESOLUTION

Disputes

- 70.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 70.

Consultation

- 70.2 If a dispute arises in relation to any aspect of this Agreement, the Operator and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter and, if necessary, shall escalate the dispute for discussion between senior colleagues at the Authority and Operator.

Adjudication

- 70.3 Without prejudice to Clause 70.2 (Consultation), either party may give the other notice of its intention to refer the dispute to adjudication (the Notice of Adjudication). The Notice of Adjudication shall include a brief statement of the issue to be referred and the redress sought. The party giving the Notice of Adjudication (the Referring Party) shall on the same day and by the same means of communication send a copy of the Notice of Adjudication to an adjudicator selected in accordance with Clause 70.4 (Identity of Adjudicator).

Identity of Adjudicator

- 70.4 The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts selected in accordance with the following:

- 70.4.1 there shall be a panel of experts in respect of operational and maintenance matters. All the experts on the panel shall be wholly independent of the Operator, the Authority, the relevant Sub-Contractor and any of the major competitors of the Operator or relevant Sub-Contractor;
- 70.4.2 the panel shall be comprised of three (3) experts who shall be selected jointly by the Operator and the Authority. Such selection shall take place within twenty (20) Business Days of the Commencement Date or otherwise as agreed between the parties;
- 70.4.3 if any member of a panel resigns during the Contract Period, a replacement expert shall be selected by the Operator and the Authority as soon as practicable;
- 70.4.4 in the event that the nominated Adjudicator is unable or unwilling to confirm acceptance of his appointment as Adjudicator within two (2) Business Days of receipt of the Notice of Adjudication, then the Referring Party shall invite the person next in line to act as the Adjudicator. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Adjudicator within two (2) days or if the parties disagree as to the relevant panel of experts to be used then the Referring Party may apply to the President for the time being of the Chartered Institute of Arbitrators who shall within three (3) Business Days of any such application nominate an Adjudicator to determine the issue set out in the Notice of Adjudication; and
- 70.4.5 if the Authority and the Operator are unable to agree on the identity of the experts to be selected to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) days of any application for such appointment by either party.

Referral of the Dispute

- 70.5 Within seven (7) days of the service of the Notice of Adjudication, or as soon thereafter as the Adjudicator is appointed, the Referring Party shall serve its statement of case

(the **Referral Notice**) on the Adjudicator and the other party (the **Responding Party**). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Adjudication, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

Response to the Referral

- 70.6 The Responding Party shall serve its statement of case (the **Response**) on the Adjudicator and the Referring Party within a period of time to be directed by the Adjudicator. The Response shall include any arguments in response to the Referral Notice of the dispute set out in the Notice of Adjudication and any additional evidence on which the Responding Party relies.

Procedure

- 70.7 The Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.

Adjudicator's Decision

- 70.8 In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty eight (28) days after the date of receipt of the Referral Notice (or such other period as the parties may agree). The Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the Referring Party. The Adjudicator shall state any reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

Adjudicator's Costs

- 70.9 The Adjudicator's costs of any referral shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.

Adjudicator as Expert

- 70.10 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

Adjudicator's Powers

- 70.11 The Adjudicator shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

Confidentiality

- 70.12 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 56 (Freedom of Information and Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

Liability of Adjudicator

- 70.13 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

Reference to the Courts

- 70.14 Either party may (within ninety (90) calendar days of receipt of the Adjudicator's decision or where the Adjudicator fails to give a decision pursuant to Clause 70.8 (Adjudicator's Decision)) give notice to the other party of its intention to refer the dispute to the courts of England and Wales for final determination.

Parties' Obligations

- 70.15 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 70 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this Clause 70.

71. SOLE REMEDY

Common Law Rights for the Operator

- 71.1 Without prejudice to any entitlement of the Operator:
- 71.1.1 to specific performance of any obligation under this Agreement; or
 - 71.1.2 to injunctive relief;
- the Operator's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement shall be that right or remedy and the Operator shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.
- 71.2 Subject to Clause 43 (Termination on Authority Default), the Operator's sole remedy in relation to any Compensation Event shall be the operation of Clause 28 (Compensation Events).

Common Law Rights of the Authority

- 71.3 Subject to:
- 71.3.1 any other express right of the Authority pursuant to this Agreement; and
 - 71.3.2 the Authority's right to claim, on or after termination of this Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by the Operator, save to the extent that the same has already been recovered by the Authority pursuant to this Agreement or has been taken into account to calculate any compensation payable pursuant to Part 8 (Compensation on Termination),
- the sole remedy of the Authority in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of Schedule 5 (Payment and Performance Monitoring System).
- 71.4 Nothing in Clause 71.3 (Common Law Rights of the Authority) shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

No Breach

- 71.5 The Operator shall not be held to be failing to comply with its obligations under this Agreement to the extent that such failure to comply is a result of the Authority's breach of its obligations hereunder.

Indirect Losses

- 71.6 Save where stated to the contrary, the indemnities under this Agreement shall not apply and (without prejudice to the Authority's rights under the Payment and Performance Monitoring System) there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either party is for Indirect Losses. The Authority agrees that, notwithstanding the foregoing, any Losses of the Operator arising under the Sub-Contracts as originally executed (or as amended in accordance with the terms of this Agreement) which are not of themselves Indirect Losses, shall not be excluded from such a claim solely by reason of this Clause 71.

72. NO DOUBLE RECOVERY

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

73. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

74. CAPACITY

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

75. INTEREST ON LATE PAYMENT

- 75.1 Save where otherwise specifically provided, where any payment or sum of money due from the Operator to the Authority or from the Authority to the Operator under any provision of this Agreement is not paid on the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the parties that the Prescribed Rate and the provisions of this Agreement relating to the payment of compensation on termination of this Agreement following the occurrence of an Authority Default provide the Operator with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.
- 75.2 In particular, where any payment or sum of money is due from the Operator to the Authority in respect of repayment of the Investment Fund under any provision of this Agreement is not paid on the due date, it shall bear interest thereon at the rate prescribed in paragraph 2.5.2 of the Services Specification. For the avoidance of doubt, interest shall be payable on the repayments of the Investment Fund in accordance with the Services Specification.

76. GOVERNING LAW AND JURISDICTION

The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 70 (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

SCHEDULE 1
SERVICES SPECIFICATION

SCHEDULE 2
SERVICE DELIVERY PROPOSALS

SCHEDULE 3

FACILITIES

Facility (including address)

SCHEDULE 4
SITE PLANS

[REDACTED]

SCHEDULE 5

PAYMENT AND PERFORMANCE MONITORING SYSTEM

[To be updated and inserted/referred to]

SCHEDULE 6

NOT USED

SCHEDULE 7

REVIEW PROCEDURE

1. REVIEW PROCEDURE

- 1.1 The provisions of this Schedule 7 shall apply whenever any item, documents or course of action are required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.
- 1.2 Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule 7 as a "**Submitted Item**"). In relation to each Submitted Item, the following procedure shall apply:
 - 1.2.1 as soon as possible and, if the Submitted Item comprises a document or proposed course of action submitted in the case of an emergency,
 - 1.2.2 within ten (10) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the parties may agree), the Authority's Representative shall return one (1) copy of the relevant Submitted Item to the Operator endorsed "no comment" or (subject to and in accordance with paragraph 1.3) "comments" as appropriate; and
 - 1.2.3 if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with this paragraph 1.2, within ten (10) Business Days (or within such other period as the parties may agree in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to the Operator endorsed "no comment".
- 1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with this paragraph 1.3 he shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that the Authority's Representative comments on a Submitted Item other than on the basis set out in this Schedule 7, or fails to comply with the provisions of this paragraph 1.3, the Operator may, in its discretion, either:
 - 1.3.1 request written clarification of the basis for such comments and, if clarification is not received within five (5) Business Days of such request by the Operator, refer the matter for determination in accordance with the Dispute Resolution Procedure; or
 - 1.3.2 at its own risk proceed disregarding such comments.

2. FURTHER INFORMATION

- 2.1 The Operator shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule 7. If the Operator does not submit any such information, data and documents, the Authority's Representative shall be entitled to:
 - 2.2 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
 - 2.3 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine

whether he has a legitimate basis for commenting or objecting in accordance with this Schedule 7.

3. GROUNDS OF OBJECTION

3.1 The expression "**raise comments**" in this paragraph 3 shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in the paragraph above or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Legislation or not be in accordance with any Necessary Consent, but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1.1 in relation to any Submitted Item:

- (a) the Operator's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
- (b) the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right;

3.1.2 in relation to any Submitted Item submitted pursuant to Clause 6.1 (*Ancillary Documents*):

- (a) the Authority's ability to perform its obligations under this Agreement would be adversely affected by the proposed course of action;
- (b) the Authority's ability to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
- (c) the proposed course of action would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Agreement;
- (d) the proposed course of action would adversely affect any right of the Authority under this Agreement or its ability to enforce any such right; or
- (e) the Operator's ability to perform its obligations under this Agreement would be materially adversely affected by the proposed course of action;

3.1.3 in relation to the submission of any proposed revision or substitution for the Service Delivery Proposals on the grounds that:

- (a) the proposed revision or substitution is not in accordance with Good Industry Practice;
- (b) the performance of the relevant Services in accordance with the proposed revision or substitution would (on the balance of probabilities):
 - (i) be less likely to achieve compliance with relevant parts of the Services Specification;

- (ii) have an adverse effect on the provision by the Operator of the Services or on the safety of any Users of the Facilities; or
 - (iii) would cause the Authority to incur material additional expense; or
 - (c) the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Delivery Proposals prior to such proposed revision or substitution;
- 3.1.4 in relation to the submission of any Schedule of Programmed Maintenance, any revision to any Schedule of Programmed Maintenance on the grounds that:
- (a) carrying out the programmed maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Facilities and such interference could be avoided or mitigated by the Operator rescheduling the Programmed Maintenance;
 - (b) the safety of Users or staff would (on the balance of probabilities) be adversely affected; or
 - (c) the period for carrying out the Programmed Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works;
- 3.1.5 in relation to any Submitted Item submitted pursuant to Clause 13.2 (Use of the Facilities), the proposed use of the Facilities by third parties:
- (a) could reasonably be expected to impair the provision of the Services or such use is not compatible with the use of the Facilities as community leisure centres;
 - (b) the use is one which the Authority (acting reasonably) has objected to;
 - (c) the use involves the sponsorship, advertisement or other direct involvement by an organisation, entity or person engaged in, or with substantial interest in the production or sale of products containing or derived from tobacco or the manufacture of sale of arms and weapons;
 - (d) the use could be expected to involve undue violence (provided that the provision of organised sport shall not be considered undue violence) or otherwise be incompatible with the ethos of the Authority;
- 3.1.6 in relation to any submission to defer the replacement of any part of the Facilities made pursuant to Clause 14.20 (*Programmed Replacement*) on the grounds that:
- (a) the proposed deferral is not in accordance with Good Industry Practice;

- (b) the performance of the relevant Services in accordance with the proposed deferral would (on the balance of probabilities):
 - (i) be less likely to achieve compliance with relevant parts of the Services Specification;
 - (ii) have an adverse effect on the provision of the Services or on the safety of any Users; or
 - (iii) would cause the Authority to incur material additional expense;
- (c) the proposed deferral would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Delivery Proposals prior to such proposed revision or substitution; or
- (d) would result in a decrease or worsening of the quality of the Sites.

4. EFFECT OF REVIEW

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "**no comment**" may be complied with or implemented (as the case may be) by the Operator.
- 4.2 In the case of any Submitted Item, if the Authority's Representative returns the Submitted Item to the Operator endorsed "**comments**", the Operator shall comply with such Submitted Item after amendment in accordance with the comments unless the Operator disputes that any such comment is on grounds permitted by this Agreement, in which case the Operator or the Authority's Representative may refer the matter for determination in accordance with Clause 70 (*Dispute Resolution*).
- 4.3 The return or deemed return of any Submitted Item endorsed "no comment" shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement such return or deemed return of any Submitted Item shall not otherwise relieve the Operator of its obligations under this Agreement nor is it an acknowledgement by the Authority that the Operator has complied with such obligations.

5. DOCUMENT MANAGEMENT

- 5.1 The Operator shall issue two copies of all Submitted Items to the Authority's Representative and compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 The Operator shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.
- 5.3 No review, comment or approval by the Authority shall operate to exclude or limit the Operator's obligations or liabilities under this Agreement (or the Authority's rights under this Agreement).

6. VARIATIONS

- 6.1 Subject to paragraph 6.2, no approval or comment or any failure to give or make an approval or comment under this Schedule 7 shall constitute an Authority Change save to the extent provided in this Schedule 7.

- 6.2 If, having received comments from the Authority's Representative, the Operator considers that compliance with those comments would amount to an Authority Change, the Operator shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the parties or determined pursuant to the Dispute Resolution Procedure that an Authority Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Authority Change and it shall be dealt with in accordance with Schedule 22 (Change Protocol). Any failure by the Operator to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to an Authority Change shall constitute an irrevocable acceptance by the Operator that any compliance with the Authority's comments shall be without cost to the Authority and without any extension of time.

