



Royal Borough of Greenwich

The Management and Operation of Hervey Road Playing Field as a Sports and Disability Sports Venue

Ref: SPS 1036

Terms and Conditions

Contents

4.4	Heads of Terms	3
4.5	Service Level Agreement	6

1.1 Heads of Terms

**Draft
Proposed Heads of Terms
SUBJECT TO CONTRACT**

1.	Premises	Hervey Road Playing Fields, Hervey Road, Kidbrooke, London, SE3 (as indicated edge in red on the attached plan).
2.	Landlord	Royal Borough of Greenwich Town Hall Wellington Street London SE18 6PW
3.	Tenant	To be advised.
4.	Contract	The Tenant will simultaneously enter into a Contract with the Lease and SLA.
5.	Rent	One peppercorn per annum if demanded. Add clause if make profit/reinvestment?
6.	Rent Free Period (and other incentives)	None.
7.	Type of Lease	Full Repairing & Insuring Lease.
8.	Landlord's Initial Works (including timing)	None.
9.	Tenant's Initial Works (including timing)	The Works and the phased programme of Works are to be agreed.
10.	Guarantor/Rent Deposits	None.
11.	Lease Length and Start Date	A term of 30 years from a date to be agreed.
12.	Break Clause	Landlord to have the right to terminate the lease giving 6 months written notice. The lease will terminate simultaneously if the conditions of the SLA are not met in

		their entirety.
13.	1954 Act Protection	The Lease is to be excluded from Sections 24-28 (inclusive) of the 1954 Landlord and Tenant Act.
14.	Additional Rights	None.
15.	Rent Reviews	None?
16.	Assignment	Assignment of Part prohibited. Assignment of Whole prohibited.
17.	Subletting	Subletting of Part prohibited. Subletting of Whole prohibited.
18.	Services and Service Charge	To be confirmed.
19.	Repairing Obligations	The Tenant is responsible for all internal and external repairs to the whole Premises including the structure of any buildings, modular or otherwise, all pipes, electrical wiring, fixtures and fittings etc. and fences.
20.	Decoration	The Tenant is responsible for decorating any buildings constructed on the land externally every three years & internally every five years. Other surfaces previously painted??
21.	Alterations	The Tenant is not to make any alterations or additions to the premises without the prior written consent of the Landlord.
22.	Permitted Use	To be used as a Sports ground and for recreation only in order to fulfil the requirements contained in the Contract.
23.	Insurance	The Tenant is responsible for all insurances for the premises.
24.	Planning & other consents	The Tenant is responsible for obtaining any necessary Planning or other consents required for its use and occupation of the property.
25.	Other Issues	To be advised.

26.	Rates and Utilities	The Tenant is responsible for all rates, utilities and all other outgoings.
27.	Indemnity	Tenant is to keep the Landlord fully indemnified against all claims, damages, liabilities etc and other eventualities arising directly or indirectly from the Use and grant of the Lease and is to comply with all relevant legislation.
28.	Legal Costs	Each party to meet its own legal costs.
29.	Other Conditions	To be advised.
30.	Landlord's Solicitors	Law & Governance Chief Executive's Department Royal Borough of Greenwich 4 th floor The Woolwich Centre 35 Wellington Street Woolwich London SE18 6HQ
31.	Tenant's Solicitors	To be confirmed.
32.	No Contract	These Heads of Terms are Subject to Contract.
33.	Other Terms	The Head of Law & Governance to include such other terms and conditions as may be deemed necessary.

Service Level Agreement

DATED _____ **2015**

ROYAL BOROUGH OF GREENWICH (1)

And

[_____ **](2)**

SERVICE LEVEL AGREEMENT

Note: The Service Level Agreement Conditions are based on the Council's standard form. The Council reserves the right to amend/supplement this Service Level Agreement to reflect the outcome of the tender process.

***Denotes that the information that shall be inserted following the outcome of the tender process.**

2013

(1) **Royal Borough of Greenwich** of Town Hall, Wellington Street, Woolwich, London, SE18 6PW (the “Council”); and

(2) (The “Provider”).

- (A) Further to the completion of the Works on *, the Council and the Provider have agreed to enter into this Service Level Agreement to govern the use of the Playing Fields for the provision of sports facilities.
- (B) The Council has entered into a Lease of even date with the Provider, for the Playing Fields pursuant to a peppercorn rent.
- (C) Pursuant to a condition of the Lease, the Provider undertakes to comply with the Council's Requirements under this Agreement in operating and managing the Playing Fields.

I. Definitions and Interpretations

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

“Agreement” means this agreement between the Provider and the Council consisting of these clauses and attached Schedules.

“Commencement Date” means the *.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Council Requirements, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

“Contract Manager” means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such person as may be nominated by the Contract Manager to act on its behalf.

“Council Requirements” means the Council’s minimum requirements for sports facilities at the Playing Fields as described in Schedule 1 or as otherwise varied by the Parties in accordance with clause 21.

“Default” means any breach of the obligations of the Provider (including but not limited to fundamental breach or breach of a fundamental term) or any

default, act, omission, negligence or statement of the Provider, its employees or agents in connection with or in relation to the subject matter of the Agreement and in respect of which the Provider is liable to the Council, subject at all times to clause 20 (Force Majeure).