SCHEDULE 8
PROHIBITED MATERIALS

SCHEDULE 9

NOT USED

SCHEDULE 10

DATA

Part 1

AUTHORITY DATA

Authority employees

STAFF REF NO	CONTRACT HOURS	WTE	SEX (M/F)	AGE	D.O.B	DATE OF COMMENCEM ENT	CONTINUOUS SERVICE START DATE	GRADE	CONTRACTED HOURS INC WHETHER FULL OR PART TIME	RATE/ HOUR (£) INC SCALE AND POINT	N.I. CODE LETTER (A OR D)	EMPLOYEE CONTRIBUTIO N RATES	ALLOWANCE/ DEDUCTION CODE	JOB TITLE AND DESCRIPTION	SITE AND DEPARTMENT IN WHICH EMPLOYED	NOTICE PERIOD	ACCOMMODA TION PROVIDED	HOLIDAY PAY	NOTICE ENTITLEMENT	REDUNDANC Y PAY	BONUS ENTITLEMENT (£)	CONTRACTU AL REMUNERATI ON
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CONTRACTUAL REMUNERATION BONUS ENTITLEMENT (S)						
REDUNDANC Y PAY						
NOTICE ENTITLEMENT						
HOLIDAY PAY						
ACCOMMODA TION PROVIDED						
NOTICE PERIOD						
SITE AND DEPARTMENT IN WHICH EMPLOYED						
JOB TITLE AND DESCRIPTION						
ALLOWANCE/ DEDUCTION CODE						
EMPLOYER AND EMPLOYEE CONTRIBUTIO N RATES						
SUPERANNU ABLE (Y/N) AND COMMENCEM ENT OF PENSIONABL E SERVICE						
N.I. CODE LETTER (A OR D)						
RATE/ HOUR (£) INC SCALE AND POINT						
CONTRACTED HOURS INC WHETHER FULL OR PART TIME						
GRADE						
CONTINUOUS SERVICE START DATE						
DATE OF COMMENCEM ENT						
D.O.B						
AGE						
SEX (M/F)						
WTE						
CONTRACT HOURS						
STAFF REF NO	15	16	17	18	19	20

Third Party Relevant Employees

CONTRACTU AL REMUNERATI ON															
BONUS ENTITLEMENT (S)															
REDUNDANC Y PAY															
NOTICE ENTITLEMENT															
HOLIDAY PAY															
ACCOMMODA TION PROVIDED															
NOTICE PERIOD															
SITE AND DEPARTMENT IN WHICH EMPLOYED															
JOB TITLE AND DESCRIPTION															
ALLOWANCE/ DEDUCTION CODE															
EMPLOYER AND EMPLOYEE CONTRIBUTIO N RATES															
SUPERANNU ABLE (Y/N) AND COMMENCEM ENT OF PENSIONABL E SERVICE															
N.I. CODE LETTER (A OR D)															
RATE/ HOUR (£) INC SCALE AND POINT															
CONTRACTED HOURS INC WHETHER FULL OR PART TIME															
GRADE															
CONTINUOUS SERVICE START DATE															
DATE OF COMMENCEM ENT															
D.O.B															
AGE															
SEX (M/F)															
WTE															
CONTRACT HOURS															
STAFF REF NO	1	2	3	4	5	6	7	8	9	10	11	12	13		

CONTRACTUAL REMUNERATION																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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Part 2

OPERATOR WARRANTED DATA

1. Registered Name of Operator:

[PREFERRED BIDDER TO COMPLETE]

2. Registered Office of Operator:

[PREFERRED BIDDER TO COMPLETE]

3. Company Registration Number of Operator:

[PREFERRED BIDDER TO COMPLETE]

4. Directors of Operator:

[PREFERRED BIDDER TO COMPLETE]

5. Shareholders of Operator (with respective shareholdings):

[PREFERRED BIDDER TO COMPLETE]

Part 3

PROPOSED WORKFORCE INFORMATION

SCHEDULE 11

PROJECT DOCUMENTS AND ANCILLARY DOCUMENTS

Part 1

PROJECT DOCUMENTS

Document	Parties
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*[list to be completed on a case by case basis
but assumed to include*

this Agreement

[Parent Company Guarantee]

[Collateral Warranties where applicable]

Head Lease[s]

Part 2

ANCILLARY DOCUMENTS

Document	Parties
----------	---------

*[Where applicable, include Leisure Contract
and FM Agreement, and any other relevant
subcontract]*

*[guarantees/bonds provided in respect of
those]*

[Management Services Agreement][*if Operator
is an SPV*]

[Underlease[s]]

SCHEDULE 12 TITLE MATTERS

Part 1

TITLE WARRANTIES

Save as disclosed in the Disclosed Title Matters, the Authority warrants that for the period of this Agreement:

1. each and every Site is in the sole legal and beneficial ownership of the Authority;
2. no one is in adverse possession of the Sites or has acquired or is acquiring any Adverse Rights affecting the Sites;
3. there are no disputes, claims, actions, demands or complaints in respect of the Sites that are outstanding or that are expected by the Authority and that would prevent or disrupt the provision of Services;
4. from the Commencement Date no person, other than the Authority, has any right (actual or contingent) to possession, occupation or use of or interest in the Sites; and
5. the Disclosed Title Matters comprise all of the documents relating to the title to the Sites.

Part 2

DISCLOSED TITLE MATTERS

Per Site:

Official Copies and plan.

Southam College, Welsh Road West, Southam CV47 0JW	WK482573
--	----------

Land on the south west side of Darlingscote Road, Shipston-On Stour	WK425803
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Studley Swimming Pool, Pool Road, Studley B80 7QU	WK383541
---	----------

Stratford Leisure Centre, Bridgefoot, Stratford-Upon-Avon CV37 6YY	WK456553
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The Greig Leisure Centre, Kinwarton Road, Alcester, Warwickshire B49 6AD	WK422767
--	----------

SCHEDULE 13
INSURANCES

This Schedule 13 comprises three Parts:

Part 1: Authority Insurances.

Part 2: Operator Insurances.

Part 3: Endorsements.

Part 1

AUTHORITY INSURANCES

[Physical damage buildings insurance for the Facilities.]

Part 2

OPERATOR INSURANCES

Common to all policies in Part 2 (unless stated otherwise):

Insureds

1. the Operator;

[each] for their respective rights and interests in the Facilities.

1. PROPERTY DAMAGE INSURANCE

1.1 Insured Property

Any property of whatsoever nature or description associated with the Services at the Facilities that is the property of the Operator or for which the Operator may be responsible under this Agreement (excluding buildings insurance) including but not limited to the contents of the Facilities.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of appropriate equipment.

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate (escalated periodically as appropriate in accordance with Clause 35.5).

1.4 Maximum Deductible

£[] each and every claim, escalated periodically as appropriate in accordance with Clause 35.5.

1.5 Territorial Limits

United Kingdom.

1.6 Period of Insurance

For the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the parties.

1.7 Cover Features and Extensions

1.7.1 Terrorism.

1.7.2 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded. To include pollution or contamination resulting from accidental damage.

1.7.3 Insured Property whilst in transit.

1.7.4 Automatic reinstatement of sum insured.

1.7.5 Capital additions Clause.

- 1.7.6 72 hour Clause.
- 1.7.7 European Union local authorities Clause.
- 1.7.8 Replacement of computer records.
- 1.7.9 Professional fees.
- 1.7.10 Debris removal.
- 1.7.11 Repair / reinstatement basis of claims settlement with cash option for non-reinstatement.

1.8 **Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.

2. **BUSINESS INTERRUPTION INSURANCE**

2.1 **Insureds**

- 2.1.1 the Operator;

[each] for their respective rights and interests in the Facilities.

2.2 **Indemnity**

In respect of:

- 2.2.1 loss of anticipated Revenue (as defined in [Part 5] of this Schedule) during the Minimum Indemnity Period arising from an interruption or interference in the provision of the Services as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of Part 2 of this Schedule 13 including physical loss or damage which would be indemnifiable but for the application of any deductible; and
- 2.2.2 the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue (as defined in Part 5 of this Schedule) of the Operator which without such expenditure would have taken place, during the Minimum Indemnity Period.

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 **Maximum Excess**

[] days.

2.5 **Minimum Indemnity Period**

[12]/[24] months.

2.6 **Period of Insurance**

For the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the parties.

2.7 **Cover Features and Extensions**

2.7.1 Denial of access.

2.7.2 Utilities.

2.7.3 Terrorism.

2.7.4 Subrogation waiver and non vitiation Clause.

2.7.5 Accountants Clause.

2.7.6 Automatic reinstatement of Sum Insured and Indemnity Period.

2.8 **Principal Exclusions**

2.8.1 War and related perils (UK market agreed wording).

2.8.2 Nuclear/radioactive risks (UK market agreed wording).

2.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

2.8.4 Wear, tear and gradual deterioration.

2.8.5 Cyber risks.

3. **THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

3.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, disease contracted by any person;

3.1.2 loss or damage to property; or

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the provision of the Services.

3.2 **Limit of Indemnity**

Not less than £[] (escalated periodically as appropriate in accordance with Clause 35.5) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 **Maximum Deductible**

£[] for each and every occurrence of property damage, escalated periodically as appropriate. [(Personal injury claims will be paid in full.)]

3.4 **Territorial Limits**

[United Kingdom but worldwide in respect of non-manual visits.] OR [Worldwide excluding USA, Canada and Australia.]

3.5 **Jurisdiction**

Worldwide excluding USA, Canada and Australia.

3.6 **Period of Insurance**

For the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the parties.

3.7 **Cover Features and Extensions**

3.7.1 Munitions of war.

3.7.2 Cross liability Clause.

3.7.3 Contingent motor liability.

3.7.4 Subrogation waiver and non vitiation Clause.

3.8 **Principal Exclusions**

3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured.

3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by Legislation in respect of such vehicles.

3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority that is in the care, custody and control of another Insured.

3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.

3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

3.8.7 Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.

3.8.8 Losses under the insurances referred to in paragraphs 1 and 2 of this Part 2 of Schedule 13.

Part 3

ENDORSEMENTS

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Agreement.

Endorsement 1

Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

1. at least thirty (30) Business Days before any such cancellation or termination is to take effect
2. at least thirty (30) Business Days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
3. of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Subrogation/Non-Vitiation Clause

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a **Vitiating Act**) committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

[Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

1. no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
2. where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
3. save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.]

Endorsement 3

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

1. if in writing, when delivered;
2. if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Operator's insurance broker at the relevant time. The initial address and facsimile number of the Authority is as follows:

The Authority:

Address:

Email:

Attention:

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 4

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 5

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Services shall not be affected and/or reduced by any claim(s) unrelated to the Services.

SCHEDULE 14

NOT USED

SCHEDULE 15

NNDR

1. DEFINITIONS

"Billing Authority"	has the meaning given to the term "billing authority" in the Local Government Finance Act 1992
"National Non Domestic Rates or NNDR"	means the National Non Domestic Rates as contained in the Local Government Finance Act 1988 (or any rates or tax that replaces it) payable in relation to the Sites and/or the Facilities
"NNDR Failure"	<p>means:</p> <p>(a) a failure by (or on behalf of) the Operator to submit, or do anything reasonably required by the Authority (acting in its capacity as Billing Authority) in support of, an application for NNDR Relief</p> <p>(b) any act or omission of any Operator Related Party and any of their servants, agents or employees which is calculated or intended to cause loss of or unavailability of NNDR Relief</p> <p>(c) any failure by the Operator to exercise reasonable skill and care and use all reasonable endeavours to obtain NNDR Relief or</p> <p>(d) a failure by the Operator to achieve the NNDR Relief status of [] or</p> <p>(e) the Operator ceasing at any time to hold the NNDR Relief status of [] other than as a result of a Change in Law which was not foreseeable at the date of this Agreement</p>
"NNDR Pre-Application Information"	shall have the meaning given in paragraph 2.2.1 (Eligibility for NNDR Relief)
"NNDR Pre-Application Rate"	shall have the meaning given in paragraph 2.2.2 (Eligibility for NNDR Relief)
"NNDR Relief"	<p>means relief from the obligation to pay NNDR applicable to the Sites and/or the Facilities pursuant to the provisions of:</p> <p>(a) sections 47 to 50 of the Local Government Finance Act 1988 (and/or any such similar scheme making provision for relief or exemption from or reduction of the payment of any part of NNDR) and/or</p> <p>(b) the NNDR Relief Policy</p>
"NNDR Relief Policy"	means the Authority's (acting in its capacity as Billing Authority) policy for the application of NNDR Relief in the Authority's rating area and the exercise of its discretion to award NNDR Relief in respect of the Facilities pursuant to such policy

"NNDR Report" shall have the meaning given in paragraph 5.3 (Alternative Structures)

"Updated NNDR Rate" shall have the meaning given in paragraph 3.4 (Initial Application for NNDR Relief)

2. ELIGIBILITY FOR NNDR RELIEF

2.1 The Operator acknowledges and agrees that, subject to the following provisions of this Schedule (NNDR), the Operator shall be responsible for the payment of NNDR applicable to the Facilities in relation to the period from (and including) the Commencement Date until (and including) the Expiry Date or, if earlier, the Termination Date.

2.2 The parties acknowledge and agree that:

2.2.1 the Operator has, prior to the Commencement Date, submitted to the Authority information relating to the contractual arrangements and the Services and corporate structure proposed by the Operator for the purposes of the Services to assist the Authority to assess the eligibility of the Operator to claim NNDR Relief in connection with the Facilities on and from the Commencement Date, such information being in the Agreed Form (the **"NNDR Pre-Application Information"**); and

2.2.2 having relied upon the information contained in the NNDR Pre-Application Information, the Authority has indicated to the Operator that the contractual arrangements and Services and corporate structure proposed by the Operator would, on the date of such indication, entitle the Operator to claim NNDR Relief in connection with the Facilities on and from the Commencement Date at a particular rate (the **"NNDR Pre-Application Rate"**) the parties acknowledging that for the purposes of the NNDR Pre-Application Rate, NNDR Relief will [include][not include] mandatory rate relief [only] and [no NNDR Policy] will apply in respect of discretionary rate relief].

3. INITIAL APPLICATION FOR NNDR RELIEF

3.1 The Operator shall inform the Authority in relation to the occupation of the Facilities by the Operator.

3.2 The Operator shall submit an application for NNDR Relief to the Authority in accordance with the Authority's policies. Such application will confirm whether the contractual arrangements and project and corporate structure vary from the NNDR Pre-Application Information.

3.3 Where, following the application referred to in paragraph 3.2 (Initial Application for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will entitle the Operator to claim NNDR Relief in connection with the Facilities at the NNDR Pre-Application Rate, then the Operator shall apply (and continue to apply) the full benefit of such NNDR Relief to the Services and the Operator warrants and confirms that in calculating the Annual Payment it has taken into account NNDR Relief at the NNDR Pre-Application Rate in respect of the Sites and/or the Facilities (as the case may be), as contemplated in row [] of the LOBTA.

3.4 Where, following the application referred to in paragraph 3.2 (Initial Application for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will not entitle the Operator to claim NNDR Relief at the NNDR Pre-Application Rate and instead claim it at a different rate (including for the avoidance of doubt, a nil rate) (the **"Updated NNDR Rate"**) in connection with the Facilities so that the NNDR liability for the Services increases, then:

3.4.1 where:

(a) the information on which such determination is made is consistent (in all relevant respects) with the information submitted in the NNDR Pre-Application Information; and

- (b) the reason for such determination does not arise as a result of an NNDR Failure;
and
- (c) the reason for such determination does not arise as a result of a Change in Law which was foreseeable at the date of this Agreement,

then, subject to the following provisions of this Schedule 15 (NNDR), the Authority shall be responsible for the payment of additional NNDR in respect of the Facilities and the Annual Payment shall be adjusted in accordance with Clause 37 (Financial Adjustments) so as to put the Operator in no better and no worse a position than it would have been in had the relevant determination not been made;

3.4.2 where:

- (a) the information on which such determination is made is inconsistent (in any relevant respect) with the information submitted in the NNDR Pre-Application Information; and/or
- (b) the reason for such determination arises as a result of an NNDR Failure; and/or
- (c) the reason for such determination arises because of a Change in Law which was foreseeable at the date of this Schedule 15 (NNDR),

the Operator shall be responsible for meeting the additional costs of NNDR in respect of the Facilities.

4. SUBSEQUENT APPLICATIONS FOR NNDR RELIEF

4.1 Following the Operator's initial application for NNDR Relief pursuant to paragraph 3.2 (Initial Application for NNDR Relief), the Operator shall submit an application for NNDR Relief to the Authority whenever thereafter so required by the relevant rules and procedures of the Authority (acting in its capacity as Billing Authority). Such applications will confirm whether the contractual arrangements and project and corporate structure vary from the NNDR Pre-Application Information.

4.2 Where, following an application referred to in paragraph 4.1 (Subsequent Applications for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will entitle the Operator to claim NNDR Relief in connection with the Facilities at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable), then the Operator shall apply (and continue to apply) the full benefit of such NNDR Relief to the Services and the Operator will warrant and confirm that in calculating the Annual Payment it has taken into account NNDR Relief at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable) in respect of the Sites and/or the Facilities (as the case may be), as contemplated in row [] of the LOBTA.

4.3 Where, following an application referred to in paragraph 4.1 (Subsequent Applications for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will not entitle the Operator to claim NNDR Relief at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable) and instead claim it at a different rate in connection with the Facilities so that the NNDR liability for the Services increases, then:

4.3.1 where:

- (a) the information on which such determination is made is consistent (in all relevant respects) with the information submitted in the NNDR Pre-Application Information;
- (b) the reason for such determination does not arise as a result of an NNDR Failure;
and

- (c) the reason for such determination does not arise as a result of a Change in Law which was foreseeable at the date of this Agreement,

then, subject to the following provisions of this Schedule 15 (NNDR), the Authority shall be responsible for the payment of additional NNDR in respect of the Facilities and the Annual Payment shall be adjusted in accordance with Clause 37 (Financial Adjustments) so as to put the Operator in no better and no worse a position than it would have been in had the relevant determination not been made;

4.3.2 where:

- (a) the information on which such determination is made is inconsistent (in any relevant respect) with the information submitted in the NNDR Pre-Application Information; and/or
- (b) the reason for such determination arises as a result of an NNDR Failure; and/or
- (c) the reason for such determination arose because of a Change in Law which was foreseeable at the date of this Agreement,

then, subject to the following provisions of this Schedule 15 (NNDR), the Operator shall be responsible for meeting the additional costs of NNDR in respect of the Facilities.

- 4.4 For the avoidance of doubt, references in this paragraph 4 to "Updated NNDR Rate" shall include both any updated rate pursuant to paragraph 3.4 and also any subsequent updates pursuant to this paragraph 4.

5. ALTERNATIVE STRUCTURES

- 5.1 Where the Operator is refused NNDR Relief at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable) or has reason to believe that the Operator will or is likely to lose all or any NNDR Relief (whether as a result of a Change in Law or a change in the NNDR Relief Policy or otherwise), it shall notify the Authority as soon as reasonably practicable with full details of the implications of this and shall keep the Authority informed of any developments in relation to such occurrence or likely occurrence and the following provisions shall apply.

- 5.2 The parties shall, within ten (10) Business Days of the Operator's notification under paragraph 5.1 (Alternative Structures), meet to discuss the implications of the lack or loss of NNDR Relief and how the impact of the lack or loss of NNDR Relief can be mitigated. If either party identifies a way in which the whole or any part of the NNDR Relief can be lawfully obtained by the Authority or the Operator, the Operator shall use its reasonable endeavours to obtain such NNDR Relief or assist the Authority in obtaining such NNDR Relief.

- 5.3 If the Authority so requests, the Operator shall, from the date of such request, investigate what alternative lawful contract structures and/or forms of entity (which are acceptable to the Operator, acting reasonably) may be available to minimise NNDR applicable to the Facilities and within one (1) month of such request present its findings to the Authority in a report (the "**NNDR Report**"), provided that, except in the case of an NNDR Failure or a Change in Law which was foreseeable at the date of this Agreement, the Authority shall reimburse the Operator's reasonable expenses in taking the steps required under this paragraph 5.3.

- 5.4 Upon presentation by the Operator of the NNDR Report to the Authority in accordance with paragraph 5.3 (Alternative Structures), the Authority shall assess the details of the NNDR Report and shall within one (1) month of such presentation notify the Operator that it:

5.4.1 agrees the alternative structure and/or form of entity proposed in the NNDR Report; or

5.4.2 does not agree the alternative structure and/or form of entity proposed in the NNDR Report;
or

5.4.3 requires further information as is reasonable to make an assessment in respect of the NNDR Report, in which case the Operator shall issue such information as soon as reasonably practicable; or

5.4.4 intends to obtain (at the Authority's cost) the opinion of a barrister or third party and, in such circumstances, the Authority will use its reasonable endeavours to not delay obtaining such opinion.

Where paragraph 5.4.3 or paragraph 5.4.4 applies, the Authority shall within twenty (20) Business Days or receipt of such further information or opinion (as the case may be) assess such additional information and/or opinion and shall notify the Operator of its decision pursuant to paragraph 5.4.1 or 5.4.2 (Alternative Structures) (as applicable).

5.5 Where the Authority accepts the alternative structure and/or form of entity proposed in the NNDR Report pursuant to paragraph 5.4.1 (Alternative Structures), with such revisions as may be agreed to by the parties (acting reasonably) the Operator shall proceed to implement such alternative structure and/or form of entity in accordance with Legislation and as agreed with the Authority, both parties acting reasonably. Such implementation shall be treated as an Authority Change, except where the reason for such change arises as a result of an NNDR Failure or a Change in Law which was foreseeable at the date of this Agreement, in which case it shall be treated as an Operator Change.

6. REDUCTIONS IN NNDR LIABILITY

Where during the Contract Period, the Authority, subsequently becomes entitled to grant (and does so grant) the Operator additional NNDR Relief in respect of the Facilities and/or where the total amount of NNDR payable in respect of the Facilities decreases for any other reason, then the Annual Payment shall be adjusted in accordance with Clause 37 (Financial Adjustments) by the same amount as the amount of relief from NNDR granted and/or the reduction in NNDR liability.

7. NNDR FAILURE

Where NNDR Relief is not granted or is lost, or where the percentage of NNDR Relief is changed from or different to that assumed in the LOBTA, so as to mean that additional NNDR is payable by the Operator, or where an alternative structure and/or form of entity is implemented pursuant to paragraph 5 (Alternative Structures), due in each case to any NNDR Failure or a Change in Law which was foreseeable at the date of this Agreement, the Annual Payment shall not be adjusted in respect of the NNDR Relief not being granted or being lost and the increase in NNDR applicable to the Facilities shall as a result of such lack of or loss of relief be for the account of the Operator.

8. NNDR CHALLENGES AND APPEALS

If the Authority shall require (acting reasonably) the Operator shall challenge or appeal any decision of the Billing Authority in respect of NNDR in relation to any of the Facilities or otherwise seek any rebates, revaluations or other lawful methods of reducing the NNDR payable (other than by way of the Operator applying for NNDR Relief in the normal course of events pursuant to paragraphs 3 and 4 of this Schedule 15 (NNDR), to which paragraphs 2 to 7 shall apply), in which case the Operator shall agree its proposals in advance with the Authority (both parties acting reasonably) and shall use its reasonable endeavours to succeed in any such challenge, appeal, rebate, revaluation or reduction. The Authority shall bear all reasonable and proper third party costs and disbursements properly incurred by the Operator provided the Authority gives prior written approval for such costs and disbursements.

9. If the amount of the NNDR is varied (including for the avoidance of doubt retrospectively) as a result of any challenge, appeal or other action taken pursuant to paragraph 8, then the Annual Payment shall be adjusted in accordance with Clause 37 (Financial Adjustments) so as to put the Operator in no better and no worse a position than if the relevant variation had not been made.

10. COSTS

Where a party is entitled to be reimbursed its reasonable costs pursuant to this Schedule 16 (NNDR), it shall issue an invoice in respect of such costs to the other party with such information that may be reasonably required to verify such costs. Subject to Clause 36.7, the relevant party shall pay the amount of any such invoice submitted to it within twenty (20) Business Days of its receipt.

SCHEDULE 16
HEAD LEASES

DATED _____

(1) STRATFORD-ON-AVON DISTRICT COUNCIL

(2) [OPERATOR]

LEASE
of []

LR1. Date of lease	[REDACTED]
LR2. Title Number(s)	LR2.1 Landlord's title number(s) [REDACTED] LR2.2 Other title number(s) None
LR3. Parties to this lease	Landlord Stratford-on-Avon District Council of Elizabeth House, Church Street, Stratford-upon-Avon CV37 6HX Tenant [REDACTED] Other parties None
LR4. Property	In the case of a conflict between this Clause and the remainder of this lease then, for the purposes of registration, this Clause shall prevail. Refer to the definition of Premises in Clause 1 of this Lease.
LR5. Prescribed statements etc.	LR5.1. Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003. None LR5.2 This lease is made under, or by reference to, provisions of: None
LR6. Term for which the Property is leased	The term as specified in this lease at Clause 1 (the " Term ")
LR7. Premium	None
LR8. Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions.
LR9. Rights of acquisition etc.	LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land None LR9.2 Tenant's covenant to (or offer to) surrender this lease None

	LR9.3 Landlord's contractual rights to acquire this lease None
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11. Easements	LR11.1 Easements granted by this lease for the benefit of the Property The easements as specified in Schedule 2 of this lease. LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property The easements as specified in Schedule 1 of this lease.
LR12. Estate rentcharge burdening the Property	None
LR13. Application for standard form of restriction	The parties to this lease apply to enter the following standard form of restriction None
LR14. Declaration of trust where there is more than one person comprising the Tenant	None

THIS LEASE is made on [REDACTED]

BETWEEN:

- (1) Stratford-on-Avon District Council of Elizabeth House, Church Street, Stratford-upon-Avon CV37 6HX (the "**Landlord**"); and
- (2) [REDACTED] (registered under company registration number [REDACTED]) whose registered office is [REDACTED] (the "**Tenant**").