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Grant Agreement” means the agreement dated [] between the Council and Provider for the provision of a grant.

“Greenwich Resident” means a person residing within the Royal Borough of Greenwich.

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider/Playing Fields are bound to comply.

“Lease” means the lease for the Playing Fields entered into on even date of this Agreement for a peppercorn rent.

“Licence of Works” means the agreement between the Council and Provider for the purposes of carrying out the Works at the Playing Fields.

“Month” means calendar month.

“Party” means a party to the Agreement and “Parties” shall be construed accordingly.

“Playing Fields” means the Hervey Road Playing Fields, Hervey Road, Kid Brooke, London, and SE3

“Works” means the works carried out by the Provider under the Grant Agreement and Licence of Works.

“Provider Representative” means the individual authorised to act on behalf of the Provider for the purposes of the Agreement or such person as may be nominated by the Provider Representative to act on its behalf.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Council, the Provider or the Playing Fields and “Regulatory Body” shall be construed accordingly.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to the Agreement.

“Service User” means any person who receives or who may receive the Services which the Provider shall provide under this Agreement.

“Services” means the services to be delivered to Service Users in accordance with the Council’s Requirements.

“Site” means the Hervey Road Playing Fields, Hervey Road, Kidbrooke, London, and SE3

“Staff” mean all persons employed by the Provider to perform the Agreement together with the Provider’s servants or agents engaged in the performance of the Agreement.

“Stakeholder” means (to include but not be limited to) the Council, the Friends of Hervey Road Playing Fields, Schools, Clubs, Greenwich Parent Voice, National Governing Bodies of Sport and other bodies with an interest in the development of Hervey Road Playing Field.

“Tender” means the tender relating to the development and operation of the Playing Fields annexed as Schedule 3.

“Term” means the period or duration of the Agreement in accordance with clause 3.1. Or such shorter period where this Agreement is terminated earlier in accordance with its terms.

“Working Day” means a day from 9am to 5pm (other than a Saturday, Sunday or bank holiday) on which banks are open for domestic business in the City of London.

- 1.2 In the Agreement except where the context otherwise requires:
- (a) The terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
 - (b) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - (c) Words importing the masculine include the feminine and the neuter;
 - (d) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - (f) References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever

kind and however constituted and their successors and permitted assignees or transferees;

- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (h) Headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2 Aims and Objectives

2.1 The primary aims of this Agreement are to:

- 2.1.1 Bring back in to use the Playing Fields to deliver and make available sports facilities at the Playing Fields;
- 2.1.2 Form a strategic partnership between the Council and the Provider to achieve the above aims;
- 2.1.3 To increase the number of adults and children who participate in sport at least once per week
- 2.1.4 To enhance the opportunities for adults and children with disabilities to participate in play and sport
- 2.1.5 To ensure that stakeholders remain continuously engaged with the operation and development of the site

3 Term

- 3.1 Subject to clause 3.2, this Agreement shall take effect on the Commencement Date and shall continue 30 years unless terminated in accordance with clause 7 or 18.
- 3.2 Notwithstanding anything to the contrary herein, this Agreement is intended to remain in force during the term of the Lease (and any extension or replacement thereof) only and upon the termination or expiration of the Lease (howsoever caused) shall this Agreement shall be deemed to be terminated forthwith.

4 The Council Requirements and Obligations

- 4.1 In consideration of the Council providing a Lease to the Provider at a peppercorn rent, the Provider shall deliver the Council Requirements and operate the Playing Fields in accordance with the Tender during the Term with due skill and care.
- 4.2 The Provider shall open the Playing Fields to the Service Users on a date to be agreed with the Council.
- 4.3 The Council and authorised representatives shall be entitled to inspect and examine the performance at the Playing Fields at any time during the hours

of 9am to 5pm. Generally this will be upon giving reasonable written notice to the Provider but unannounced inspections are also permitted.

- 4.4 The Provider shall at all times deliver the Services and Council Requirements in accordance with the Law, including but not limited to child welfare and vulnerable adults.
- 4.5 The Provider shall carry out DBS checks for Staff as required or deemed necessary in the delivery of the Services.
- 4.6 The Provider shall not in the performance of the Council Requirements undertake any action or conduct itself in such manner as might, in the reasonable opinion of the Council Representative, damage the good name and reputation of the Council. In the event that the Provider becomes aware of any complaint or of any actual or potential breach of this requirement (whether or not a complaint has been received) it shall promptly notify the Council's Contract Manager of the incident/circumstances and provide such further information as the Contract Manager may reasonably require to allow it to investigate the incident, what is being done to resolve it and prevent it reoccurring. If the Council receives any complaint or considers that the Provider or the Playing Fields may, through act or omission, be likely to damage the good name and reputation of the Council or is not otherwise complying with the terms of this Agreement then it shall notify the Provider who shall investigate, provide observations to the Council and take such action as reasonably required to resolve the issue and minimise any damage.
- 4.7 The Council will provide reasonable such support and assistance to the Provider as it may reasonably request.