IT IS AGREED as follows:

1. DEFINITIONS

The following expressions shall where the context so admits have the following meanings:

" 1954 Act "	means the Landlord and Tenant Act 1954
" Authorised Use "	means use for the purposes prescribed under the Leisure Agreement
" Conducting Media "	means all pipes, wires, cables, sewers, tanks, cisterns, pumps, ducts, drains and other service conducting media now or at any time during the Term [in, under, over or on the Retained Land and] serving the Premises and other adjoining land whether for gas, foul and surface water drainage, water, electricity, telephone, telecommunications or any other service to the Premises
" this Lease "	means this deed as varied or supplemented by any document which is supplemental to this deed
" Leisure Agreement "	means the agreement (and any agreement made supplemental to or in variation thereof from time to time) entered on today's date between (1) the Landlord and (2) the Tenant relating to the provision of [a] leisure centre[s] with ancillary uses at the Premises
" Plan "	means the plan annexed
" Planning Acts "	means the Town and Country Planning Act 1990 (as amended), the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 and all secondary legislation including but not limited to the Town and Country (General Permitted Development) Order 1995
" Premises "	means the land and buildings at [REDACTED] shown [edged red] on the Plan together with all buildings, additions, alterations, improvements, and landlord's fixtures and fittings at the same from time to time as the same forms part of the land registered at the Land Registry under title number [REDACTED]
" Retained Land "	means [the adjoining or neighbouring land of the Landlord being the land registered at the Land Registry under title number [REDACTED] but excluding the Premises and a copy of the title plan to title number [REDACTED] is attached to this Lease]
" Services "	means foul and surface water, drainage, gas, electricity, telephone, telecommunications and other services to or on the Premises [and the Retained Land]

"Term" means the term of years from and including the date hereof and terminating on the [] day of [] 20[] being the Expiry Date as defined in the Leisure Agreement

"Yearly Rent" means £1 (one pound) per annum (if demanded)

2. INTERPRETATION

- 2.1 The expression "the Landlord" shall include the person for the time being entitled to the reversion immediately expectant on the determination of the Term while the expression "the Tenant" shall include the Tenant's successors in title and assigns.
- 2.2 Subject to and without prejudice to Clause [47] (Change in Law) of the Leisure Agreement, in this Lease references to any statute or statutory provision shall be deemed to refer to any statutory modification or re-enactment for the time being in force whether by statute or any directives and regulations (intended to have direct application within the United Kingdom) adopted by the Council of the European Communities.
- 2.3 The headings are inserted for convenience only and shall be ignored in construing the terms and provisions of this Lease.
- 2.4 References in this Lease to any Clause or sub-Clause, schedule or paragraph of a schedule without further designation shall be construed as a reference to the Clause, sub-Clause, schedule or paragraph of the schedule to this Lease so numbered.
- 2.5 Where there is any inconsistency between the terms of the Leisure Agreement and this Lease the Leisure Agreement shall prevail.

3. DEMISE AND RENT

In consideration of the rents and covenants on the part of the Tenant reserved and contained in this Lease the Landlord DEMISES to the Tenant with full title guarantee ALL THOSE the Premises TOGETHER WITH the rights set out in Schedule 2 EXCEPTING AND RESERVING nevertheless unto the Landlord the rights and matters set out in Schedule 1 TO HOLD the same to the Tenant for the Term but determinable as provided later in this Lease YIELDING AND PAYING the Yearly Rent throughout the Term if and when demanded.

4. TENANT'S COVENANTS

The Tenant covenants with the Landlord as follows:

4.1 To Pay Rent

To pay the Yearly Rent reserved in Clause 3.

4.2 Signs

- 4.2.1 Save where necessary to comply with its obligations under the Leisure Agreement not to affix, place or exhibit or permit or suffer to be affixed, placed or exhibited to or upon the exterior of any part of the Premises or to or through any windows or to or upon any boundary wall rail or fence at the Premises any sign, placard, poster, signboard or other advertisement save as may have been previously approved in writing by the Landlord such approval not to be unreasonably withheld or delayed.
- 4.2.2 Before the end of the Term, The Teant shall remove any signs placed by it at the Premises and shall make good any damage caused to the Premises by that removal.
- 4.2.3 The Tenant shall allow the Landlord to fix to and keep at the Premises any sale or re-letting board as the Landlord reasonably requires.

4.3 **Planning**

Subject to the terms of the Leisure Agreement not to do anything in breach of the Planning Acts and to give as soon as reasonably practicable full particulars to the Landlord of any notice, proposal or order issued under the Planning Acts in respect of or affecting the Premises.

4.4 **User**

Not to use or permit or suffer the Premises to be used otherwise than for the Authorised Use.

4.5 **Encroachment, obstructions and acquisition of rights**

4.5.1 The Tenant shall not grant any right or licence over the Premises to a third party without the written consent of the Landlord.

4.5.2 If a third party makes or attempts to make any encroachment over the Premises or takes any action by which a right may be acquired over the Premises, the Tenant shall:

- (a) immediately inform the Landlord and shall give the Landlord notice of that encroachment or action: and
- (b) take all steps (including any proceedings) the Landlord reasonably requires to prevent that encroachment or action.

4.5.3 The Tenant shall not obstruct the flow of light or air to the Premises nor obstruct any means of access to the Premises.

4.5.4 The Tenant shall not make any acknowledgement that the flow of light or air to the Premises or that the means of access to the Property is enjoyed with the consent of any third party.

4.5.5 If any person takes or threatens to take any action to obstruct the flow of light or air to the Premises or obstruct the means of access to the Premises, the Tenant shall:

- (a) immediately inform the Landlord and shall give the Landlord notice of that action: and
- (b) take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction.

4.6 **Notices**

4.6.1 To transmit as soon as reasonably practicable to the Landlord the original or a full and accurate copy of any notice concerning the Premises which is received by the Tenant.

4.6.2 As soon as reasonably practicable to give notice to the Landlord upon becoming aware of any defect or need of repair or renewal arising to the Premises which might result in the Landlord becoming liable to third parties by reason of the provisions of the Defective Premises Act 1972.

4.7 **Alienation**

4.7.1 Not to assign, underlet, charge, part with the possession or share the possession, use or occupation of the whole or any part or parts of the Premises nor enter into a binding agreement to do any of the same.

4.8 To Yield Up

To yield up the Premises in accordance with the provisions of the Leisure Agreement provided that the Landlord may treat as abandoned by the Tenant any property not removed by the Tenant prior to the expiration of the Term and may as agent of the Tenant (and the Landlord is hereby irrevocably appointed by the Tenant to act in that capacity) arrange for the removal and destruction or sale of the same after having given the Tenant at least 28 days' prior written notice of its intention to carry out such removal and destruction and having given the Tenant reasonable opportunity within such notice period to remove any such property.

4.9 Alterations

4.9.1 The Tenant shall not without the landlord's consent to make any structural or external alteration or addition to the Premises.

4.9.2 The Tenant shall not to commit any waste.

4.9.3 The Tenant shall not without the Landlord's consent cut down or injure any trees plants bushes or hedges or remove from the Premises any soil clay sand or other materials or make any excavations such consent not to be unreasonably withheld or delayed.

4.9.4 The Tenant shall not make connection with the Service Media otherwise than in accordance with plans and specifications approved in writing by the landlord such approval not to be unreasonably withheld or delayed subject to consent to make such connection having previously been obtained from the competent statutory authority or undertaken.

5. LANDLORD'S COVENANT

The Landlord covenants with the Tenant that the Tenant shall and may peaceably and quietly hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord.

6. PROVISOS AGREEMENTS AND DECLARATIONS

Provided always and it is hereby expressly agreed as follows:

6.1 Remedies

Any breach of the covenants and obligations in this Lease by the Tenant shall be dealt with by way of Clause 6.2 and the remedies specified in the Leisure Agreement.

6.2 Early Termination of the Term

If the Leisure Agreement is terminated or determines for any reason in accordance with the terms of the Leisure Agreement then this Lease shall automatically determine on the same date without any further notice being served under this Lease but without prejudice to any claim by either party against the other in respect of any antecedent breach of any covenant or condition contained in this Lease and on such determination it shall be lawful for the Landlord at any time thereafter to re-enter the Premises or any part of the Premises in the name of the whole.

6.3 No implied Rights

Save for the rights expressly granted nothing in this Lease shall by implication of law or otherwise operate to confer on the Tenant any easement, right or privilege whatsoever over or against [the Retained Land or] any other property of the Landlord which might in any way restrict or prejudicially affect the future rebuilding alteration or development of [the Retained Land or] such other property.

6.4 Security of Tenure - Exclusion of sections 24 to 28 of the 1954 Act

6.4.1 The parties confirm that before the Tenant became contractually bound to enter into the tenancy created by this Lease:

- (a) the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the 1954 Act applying to the tenancy created by this Lease; and
- (b) [the Tenant] / [name of declarant who was duly authorised by the Tenant to do so] made a [statutory] declaration dated [] in accordance with the requirements of section 38A(3)(b) of the 1954 Act.

6.4.2 The parties agree that the provisions of sections 24 to 28 of the 1954 Act are excluded in relation to the tenancy created by this Lease.

6.5 Notices

The service and receipt of notices shall be undertaken in accordance with the terms of the Leisure Agreement.

6.6 Contracts (Rights of Third Parties) Act 1999

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

6.7 Landlord and Tenant (Covenants) Act 1995

This Lease creates a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

6.8 Warranty on Use

Nothing in this Lease constitutes or shall constitute a representation or warranty that the Premises may lawfully be used for any purpose allowed by this Lease.

6.9 Local Authority Landlord's Capacity and Powers

The Landlord enters into this Lease solely in its capacity as a landowner in respect of the Premises and not in any other capacity. Nothing in this Lease shall restrict the Landlord's powers or rights as a local authority, local planning authority or statutory body to perform any of its statutory functions.

THIS LEASE is executed as a deed and is delivered on the date stated at the beginning of this Lease.

SCHEDULE 1

EXCEPTIONS AND RESERVATIONS

1. [The free and uninterrupted passage and running of Services to and from the Retained Land in and through the Conducting Media which now are or may at any time hereafter during the Term be in, upon, through, under or over the Premises.]
2. [The right to maintain in, on, through, under or over the Premises at any time during the Term any easements or services for the benefit of the Retained Land, the right to connect into any Conducting Media on the Premises and the right to install and construct Conducting Media at the Premises to serve any part of the Retained Land.]
3. The right at any time during the Term in accordance with the conditions for such entry included within the Leisure Agreement or otherwise (if no such conditions apply) at reasonable times and after reasonable prior written notice (except in an emergency when no notice shall be required) to enter upon the Premises to:
 - 3.1 [inspect, maintain, relay, repair, replace or renew or execute any works whatever to or in connection with any of the Conducting Media easements or Services referred to in paragraphs 1 and 2 of this Schedule 1;]
 - 3.2 [carry out any cleaning and or maintenance of the Landlord's Retained Land; or]
 - 3.3 exercise any of the rights granted or reserved to the Landlord by this Lease or the Leisure Agreement, the Landlord exercising such rights only if such works cannot reasonably be effected without such entry and causing as little inconvenience as possible and remedying any physical damage so caused to the Tenant's reasonable satisfaction.
4. [All liberties, privileges, easements, quasi-easements, rights and advantages whatsoever now held or enjoyed with or appertaining or reputed to appertain to any other part of the Retained Land provided always that those matters or any of them reserved pursuant to this paragraph do not materially interfere with the Tenant's proper performance and exercise of its obligations and rights contained in the Leisure Agreement.]
5. [The right to deal in any manner whatsoever with the Retained Land and to erect, maintain, rebuild or alter or suffer to be erected, maintained, rebuilt or altered thereon any buildings whatsoever.]
6. [The right of support and protection by and from the Premises for adjoining buildings (whether now in existence or erected during the term) situated on the Retained Land.]
7. The mines and minerals under the Premises and the airspace above the buildings on the Premises.

SCHEDULE 2

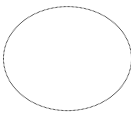
RIGHTS GRANTED TO THE TENANT

1. [The right of support and protection by and from the Retained Land for the Premises and buildings (whether now in existence or erected during the term) situated on the Premises.]
2. [The free and uninterrupted passage and running of Services to and from the Premises in and through the Conducting Media which now are or may at any time hereafter during the Term be in, upon, through, under or over the Retained Land.]
3. [The right at any time during the Term in accordance with the conditions for such entry included within the Leisure Agreement or otherwise (if no such conditions apply) at reasonable times and after reasonable prior written notice (except in an emergency when no notice shall be required) to enter upon the Retained Land to:
 - 3.1 inspect, maintain, relay, repair, replace or renew or execute any works whatever to or in connection with any of the Conducting Media, easements or Services referred to in paragraph 2 of this Schedule 2;
 - 3.2 carry out any cleaning and or maintenance of the Premises; or
 - 3.3 exercise any of the rights granted or reserved to the tenant by this Lease or the Leisure Agreement,the Tenant exercising such rights only if such works cannot reasonably be effected without such entry and causing as little inconvenience as possible and remedying any physical damage so caused to the Landlord's reasonable satisfaction.]

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of [NAME OF LOCAL AUTHORITY] in the presence of

.....
Full Name

.....
Authorised Signature



Common Seal

Executed as a Deed (but not delivered until the date of this Deed) by [redacted] acting by

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director/Secretary)

.....
Signature of Director/Secretary

SCHEDULE 17

NOT USED

SCHEDULE 18

NOT USED

SCHEDULE 19

EQUALITY REQUIREMENTS

1. The Operator (including its agents and employees) shall not, and shall procure that any Operator Related Party shall not:
 - 1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Protected Characteristics; and/or
 - 1.2 contravene Sections 39, 108 to 109 and 111 to 112 of the Equality Act 2010 and Section 24A of the Equality Act 2006 (or any of them),

where appropriate.
2. The Operator (including its agents and employees) shall, and shall procure that any Operator Related Party shall, for purposes of ensuring compliance with paragraphs 1.1 to 1.2, in relation to staff engaged in the provision of Works or Services observe as far as possible the provisions of:
 - 2.1 the Equality and Human Rights Commission Code of Practice in Employment;
 - 2.2 the Equality and Human Rights Commission's Statutory Code of Practice on Equal Pay; and
 - 2.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,

including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.
3. The Operator shall, and shall procure that any Operator Related Party shall, in performing its/their obligations under this Agreement, comply (to the extent permitted by law) with the provisions of sections 149 and 150 of the Equality Act 2010 as if they were a body within the meaning of Schedule 19 to the Equality Act 2010.
4. Where in connection with this Agreement the Operator (including its agents and employees) or any Operator Related Party are required to carry out work on the Authority's premises or alongside the Authority's employees on any other premises, they shall comply with the Authority's own employment policy and codes of practice relating to discrimination and equal opportunities.
5. The Operator shall, and shall procure that any Operator Related Party shall, notify the Authority's Representative forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Operator or any Operator Related Party under the Equalities Legislation.
6. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Operator's performance of its obligations under this Agreement being in contravention of the Equalities Legislation, the Operator shall, and shall procure that any Operator Related Party shall, free of charge:
 - 6.1 provide any information requested in the timescale allotted;
 - 6.2 attend any meetings as required and permit any of its staff to attend;
 - 6.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 6.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and
 - 6.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

SCHEDULE 20

CONFIDENTIAL INFORMATION

Part 1

COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS

Column 1 - Commercially Sensitive Contractual Provisions	Column 2 - For period ending on date below:

Part 2

COMMERCIALLY SENSITIVE MATERIAL

Column 1 - Commercially Sensitive Material	Column 2 - For period ending on date below:

SCHEDULE 21

LOSS OF REVENUE

[Note: In order to assist parties for the duration of the Agreement, two alternatives of the Loss of Revenue Schedule are included in this draft contract:

- **[Option 1 – longer form, consistent with previous Sport England template documentation; and**
- **Option 2 - a simplified version of the Loss of Revenue schedule. Drawing on the principles contained in Option 1, the simplified schedule contained in Option 2 does not differentiate between high, medium and low seasons – and instead applies an averaged figure across the year.]**

Local Authorities should decide whether to include Option 1 or Option 2 of this Schedule]

OPTION 1

1. Subject to the provisions of this Schedule 21 (Loss of Revenue), any Loss of Revenue shall be calculated in respect of each relevant activity by determining the anticipated daily Revenue for the relevant activity in question for the period in question (the Anticipated Daily Revenue) and deducting from that sum the actual daily revenue received for the relevant activity in question for the period in question.
2. The Authority shall be entitled to audit, at frequent intervals, actual Revenue received by the Operator at the Facilities.
3. The Anticipated Daily Revenue for each activity shall vary between seasons (as set out in paragraphs 4 and 5 of this Schedule 21 (Loss of Revenue)), and are set out:
 - 3.1 [in respect of the Initial Phase in the table at paragraph 11 of this Schedule 21 (Loss of Revenue); and]
 - 3.2 in respect of the [Contract/Services] Period [(or any delay in the commencement of the Services Period)], in the table at paragraph 12 of this Schedule 21 (Loss of Revenue).
4. In respect of [Swimming/Gym and Memberships]:
 - 4.1 The High Season rate shall apply in [May, June, July and August];
 - 4.2 The Mid Season rate shall apply in [February, March, April, September and October]; and
 - 4.3 The Low Season rate shall apply in [January, November and December].
5. In respect of all activities except for [Swimming/Gym and Memberships]:
 - 5.1 The High Season rate shall apply in [January, February, March, April, May, June, September and October];
 - 5.2 The Mid Season rate shall apply in [July, August and November]; and
 - 5.3 The Low Season rate shall apply in [December].
6. The Anticipated Daily Revenue rates set out in the table[s] in paragraph[s] 11 and] 12 of this Schedule 21 (Loss of Revenue) are daily and shall be index-linked.
7. The Operator shall at all times use all endeavours to minimise and mitigate any Loss of Revenue and the consequences of any Relevant Event or Loss of Revenue Event which shall include

addressing variable costs and making appropriate cost adjustments. For the avoidance of doubt mitigation shall not include a reduction in Loss of Revenue based on an assessment of whether the prescribed rate for each area would have actually been achieved during the closure period in question.

8. In calculating any Loss of Revenue, the Operator shall not be entitled to recover, as Loss of Revenue, any greater amount than the level of Revenue which it is projected to recover as set out in the table[s] at paragraph[s] 11 and] 12 of this Schedule 21 (Loss of Revenue).
9. [For the avoidance of doubt, the loss of membership revenue shall be equivalent to the price reduction given to the User in lieu of the relevant closures, to be agreed between the Operator and the Authority in line with sensible commercial practice, plus the loss of membership revenue caused by membership cancellations during the closure period that are not replaced by membership revenue from new sales.]
10. [In the circumstances where the Loss of Revenue is triggered by a Relevant Event or a Loss of Revenue Event and a period of six (6) months has elapsed from the occurrence of such Relevant Event or Loss of Revenue Event, the amounts set out in the table[s] at paragraph[s] 11 and] 12 of this Schedule 21 (Loss of Revenue) shall be reduced by [X%] to remove the Operator's profit from the calculation of the Loss of Revenue.]

11. [INITIAL PHASE]

[XYZ] FACILITY

Revenue Area/Service	Daily Rates (£)		
	Low Season	Mid Season	High Season
Swimming – Admissions			
Swimming – Clubs Hire			
Swimming – Schools Hire			
Swimming – Lessons			
Fitness Suite – Casual			
Fitness Suite – Memberships	[See para 9]	[See para 9]	[See para 9]
Fitness Suite – Joining Fees			
Dance Studios – Casual			
Dance Studios – Membership	[See para 9]	[See para 9]	[See para 9]
Sale of Goods			
Sport Card Income			
Room Hire/Functions			
Sports Hall – Casuals, Contracts & Schools			
Sports Hall – Sessions			
Sports Hall – Clubs			
The Zone			
Squash (per court)			
Health Suite			
Total Income excl catering etc.			
Catering			
Bar			
Vending			
Total Income catering etc.			
Grand Total			

12. [CONTRACT/SERVICES] PERIOD**[XYZ] FACILITY**

Revenue Area/Service	Daily Rates (£)		
	Low Season	Mid Season	High Season
Swimming – Admissions			
Swimming – Clubs Hire			
Swimming – Schools Hire			
Swimming – Lessons			
Fitness Suite – Casual			
Fitness Suite – Memberships	[See para 9]	[See para 9]	[See para 9]
Fitness Suite – Joining Fees			
Dance Studios – Casual			
Dance Studios – Membership	[See para 9]	[See para 9]	[See para 9]
Sale of Goods			
Sport Card Income			
Room Hire/Functions			
Sports Hall – Casuals, Contracts & Schools			
Sports Hall – Sessions			
Sports Hall – Clubs			
The Zone			
Squash (per court)			
Health Suite			
Total Income excl catering etc.			
Catering			
Bar			
Vending			
Total Income catering etc.			
Grand Total			

13. COMPENSATION

The financial consequences of any Relevant Event or Loss of Revenue Event shall be calculated pursuant to Clause 37 (Financial Adjustments).

Notes

- The daily rate represents the maximum amount that will be charged for the full day in the (relevant high, medium or low season/relevant month), subject to mitigation in line with paragraph 7 of this Schedule 21 (Loss of Revenue). The hourly rate will not always be a simple calculation of daily rate divided by hours in the day but should reflect the time of day when the loss of revenue occurs. For example loss of revenue in the dance studio will be greater in the evening than in the morning. The booking programme or historical usage patterns may be used to calculate the hourly rate for different times of day and the Authority will have the certainty that the loss per day will not exceed the daily rate (listed in the schedule/as calculated by reference to Appendix A and divided by the relevant number of calendar days).
- The loss of revenue associated with Bar, Catering and Vending Sales (above/as listed in Appendix A) will be apportioned in direct relation to the revenue loss attributable to the affected Revenue area, over the total revenue excluding Bar, Catering and Vending Sales.

OPTION 2

1. Subject to the provisions of this Schedule 21 (Loss of Revenue), any Loss of Revenue shall be calculated in respect of each relevant activity by determining the anticipated daily Revenue for the relevant activity in question for the period in question (the "**Anticipated Daily Revenue**") and deducting from that sum the actual daily revenue received for the relevant activity in question for the period in question.
2. The Authority shall be entitled to audit, at frequent intervals, actual Revenue received by the Operator at the Facilities.
3. The Anticipated Daily Revenue for each activity in respect of the Service Period can be calculated by reference to the LOBTA and will be indexed in accordance with Schedule 5.
4. The Operator shall at all times use all endeavours to minimise and mitigate any loss of Revenue and the consequences of any Relevant Event or Loss of Revenue Event which shall include addressing variable costs and making appropriate cost adjustments. For the avoidance of doubt mitigation shall not include a reduction in Loss of Revenue based on an assessment of whether the prescribed rate for each area would have actually been achieved during the closure period in question.
5. In calculating any Loss of Revenue, the Operator shall not be entitled to recover, as Loss of Revenue, any greater amount than the level of Revenue which it is projected to recover calculated by reference to the LOBTA.
6. The loss of membership revenue shall be equivalent to the price reduction given to the User in lieu of the relevant closures, to be agreed between the Operator and the Authority in line with sensible commercial practice, plus the loss of membership revenue caused by membership cancellations during the closure period that are not replaced by membership revenue from new sales.
7. [In the circumstances where the Loss of Revenue is triggered by a Relevant Event and a period of six (6) months has elapsed from the occurrence of such Relevant Event, the amount of daily rate recoverable by the Operator shall be reduced by [X]% to remove the Operator's profit from the calculation of the Loss of Revenue.]

8. Compensation may be paid as follows

8.1 Loss of Revenue Event

The Authority shall (at its discretion) compensate the Operator in respect of any Loss of Revenue arising from a Loss of Revenue Event by:

8.1.1 lump sum payment

8.1.2 instalments; or

8.1.3 pursuant to Clause 37 (Financial Adjustments).

8.2 Relevant Event

The Authority shall compensate the Operator in respect of any Loss of Revenue arising from a Relevant Event pursuant to Clause 37 (Financial Adjustments).

SCHEDULE 22

CHANGE PROTOCOL

Part 1 - AUTHORITY CHANGES

1. RIGHT TO PROPOSE

- 1.1 The Authority has the right to propose Authority Changes in accordance with this Part 1 of this Schedule 22. If the Authority requires an Authority Change, it must serve a notice (an "**Authority Change Notice**") on the Operator in accordance with paragraph 2 of this Part 1 of this Schedule 22.
- 1.2 The Operator shall be entitled to refuse an Authority Change that:
- 1.2.1 requires the Services to be performed in a way that infringes any Legislation or is inconsistent with Good Industry Practice;
 - 1.2.2 would cause any Necessary Consent to be revoked (or would require a new consent to be obtained to implement the relevant change in the Services which, after using reasonable efforts, the Operator has been unable to obtain);
 - 1.2.3 would materially and adversely affect the Operator's ability to deliver the Services (except those Services which have been specified as requiring to be amended in the Authority Change Notice) in a manner not compensated for pursuant to this Part 1 of this Schedule 22;
 - 1.2.4 would materially and adversely affect the health and safety of any person;
 - 1.2.5 would, if implemented, materially and adversely change the nature of the Services (including the risk profile in relation thereto);
 - 1.2.6 the Authority does not have the legal power or capacity to require to be implemented; or
 - 1.2.7 is the subject of an Authority Change Notice that cannot reasonably be complied with.

2. AUTHORITY NOTICE

The Authority Change Notice shall:

- 2.1 set out the change in the Services required in sufficient detail to enable the Operator to calculate and provide the estimated Change in Costs and estimated Change in Revenue in accordance with paragraph 3 of this Part 1 of this Schedule 22;
- 2.2 set out whether, in respect of any additional works, the Operator is expected to provide soft services, facilities management services and lifecycle maintenance services in respect of such additional works;
- 2.3 set out the timing of the additional works or services required by the Authority;
- 2.4 set out details of the Authority's budgetary constraints and/or affordability thresholds; and
- 2.5 require the Operator to provide to the Authority within fifteen (15) Business Days (or such longer period as the notice may specify) of receipt of the Authority Change Notice either:
- 2.5.1 an estimate of the likely effects of the proposed variation, setting out the information specified in paragraph 3 below (the "**Estimate**");
 - 2.5.2 confirmation as to when the Estimate is to be provided to the Authority (provided that the Operator shall use all reasonable endeavours to obtain such information as is required

expeditiously) provided that if the Authority does not believe the proposal from the Operator is reasonable, the parties shall seek to agree the time period, failing which any dispute as to what is an appropriate period for submission of the Estimate may be referred to the Dispute Resolution Procedure; or

- 2.5.3 notification in writing if the Operator believes that any of the circumstances outlined in paragraphs 1.2.1 to 1.2.7 of this Part 1 of this Schedule 22 apply (provided that if the Authority does agree with the Operator's notification, any dispute as to whether there are valid grounds for the Operator to refuse such Authority Change Notice may be referred to the Dispute Resolution Procedure.

3. OPERATOR'S ESTIMATE

Other than where a valid notice is served under paragraph 2.5.3 of this Part 1 of this Schedule 22 the Operator shall as soon as practicable (and in any event within the time period agreed or determined pursuant to paragraph 2.5 of this Part 1 of this Schedule 22), deliver to the Authority the Estimate. The Estimate shall include the opinion of the Operator on:

- 3.1 a detailed timetable for implementation of the Authority Change;
- 3.2 whether relief from compliance with obligations is required, including the obligations of the Operator to meet the requirements set out in the Services Specification during the implementation of the Authority Change;
- 3.3 an outline of the proposed design solution and design, including an appropriate analysis/risk appraisal and, to the extent relevant, the impact on whole life costings;
- 3.4 any impact on the provision of the Services;
- 3.5 any amendment required to this Agreement and/or any Project Document or Ancillary Document as a result of the Authority Change;
- 3.6 any estimated Change in Costs and estimated Change in Revenue that results from the Authority Change;
- 3.7 any Capital Expenditure that is required or no longer required as a result of the Authority Change;
- 3.8 any Necessary Consents that are required;
- 3.9 its suggested payment schedule for the Change based on milestones where relevant;
- 3.10 costs and details of any third party costs (that is external costs of the Operator and its Sub-Contractors, including the costs of consultants and advisers);
- 3.11 the method of implementation and the proposed method of certification of any construction or operational aspects of the works or the Services required by the proposed Authority Change; and
- 3.12 any other information requested by the Authority in the Authority Change Notice.

4. COSTING OF THE ESTIMATE

In computing the estimated Change in Costs and/or the Capital Expenditure and/or the estimated Change in Revenue, the Operator shall apply the following principles wherever applicable:

- 4.1 any lifecycle replacement and maintenance associated with additional works shall be consistent with the lifecycle and maintenance profile of the Facilities envisaged in Schedule 2 (Service Delivery Proposals) including (without limitation) in terms of the replacement cycles for equipment, provided that the Operator shall reflect improvements in technology that can optimise whole life costs for the Authority;

- 4.2 any Loss of Revenue shall be calculated by applying Schedule 21 (Loss of Revenue);
- 4.3 where elements of the Authority Change are not addressed by paragraphs 4.1 or 4.2 of this Part 1 of this Schedule 22, they shall be costed (and evidenced on an open book basis) on a fair and reasonable basis reflecting the then current market rates.

5. STANDARDS OF PROVISION OF THE ESTIMATE

In providing the Estimate the Operator shall:

- 5.1 use reasonable endeavours to:
- 5.1.1 minimise third party (including advisor) costs and expenses; and
 - 5.1.2 oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs (including where practicable, the use of competitive quotes);
- 5.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, reasonably foreseeable Changes in Law at that time have been taken into account by the Operator; and
- 5.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Authority Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under paragraphs 3.6 (Operator's Estimate) and/or 3.7 (Operator's Estimate) of this Part 1 of this Schedule 22; and
- 5.4 provide written evidence of the Operator's compliance with paragraphs 4 and 5.1 of this Part 1 of this Schedule 22.

6. DETERMINATION OF THE ESTIMATE

As soon as practicable after the Authority receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate. If the parties cannot agree on the contents of the Estimate, the matter may be referred to the Dispute Resolution Procedure to determine if the Estimate represents a fair and reasonable approach to implementing the Authority Change in all respects, in accordance with the requirements of this Agreement.

7. CONFIRMATION OR WITHDRAWAL OF THE AUTHORITY CHANGE NOTICE

- 7.1 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to the Dispute Resolution Procedure, the Authority shall:

- 7.1.1 confirm in writing to the Operator the Estimate (as modified); or
- 7.1.2 withdraw the Authority Change Notice.

If the Authority has not confirmed an Estimate (as modified) or withdrawn an Authority Notice of Change within twenty (20) Business Days of the contents of the Estimate having been agreed or determined in accordance with the foregoing provisions of this Part 1 of this Schedule 22, the Authority Change Notice shall be deemed withdrawn.

- 7.2 Where the Authority withdraws an Authority Change Notice (whether pursuant to paragraph 7.1 or otherwise, save where paragraph 8.1 applies) or is deemed to withdraw an Authority Change Notice pursuant to paragraph 7.1, then the Authority shall pay to the Operator the reasonable additional third party costs incurred by the Operator in preparing the Estimate provided that:

- 7.2.1 the Operator has used all reasonable endeavours to submit a reasonably priced Estimate;

7.2.2 the Operator made available to the Authority (with the Estimate where applicable) an estimate of third party costs to be incurred by the Authority in the event the Authority Change Notice is withdrawn or deemed to be withdrawn; and

7.2.3 the Authority has:

- (a) approved the estimate of third party costs referred to in paragraph 7.2.2 of this Part 1 of this Schedule 22 and the type of third party prior to any third party costs being incurred; and
- (b) agreed that, given the nature of the proposed Authority Change, it is reasonable to expect the relevant third party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the Services and the work required in submitting an accurate Estimate in compliance with this Part 1 of this Schedule 22).

8. IMPLEMENTATION OF THE AUTHORITY CHANGE

8.1 Where the Authority has confirmed the Estimate in accordance with paragraph 7.1 of this Part 1 of this Schedule 22 the Operator shall implement the required Authority Change in accordance with the Estimate and so as to minimise any inconvenience to the Authority and to the provision of the Services.

8.2 The Operator shall notify the Authority when it believes the Authority Change has been completed.

8.3 Where

8.3.1 the Operator has either:

- (a) failed to provide a response pursuant to paragraph 3 of this Part 1 of this Schedule 22 within fifteen (15) Business Days of the date of the Authority Change Notice (or within such other time period as may be agreed or determined pursuant to paragraph 2.5 of this Part 1 of this Schedule 22);
- (b) provided an Estimate in accordance with paragraph 3 of this Part 1 of this Schedule 22 but failed to fully implement the Authority Change within ten (10) Business Days of the date set out in the Estimate (as confirmed in accordance with paragraph 7.1 of this Part 1 of this Schedule 22) as being the date on which the Authority Change should have been implemented; or

8.3.2 it is determined pursuant to paragraph 6 of this Part 1 of this Schedule 22 that the Operator has failed to submit a fair and reasonable Estimate in accordance with the requirements of this Agreement,

then the Authority may notify the Operator that the Authority Change Notice is withdrawn and, following such notification, may procure the implementation of the Authority Change without further recourse to the Operator.

9. CERTIFICATION OF THE AUTHORITY CHANGE

9.1 If the Authority Change constitutes works, the procedure set out and agreed in the Estimate for certifying the completion of the Authority Change shall apply to determine whether the Authority Change has been completed appropriately.

9.2 Where the Authority Change constitutes additional or varied Services, the Payment and Performance Monitoring System shall apply to determine whether the Authority Change has been properly implemented.

10. ADJUSTMENT TO ANNUAL PAYMENT

- 10.1 The Annual Payment shall be adjusted in accordance with Clause 37 (Financial Adjustments) to reflect the terms of the confirmed Estimate, save that no such adjustment shall be made in respect of Capital Expenditure to be incurred by the Operator in carrying out the Authority Change to the extent the confirmed Estimate provides for such Capital Expenditure to be funded by the Authority.

11. METHOD OF PAYMENT OF AUTHORITY FUNDED CAPITAL EXPENDITURE

- 11.1 The Authority and the Operator shall agree:

11.1.1 a payment schedule in respect of the payment of a sum reflecting the amount and timing of Capital Expenditure to be incurred by the Operator in carrying out the Authority Change (to the extent the confirmed Estimate provides for such Capital Expenditure to be funded by the Authority); and

11.1.2 where payment for part of an Authority Change reflects the carrying out of, or specific progress towards, an element within the Authority Change, an objective means of providing evidence confirming that the part of the Authority Change corresponding to each occasion when payment is due under the payment schedule appears to have been duly carried out,

(such payment and evidence to be determined in accordance with the Dispute Resolution Procedure in the event of the Authority and the Operator failing to agree its terms).

- 11.2 The Authority shall make a payment to the Operator within fifteen (15) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Authority Change has been carried out.

- 11.3 If payment is not made in accordance with paragraph 11.2, the Authority shall pay interest to the Operator on the amount unpaid from the date fifteen (15) Business Days after receipt of the relevant invoice until paid at the Prescribed Rate.

12. PROJECT DOCUMENTATION

- 12.1 Unless the parties otherwise agree, no changes to the Project Documents or Ancillary Documents shall be made as a result of a Authority Change.

- 12.2 The Operator shall, no later than one (1) month following completion of the Change, update any As-built Drawings and the operating and maintenance manuals as necessary to reflect the Change.

Part 2 - OPERATOR CHANGES

1. If the Operator wishes to introduce an Operator Change, it shall serve a notice containing the information required pursuant to paragraph 2 of this Part 2 of this Schedule 22 (an "**Operator Notice of Change**") on the Authority.
2. The Operator Notice of Change shall:
 - 2.1 set out the proposed Operator Change in sufficient detail to enable the Authority to evaluate it in full;
 - 2.2 specify the Operator's reasons for proposing the Operator Change;
 - 2.3 indicate any implications of the Operator Change;
 - 2.4 indicate what savings, if any, will be generated by the Operator Change, including:
 - 2.4.1 whether a revision of the Annual Payment is proposed (and, if so, give details of such proposed revision, taking account of paragraph 8 of this Part 2 of this Schedule 22); and
 - 2.4.2 whether all or part of such savings will be paid by a lump sum;
 - 2.5 if the Operator Change is required as a result of a Qualifying Change in Law:
 - 2.5.1 indicate what sums, if any, will be payable by the Authority; and
 - 2.5.2 contain the information required by Clause 27.2 (Qualifying Change in Law) of this Agreement;
 - 2.6 indicate whether there are any critical dates by which a decision by the Authority is required; and
 - 2.7 request the Authority to consult with the Operator with a view to deciding whether to agree to the Operator Change and, if so, what consequential changes the Authority requires as a result.
3. The Authority shall evaluate the Operator Notice of Change in good faith, taking into account all relevant issues, including whether:
 - 3.1 the Operator has proposed that a revision of the Annual Payment would occur;
 - 3.2 the Operator Change may affect the quality of the Services or the likelihood of successful delivery of the Services (or any of them);
 - 3.3 the Operator Change will interfere with the relationship of the Authority with third parties;
 - 3.4 the financial strength of the Operator is sufficient to perform the Services after implementation of the Operator Change;
 - 3.5 the value and/or life expectancy of any of the Facilities and/or Assets is reduced; or
 - 3.6 the Operator Change materially affects the risks or costs to which the Authority is exposed.
4. As soon as practicable after receiving the Operator Notice of Change, the parties shall meet and discuss the matters referred to in it, including in the case of a Qualifying Change in Law those matters referred to in Clause 27.3 (Parties to Discuss) of this Agreement. During discussions, subject to paragraph 10 of this Part 2 of this Schedule 22, the Authority may propose modifications to, or accept or reject, the Operator Notice of Change.
5. If the Authority accepts the Operator Notice of Change (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement the Authority

shall issue a notice confirming the Operator Change which shall set out the agreed Operator Change and:

- 5.1 shall enter into any documents to amend this Agreement or any relevant Project Document which are necessary to give effect to the Operator Change;
- 5.2 subject to paragraph 7 of this Part 2 of this Schedule 22, the Annual Payment shall be revised in accordance with Clause 37 (Financial Adjustments); and
- 5.3 the Operator Change shall be implemented within the period specified by the Authority in its notice of acceptance.
6. If the Authority rejects the Operator Notice of Change, it shall not be obliged to give its reasons for such a rejection and the Operator shall not be entitled to reimbursement by the Authority of any of its costs involved in the preparation of the Operator Notice of Change.
7. Subject to paragraphs 9 and 10, unless the Authority's written acceptance expressly agrees to an adjustment in the Annual Payment, there shall be no adjustment to the Annual Payment as a result of an Operator Change.
8. Unless the Authority's written acceptance expressly agrees that the Operator should be entitled to relief from any of its obligations, there shall be relief granted to the Operator in respect of any of its obligations as a result of an Operator Change.
9. If the Operator Change causes, or will cause, the Operator's costs or those of a Sub-Contractor to decrease, there shall be an adjustment to the Annual Payment pursuant to Clause 37 (Financial Adjustments) such that any cost savings (following deduction of costs reasonably incurred by the Operator in implementing such Operator Change in accordance with the accepted terms) shall be shared [50]:[50] as between the Operator and the Authority.
10. The Authority shall not reject an Operator Change that is required in order to conform to a Change in Law. The costs of introducing an Operator Change resulting from a Qualifying Change in Law (including any resulting revision of the Annual Payment) shall be dealt with in accordance with Clause 27 (Change in Law) and, to the extent not dealt with therein, all costs resulting from an Operator Change to conform to a Change in Law shall be borne by the Operator.

SCHEDULE 23

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SCHEDULE 24

PENSIONS

DRAFTING NOTE: The design of LGPS makes it particularly challenging for short periods of participation and there are provisions that impose significant costs and risks for employers who may only be participating for the purposes of finite period of time. It is also important to appreciate that although the new operator may be contracting with Authority for the provision of the services, for the purposes of participating in LGPS it is dealing with a third party – the LGPS Administering Authority. There may be occasions where the Administering Authority is also the Authority but be aware that the relevant council acts in two different capacities and the interests are not aligned. The Operator will have to contract with both parties separately, the Administering Authority is very unlikely to give any pension protections and will pass on all liabilities to the Operator. Therefore, it is important that the contract between the Operator and the Authority contain all the protections necessary. The key risks to any operator who receives protected employees are as follows: (i) variable employer contribution rate, (ii) assuming the liability for pensionable service accrued before staff moved to the Operator, and (iii) exit liabilities. These costs are largely unpredictable. This has for some years been recognised by central government in the way pension liabilities are now managed for its own outsourcings but the position for local government is more nuanced. This contract is drafted to reflect the principle that the Operator will be protected from the key risks by the contracting authority and hence contract pricing in respect of pensions can be more transparent and refined.

The Schedule includes a number of cost and/or risk sharing options which the Authority/Operator might be willing to consider:

[OPTION 1] The Operator pays a fixed rate of employer contributions for the duration of the Agreement.

[OPTION 2] The Operator pays the employer contributions due under the LGPS Regulations and the Operator Admission Agreement but subject to an upper limit (the Upper Contribution Rate) and a lower limit (the Lower Contribution Rate).

[OPTION 3] The Authority is responsible for any Exit Payment that becomes due when the Operator/Sub-Contractor ceases to participate in the LGPS. This option can be used on its own or in conjunction with either option 1 or option 2.

Ultimately this is a commercial document and the parties are able to agree whatever terms they see fit based on the negotiating strengths of each party and the constraints imposed by law.

This Schedule is prepared in accordance with English law and may not be appropriate in the other jurisdictions of the United Kingdom. Appropriate local advice in respect of that jurisdiction should be sought where applicable.

1. INTERPRETATION

1.1 For the purposes of this Schedule 24:

1.1.1 **"Administering Authority"** means [name of administering authority] of [address] acting in its capacity as the administering authority of the [name of relevant LGPS fund] for the purposes of the LGPS Regulations;

1.1.2 **"Admission Body"** means an admission body for the purposes of Paragraph 1 of Part 3 of Schedule 2 of the LGPS Regulations;

1.1.3 **[SELECT] [OPTION 1] ["Agreed Contribution Rate"]** means [] per cent ([]%) of the Eligible Employees' Pensionable Pay;

1.1.4 **"Best Value Direction"** means the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (and any successor or replacement legislation, policy or guidance);

1.1.5 **"Cessation Date"** has the meaning given to it in paragraph 2.2.2;

- 1.1.6 **"Eligible Employees"** means the [Relevant Employees] who in respect of their transfer to the Operator or Sub-Contractor are entitled to pension protection under the Best Value Direction and are active members of, or eligible to join, the LGPS immediately on the Relevant Transfer Date and whose names (or other form of identification) are appended to this pensions schedule. A person will cease to be an Eligible Employee where they are no longer employed in connection with the provision of the Services or part of such Services or cease to be eligible for membership of LGPS under the LGPS Regulations or the Admission Agreement;
- 1.1.7 **"Excess Amount"** has the meaning given to it in paragraph 4.2;
- 1.1.8 **[SELECT] [OPTION 3] ["Exit Credit"]** has the meaning given to it in paragraph 4.5.;
- 1.1.9 **[SELECT] [OPTION 3] ["Exit Payment"]** has the meaning given to it in paragraph 4.5.;
- 1.1.10 **"Fund"** means the [insert name of the relevant LGPS Fund here]
- 1.1.11 **"LGPS or Local Government Pension Scheme"** means the Local Government Pension Scheme as established by the LGPS Regulations;
- 1.1.12 **"LGPS Regulations"** means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and the Local Government Pension Scheme (Transitional Provisions, Savings, and Amendment) Regulations 2014 as amended, re-enacted or re-instated from time to time;
- 1.1.13 **[SELECT] [OPTION 2] ["Lower Contribution Rate"]** means [] per cent ([]%) of the Eligible Employees' Pensionable Pay;
- 1.1.14 **"Operator Admission Agreement"** means an admission agreement entered into in accordance with paragraph 1 of Part 3 of Schedule 2 of the LGPS Regulations by the Administering Authority, the Authority and the Operator or a Sub-Contractor (as appropriate);
- 1.1.15 **"Operator Scheme"** has the meaning given to it in paragraph 2.2;
- 1.1.16 **"Pensionable Pay"** shall have the same meaning as defined in the LGPS Regulations;
- 1.1.17 **"Post Transfer Pension Liabilities"** means the aggregate liabilities in respect of the Eligible Employees and their spouses and dependants (whether immediate, prospective or contingent) attributable to benefits accrued from pensionable service in the LGPS on and from the Relevant Transfer Date (excluding any aggregation under regulation 22 LGPS Regulations 2013) to the earlier of the date they cease to be active members and the termination of this Agreement but making proper allowance for projected increases in the rate of pensionable salary to the date of withdrawal, retirement or death and increases in pensions in payment using the demographic and actuarial assumptions which were adopted for the most recent funding valuation of the Fund.
- 1.1.18 **"Pre Transfer Pension Liabilities"** means the aggregate liabilities in respect of the Eligible Employees and their spouses and dependants (whether immediate, prospective or contingent) attributable to benefits accrued in respect of pensionable service in the LGPS immediately before the Relevant Transfer Date but making proper allowance for projected increases in the rate of pensionable salary to date of withdrawal, retirement or death and increases in pensions in payment using the demographic and actuarial assumptions which were adopted for the most recent funding valuation of the Fund.
- 1.1.19 **"Relevant Employees"** has the meaning given in Clause 1.1.
- 1.1.20 **"Shortfall Amount"** has the meaning given to it in paragraph 4.4; and

1.1.21 [SELECT] [OPTION 2] ["Upper Contribution Rate" means [] per cent ([]%) of the Eligible Employees' Pensionable Pay.]

2. BEST VALUE DIRECTION

DRAFTING NOTE: This Schedule is drafted on the basis that some of the Relevant Employees were active members (or entitled to become an active members) of the LGPS immediately before a Relevant Transfer Date and are entitled to pension protection in accordance with the Best Value Direction. We have assumed the Authority's preferred approach to secure pension protection will be to require Operator/Sub-Contractor to offer membership of the LGPS to the Eligible Employees (rather than provide it as an option). Protection is not given to those not covered by the Best Value Direction.

2.1 Where the Operator or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date, the Operator shall procure that it and/or each relevant Sub-Contractor shall offer those Eligible Employees membership of the LGPS for so long as they remain Eligible Employees or eligible to be active members of the LGPS under the LGPS Regulations or the Operator Admission Agreement.

DRAFTING NOTE: paragraph 2.2 will only apply where the Operator/Sub-Contractor is unable or ceases to be able to offer membership of the LGPS to the employees who remain Eligible Employees. In those circumstances the Operator/Sub-Contractor will have to put in place alternative arrangements which meet the requirements of the Best Value Direction. The Authority will have to decide whether the Operator Scheme satisfies those requirements. In particular the Authority should be satisfied that an individual's right to acquire pension benefits under the Operator Scheme are the same as broadly comparable to the right the individuals would have had while employed by the Authority. The Authority should ask a suitable actuary to certify that the Operator Scheme provides benefits which are broadly comparable to those provided by the LGPS. The Authority should note that certification of Broad Comparability does not take account of any benefits which are payable solely as a result of the member being declared redundant, either compulsorily or voluntarily, where those benefits exceed the normal benefits available to an individual who resigns from employment at the same time. Such benefits are payable under regulation 30(7) of the LGPS Regulations. The Authority may wish to consider whether it wants to include any express provisions about the continuation of such benefits in the Operator Scheme or by way of compensation. If so, the Authority should consult with its professional advisers about such provisions. If such benefits are contractual, it is likely they will pass under TUPE (where TUPE applies) as clarified by the decisions in *Beckmann v Dynamco Whichloe Macfarlane* [2002] 64 PBLR and *Martin v South Bank University* [2003] 85 PBLR.

It is assumed that there will be no bulk transfer in the event of a broadly comparable scheme having to be utilised in lieu of LGPS.

2.2 If the Operator and/or each relevant Sub-Contractor:

2.2.1 is not able to offer the Eligible Employees membership of the LGPS from a Relevant Transfer Date in accordance with paragraph 2.1 (Best Value Direction); or

2.2.2 ceases to offer the Eligible Employees membership of the LGPS from a later date (the **Cessation Date**) for a reason other than the Eligible Employees no longer being eligible for active membership of the LGPS under the LGPS Regulations or the Admission Agreement;

the Operator shall procure that it and/or each relevant Sub-Contractor shall (where applicable) make alternative arrangements (the Operator **Scheme**) to secure pension protection for the Eligible Employees in accordance with the Best Value Direction.

3. PARTICIPATION IN THE LOCAL GOVERNMENT PENSION SCHEME

3.1 The Operator shall procure that it and/or each relevant Sub-Contractor shall become an Admission Body and the Operator shall procure that it and/or each relevant Sub-Contractor shall execute an Operator Admission Agreement which will have effect on and from the Relevant Transfer Date.

3.2 The Authority shall before the Relevant Transfer Date execute each of the Operator Admission Agreements referred to in paragraph 3.1 and will procure that the Administering Authority executes each such Operator Admission Agreement before the Relevant Transfer Date.

DRAFTING NOTE: The Authority may also be the Administering Authority. See earlier comments on this point.

3.3 The Authority shall provide all reasonable assistance and cooperation to the Operator and/or each relevant Sub-Contractor to become an Admission Body in accordance with paragraph 3.1.

3.4 The Authority shall procure that where the Operator and/or Sub-Contractor are responsible for any Post Transfer Pension Liabilities through clause 4.6 the Administering Authority shall identify:

3.4.1 **[SELECT] [OPTION 1] [OPTION 2] [OPTION 3]** [the proportion of any employer contribution or payment that is attributable to liabilities that the Operator and/or the Sub-Contractor is responsible for in accordance with paragraph 4.6; and]

3.4.2 the proportion of that amount that is attributable to Pre Transfer Pension Liabilities and Post Transfer Pension Liabilities.

DRAFTING NOTE: Past service liabilities in the LGPS attributable to Eligible Employees in respect of pensionable service completed before the Relevant Transfer Date will under the LGPS Regulations become the responsibility of the Operator/Sub-Contractor on and from the Relevant Transfer Date. This is unattractive for Bidders as this could result in significantly increased cost and risk.

Funds deal with past service liabilities in different ways. We have drafted this Agreement on the basis that the Operator/Sub-Contractor will have no responsibility for past service liabilities. However, in doing so we have assumed that the Operator/Sub-Contractor will be offered the protection in **[OPTION 1]** or **[OPTION 2]** and in **[OPTION 3]**. If any of these protections are not given, further drafting will be required to determine how any liability for Pre Transfer Pension Liabilities is allocated.

The purpose of Clause 3.5 is to ensure that there is transparency about the split of any amount between Pre Transfer Pension Liabilities and Post Transfer Pension Liabilities to ensure that the Authority and the Operator/Sub-Contractor knows what they are responsible for. The Authority will have to agree an arrangement with the Administering Authority to ensure that this split can be provided to the Operator/Sub-Contractor.

3.5 The Authority shall be responsible for, and hold the Operator harmless against, any costs incurred by the Administering Authority in respect of clauses 3.4 and 3.5.

4. CONTRIBUTIONS TO THE LOCAL GOVERNMENT PENSION SCHEME

4.1 Employer contributions

4.1.1 The Operator shall procure that it and/or any relevant Sub-Contractor (as applicable) shall pay to the Fund all employer contributions and other payments that are due under the LGPS Regulations.

4.1.2 All contributions payable by the Contractor/Sub-Contractor (and any sub-contractor) in respect of the Eligible Employees are and shall be calculated on the basis that the pension rights of the Eligible Employees in respect of the Fund accrued prior to the Relevant Transfer Date are fully funded as at the Relevant Transfer Date on an ongoing basis in accordance with the assumptions applied by the actuary appointed by the Fund in the latest triennial valuation. For the avoidance of doubt fully funded shall mean that the Contractor/Subcontractor shall be notionally allocated an amount of assets from the Authority as a scheme employer in the Fund equal to the value placed on the liabilities as at the Relevant Transfer Date as determined by the actuary appointed by the Fund.

DRAFTING NOTE: The Fund's actuary will determine the rate of employer contributions payable to the Fund by the Operator/Sub-Contractor. This will be set out in the rates and adjustment certificate prepared in accordance with Regulation 62 of the LGPS Regulations. The Fund's actuary may issue a revised rates and

adjustment certificate following an actuarial valuation during the term of the Agreement and on termination varying the rate of employer contributions or requiring a further payment to be made to the Fund (e.g. an exit payment).

The Operator/Sub-Contractor would still have to pay the employer contributions set out in the rates and adjustment certificate in circumstances where the Authority has provided some form of cost protections (e.g. fixing the rate of employer contributions or being responsible for any exit payment) and so a recovery mechanism is required to enable the Operator/Sub-Contractor to recover any costs that the Authority has agreed to be responsible.

There are a number of options available if the Authority wishes to provide the Operator/Sub-Contractor with cost and/or risk protection.

Professional advice should be taken to determine whether these protections are appropriate under the circumstances.

4.2 **[SELECT] [OPTION 1]** [Subject to paragraph 4.6, if at any time during the term of this Agreement, the Administering Authority, pursuant to the Operator Admission Agreement or the LGPS Regulations, requires the Operator or any Sub-Contractor to pay employer contributions or payments to the Fund in excess of the Agreed Contribution Rate, the excess of employer contributions above the Agreed Contribution Rate (the **Excess Amount**) shall be paid by the Operator or the Sub-Contractor, as the case may be, and the Operator or Sub-Contractor shall be reimbursed by the Authority in accordance with paragraph 4.10.] **[OR]**

[OPTION 2] [Subject to paragraph 4.6, if at any time during the term of this Agreement, the Administering Authority, pursuant to the Operator Admission Agreement or the LGPS Regulations, requires the Operator or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate in excess of the Upper Contribution Rate, the excess of employer contributions above the Upper Contribution Rate (the **Excess Amount**) shall be paid by the Operator or the Sub-Contractor, as the case may be, and the Operator or Sub-Contractor shall be reimbursed by the Authority in accordance with paragraph 4.10.] **[OR]**

4.3 **[SELECT] [OPTION 1]** [Subject to paragraph 4.6, if during the term of this Agreement, the Administering Authority, pursuant to the Operator Admission Agreement or the LGPS Regulations, requires the Operator or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate below the Agreed Contribution Rate, the Operator shall procure that it or the Sub-Contractor, as the case may be, shall pay to the Authority the Shortfall Amount in accordance with paragraph 4.11.] **[OR]**

[OPTION 2] [Subject to paragraph 4.6, if during the term of this Agreement, the Administering Authority, pursuant to the Operator Admission Agreement or the LGPS Regulations, requires the Operator or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate below the Lower Contribution Rate, the Operator shall procure that it or the Sub-Contractor, as the case may be, shall pay to the Authority the Shortfall Amount in accordance with paragraph 4.11.]

4.4 **[SELECT] [OPTION 1][OPTION 2]** [For the purposes of paragraph 4.3 above, the "**Shortfall Amount**" shall be an amount equal to the difference between:

4.4.1 **[SELECT] [OPTION 1]** [the contributions and payments that would have been if they were equal to the Agreed Contribution Rate; and] **[OR]**

[OPTION 2] [the contributions and payments that would have been paid if they were equal to the Lower Contribution Rate; and]

4.4.2 the contributions and payments levied on the Operator or Sub-Contractor (as applicable) by the Fund.]

4.5 **[SELECT] [OPTION 3]** The Authority shall reimburse the Operator in accordance with paragraph 4.10 in respect of any exit payment as defined in the LGPS Regulations 2013 (the "**Exit Payment**") which the Operator and/or any relevant Sub-Contractor (as applicable) become liable to pay. In the

event of the Operator and/or any Sub-Contractor being entitled to a exit credit as defined in the LGPS Regulations 2013 (the "**Exit Credit**"), the Operator shall procure that it pays the Exit Credit to the Authority within ten working days of the Operator and/or Sub-Contractor being in receipt of the Exit Credit.

4.6 **[SELECT] [OPTION 1][OPTION 2][OPTION 3]** [The Operator shall and shall procure that any Sub-Contractors shall at all times be responsible for that proportion of any Post Transfer Pension Liabilities attributable to the following:

DRAFTING NOTE: Clause 4.6 sets out the liabilities which are wholly within the control of the Operator/Sub-Contractor either because they only arise if the Operator/Sub-Contractor gives consent or exercises a discretion in accordance with the LGPS Regulations or Operator Admission Agreement or if the Operator/Sub-Contractor awards salary rises in excess of those assumed by the Fund's actuary at the most recent actuarial valuation.

There can often be some debate about whether the Authority should pick up some of the costs, particularly around transformation/redundancy costs and ill health/incapacity costs. The purpose of this paragraph 4.6 is to ensure that the Operator/Sub-Contractor is responsible for the liabilities listed in this paragraph 4.6 and so no account is taken of them when calculating the Excess Amount, Exit Payment or Shortfall Amount.

4.6.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the LGPS Regulations or otherwise other than where; (i) the Authority has entered into a contractual commitment to make the relevant Eligible Employee redundant before the Relevant Transfer Date, or (ii) it arises as a result of the termination or expiry of this Agreement; or (i) the termination(s) have been agreed between the Authority and the Operator/Sub-Contractor;

4.6.2 any employer contributions relating to the costs of flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Operator or any relevant Sub-Contractor;

4.6.3 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Operator or any relevant Sub-Contractors including without limitation under Regulation 31 of the LGPS Regulations or otherwise save where the Operator / Sub-Contractor is obliged under Clause 9; and

4.6.4 any increase to the employer contribution rate resulting from the award of pay increases by the Operator or relevant Sub-Contractors in respect of all the Eligible Employees which are materially in excess of those assumed by the Fund in respect of the Operator and/or Sub-Contractor and which are not attributable to (i) increases to cover the cost of living or, (ii) alignment with market rates or, (iii) to recognise promotion, increased responsibility or performance.

but the Operator / Sub-Contractor shall not be responsible for any costs under 4.6.1 to 4.6.4 arising as result of complying with paragraph 9. Any contributions payable by the Contractor/Sub-Contractor (and any sub-contractor) in respect of the Eligible Employees are calculated on the basis that the pension rights of the Eligible Employees in respect of the Fund accrued prior to the Relevant Transfer Date are fully funded as at the Relevant Transfer Date on an ongoing basis in accordance with the assumptions applied by the actuary appointed by the Fund in the latest triennial valuation. For the avoidance of doubt fully funded shall mean that the Contractor/Subcontractor shall be notionally allocated an amount of assets from the Authority as a scheme employer in the Fund equal to the value placed on the liabilities as at the Relevant Transfer Date as determined by the actuary appointed by the Fund.

4.7 **[SELECT] [OPTION 1][OPTION 2][OPTION 3]** [For the purposes of calculating **[SELECT] [OPTION 3]** [the Exit Payment under paragraph 4.5 or] **[AND/OR] [OPTION 1][OPTION 2]** [the Excess Amount under paragraph 4.2], any part of an **[SELECT] [OPTION 3]** [Exit Payment or] **[AND/OR] [OPTION 1][OPTION 2]** [Excess Amount], as the case may be, which is attributable to any matters for which the Operator or Sub-Contractors are responsible for under paragraph 4.6 shall be disregarded.]

4.8 [SELECT] [OPTION 1][OPTION 2] [For the purpose of calculating the Shortfall Amount under paragraph 4.3, any increase in the contributions or payments which are attributable to matters which are the Operator's or relevant Sub-Contractor's responsibility for under paragraph 4.6 shall be disregarded.]

4.9 [SELECT] [OPTION 3] [For the purposes of calculating the Exit Credit under paragraph 4.5, any reduction in the Exit Credit attributable to matters which are the Operator's or relevant Sub-Contractor's responsibility for under paragraph 4.6 shall be disregarded.]

4.10 [SELECT] [OPTION 1][OPTION 2][OPTION 3] [Where an [SELECT] [OPTION 1][OPTION 2] [Excess Amount] [AND/OR] [OPTION 3] [or an Exit Payment] is paid by the Operator or any Sub-Contractor, the Operator shall, subject to paragraph **Error! Reference source not found.**, forthwith as the liability to make the payment arises, invoice the Authority for payment of [SELECT] [OPTION 1][OPTION 2] [the Excess Amount] [AND/OR] [OPTION 3] [or Exit Payment] and the Authority shall make payment to the Operator or any Sub-Contractor of the required amount within the lesser of [ten (10)] Business Days of receipt of the invoice or the date one day before the Operator / Sub-Contractor is required to pay the sum to the Fund.]

DRAFTING NOTE: The mechanism under paragraph 4.10 and 4.11 could present cash-flow difficulties for the Authority and the Operator/Sub-Contractor. The Operator/Sub-Contractor may not have the cash to pay the contributions and payments that become due under the LGPS Regulations and Operator Admission Agreement (particularly the Exit Payment under paragraph 4.5). Even if the Operator/Sub-Contractor has available cash the Operator/Sub-Contractor will still have to wait for any amounts to be reimbursed by the Authority which could have an impact upon the Operator/Sub-Contractor's cash flow. Note that whilst the Exit Payment will be a one off terminal payments, other payments linked to the contribution rate may become regular monthly payment requirements. Finally, the reimbursement obligations may result in the Authority paying significant sums to the Operator/Sub-Contractor (particularly the Exit Payment under paragraph 4.5) which could have an impact on the Authority's cash flow. Consideration should be given to the appropriateness and practical aspects of the reimbursement mechanism.

4.11 [SELECT] [OPTION 1][OPTION 2] [Where a Shortfall Amount is payable by the Operator or any Sub-Contractor, the Operator shall or shall procure that the Sub-Contractor, forthwith as the liability arises, notify the Authority of the Shortfall Amount, subject to paragraph **Error! Reference source not found.**, and shall make payment to the Authority of the required amount within [ten (10)] Business Days of the notification.]

5. INDEMNITY

5.1 Without prejudice to the generality of this paragraph 5.1, the Parties agree to indemnify one another from and against all Direct Losses suffered or incurred by them which arise from any breach by the Parties of this Pensions Schedule to the extent that such liability arises before or as a result of the termination or expiry of this Agreement or the termination of participation within the Fund (howsoever caused).

6. INDEMNITY OR BOND OR GUARANTEE

DRAFTING NOTE: The LGPS Regulations require the Admission Body (i.e. the Operator/Sub-Contractor) to carry out an assessment of the level of risk arising on premature termination of the provision of the service and that where the level of risk identified by the assessment is such as to require it, the admission body must provide an indemnity or bond to meet the level of risk identified.

Where for any reason it is not desirable for an admission body to enter into an indemnity or bond the admission body will have to secure a guarantee in a form satisfactory to the Administering Authority. The reality is that you will typically see the Authority or the Administering Authority carrying out such an assessment rather than the Operator/Sub-Contractor.

In considering whether a bond/indemnity/guarantee is required, the Authority/Administering Authority should consider the cost to the Operator/Sub-Contractor of obtaining a bond/indemnity/guarantee as this cost will ultimately be passed back to the Authority through the pricing of the Agreement.

6.1 At the written request of the Authority, the Operator shall procure that it and each relevant Sub-Contractor shall obtain as soon as reasonably practicable an indemnity or bond required in accordance with the Admission Agreement.

6.2 Where for any reason it is not desirable for the Operator or Sub-Contractor to enter into an indemnity or bond in accordance with paragraph 6.1, the Operator shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable secure a guarantee in a form acceptable to the Administering Authority in accordance with the Admission Agreement.

6.3 The Authority shall reimburse the Operator / Sub-Contractor for any costs for the establishment and maintenance of any indemnity or bond under this paragraph 6.

7. RIGHT OF SET-OFF

7.1 The Authority shall have a right to set off against any payments due to the Operator under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Operator or from any relevant Sub-Contractor (as applicable) under the LGPS Regulations.

8. UNDERTAKING FROM THE OPERATOR

8.1 The Operator undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that:

8.1.1 all information which the Authority or the Administering Authority or their respective professional advisers may reasonably request from the Operator or any relevant Sub-Contractor for the administration of the LGPS and matters relating to the Operator and/or the relevant Sub-Contractor complying with its obligations under paragraph 2.2;

8.1.2 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraph 2 to paragraph 7 inclusive without the consent in writing of the Authority and the Administering Authority (not to be unreasonably withheld or delayed); and

8.1.3 it shall and shall procure that any relevant Sub-Contractor shall procure that any of its Eligible Employees who cease to be engaged in the provision of the Services or in any other way ceases to be eligible for membership of the LGPS are offered membership of an alternative pension scheme in accordance with the employers obligations under Chapter 1 of Part 1 of the Pensions Act 2008.

9. DISCRETIONARY BENEFITS

9.1 Where the Operator or Sub-Contractor is an Admission Body they shall procure that any discretionary benefits under the LGPS Regulations shall be awarded on the basis of the Authority's written policy in relation to such benefits (which the Authority shall provide upon request) in place at the time the relevant discretion comes to be exercised. The additional employer payments to the Fund by procuring such discretionary benefits shall form part of the contributions accounted for under clause 4 of this pensions schedule.

DRAFTING NOTE: The Authority may wish to consider the extent it wishes to impose obligations on the Operator or Sub-Contractors in respect of the discretionary benefits they may award under the LGPS (in particular where employment is terminated by reason of redundancy or in the efficient exercise of the Authority's functions). The suggested wording reflects the starting position for negotiation with the Operator.

10. CLAIMS FROM ELIGIBLE EMPLOYEES OR TRADE UNIONS

10.1 The Operator hereby indemnifies the Authority from and against all Direct Losses suffered or incurred by it which arise from claims by Eligible Employees of the Operator and/or of any Sub-Contractor or

by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

10.1.1 relate to pension rights in respect of periods of employment and pensionable service accrued on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement; or

10.1.2 arise out of the failure of the Operator and/or any relevant Sub-Contractor to comply with the provisions of this pensions schedule before the date of termination or expiry of this Agreement.

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

11.1 In respect of Eligible Employees, the Authority and the Operator or Sub-Contractor agree that Clause [X] of this Agreement shall not apply clause 2.1 of this pensions schedule.

12. TRANSFER TO ANOTHER EMPLOYER

12.1 Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Operator shall and shall procure that any relevant Sub-Contractor shall:

12.1.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

12.1.2 procure that the employer to which the Eligible Employees are transferred (the **New Employer**) complies with the provisions of this pensions schedule provided that references to the **Sub-Contractor** will become references to the New Employer, references to **Relevant Transfer Date** will become references to the date of the transfer to the New Employer and references to **Eligible Employees** will become references to the Eligible Employees so transferred to the New Employer.

13. PENSION ISSUES ON EXPIRY OR TERMINATION

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

13.1.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);

13.1.2 promptly provide to the Authority such documents and information mentioned in paragraph 13.1.1 (Pensions Issues on Expiry or Termination) which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and

13.1.3 fully co-operate (and procure that the trustees of the Operator Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

14. COMPLIANCE WITH SECTION 257 AND 258 PENSIONS ACT 2004

14.1 The Operator shall and shall procure that any relevant Sub-Contractor shall comply with sections 257 and 258 of the Pensions Act 2004 in relation to any Relevant Employee (excluding, for the avoidance of doubt any Eligible Employees).

APPENDIX 1 – ELIGIBLE EMPLOYEES

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