5 Financial Management

- 5.1 The Playing Fields shall be operated by the Provider as set out in this Agreement and in accordance with the Tender.
- 5.2 With effect from the Commencement Date, the Provider shall be responsible for all costs incurred in the running of the Playing Fields and the Provider shall bear all financial risks associated with the Playing Fields, subject to any provision to the contrary in the Lease.
- 5.3 The Provider shall ensure that separate accounting records and arrangements are made for the Playing Fields.
- 5.4 Unaudited accounts should be produced by the Provider for the Playing Fields quarterly from the Commencement Date commencing April, July, September and January. The annual accounts will be independently audited. Such accounts shall, without limitation, consist of:
 - 5.4.1 income attributable to the Playing Fields linked to the number of Service Users using the Playing Fields; and

- 5.4.2 The costs of the Playing Fields both direct and indirect. Any 'overhead' or management costs of the Provider which are attributed to the Playing Field's accounts shall be such as are fair and reasonable in the circumstances.
- 5.4.3 The Provider shall supply to the Council on reasonable notice access to and copies of supporting information relating to these accounts including but not limited to invoices, remittances, funding information and grant claims and an explanation of the calculations behind the accounts. The quarterly accounts shall be presented to meetings of the Council and Provider.
- 5.5 The Provider shall ensure accounting shall be open, shared, and transparent and shall be in accordance with the Law and generally applicable accounting rules.
- 5.6 Further to the accounts produced in accordance with clause 5.4, on a yearly basis from the Commencement Date the following shall apply to the income levels for the Playing Fields:
 - 5.6.1 If the level of income for the Playing Fields exceeds expenditure by 10% or more then such excess shall be applied in such manner as the Parties shall jointly agree in writing.
 - 5.6.2 If the level of income for the Playing Fields exceeds expenditure but falls below 10% then such excess shall be reinvested into the Playing Fields in such manner as the Parties shall jointly agree in writing.
 - 5.6.3 Any losses shall be borne by the Provider.
- 5.7 The Provider shall every 3 years from the Commencement Date, prepare a 3 year plan as part of its revenue budgets which shall include a statement on how the long term maintenance and condition of the Playing Fields will be addressed in terms of management and cost over a period of not less than 5 years from the Commencement Date. This must include a demonstration of how the costs will be met.

6 Complaints in Services

- 6.1 The Provider shall operate a complaints policy which is to be approved by the Council and shall be consistent with the Council's own complaints policies and procedures.

7 Defaults (to be determined and agreed at preferred bidder stage).

- 7.1 In the event a Default occurs, the Council shall notify the Provider within a reasonable period, but in any event within 10 Working Days after becoming aware of the occurrence of the Default:
 - 7.1.1 the action required to remedy the Default;
 - 7.1.2 time period for which the Default shall be remedied by; and
 - 7.1.3 the effect the Default has or continues to have on the Council's Requirements and the Services.

- 7.2 On receipt of the notice referred to in clause 7.1 the Provider shall remedy, make good or mitigate the Default within such reasonable time period specified by the Council having regard to the nature of the Default. Such costs referred to in clause 7.1 shall be borne by the Provider.
- 7.3 The Provider shall in addition attend a meeting with the Contract Manager to discuss the Default and the steps being taken or taken to remedy the Defect.
- 7.4 If the Parties are unable to agree upon a course of action to resolve the Default, the matter shall be referred to dispute resolution in accordance with clause 16.
- 7.5 The Council retains the right to terminate the Agreement by giving the Provider a minimum of one month's notice in writing if a material Default has occurred and
 - 7.5.1 the Council has served a notice in respect of such Default on the Provider in accordance with clause 7.1; and
 - 7.5.2 Such Default has not been remedied in accordance with clause 7.2.
- 7.6 In the event that 7.5 shall occur the Lease shall terminate forthwith.

8 Remedies Cumulative

- 8.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

9 Monitoring

- 9.1 The Council will review the delivery of the Services on an annual basis through the provision of data set out in Schedule 2, and will meet on a quarterly basis (or as agreed between the parties) with the Provider to obtain an overview of activity.
- 9.2 The Council will carry out an annual review of the performance of the Provider against agreed performance targets and priorities, both to evaluate performance and to inform activities for the following year.
- 9.3 The Council will review performance against agreed performance measures targets and priorities on a quarterly basis ;and review on an annual basis the targets and priorities for the forthcoming year; a report of Service changes proposed including:
 - 9.3.1 Staff resources;
 - 9.3.2 a report of shared learning and opportunities for education purposes;
 - 9.3.3 an evaluation of any statistics or information required to be kept;

- 9.4 The Provider shall within 1 month of each anniversary of the Commencement Date prepare a report containing all of the information necessary in order to enable the Council to carry out the above review.
- 9.5 The Council shall, in conducting that review, comment on the performance of the Services and make recommendations as to the continuance of this Agreement and the performance of the Services going forward.
- 9.6 The Council shall distribute the results of its review to the Parties within 1 month of completing it.
- 9.7 The Council may ask such questions of the Provider as it considers appropriate to properly inform its review and the Provider will fully cooperate in providing answers.
- 9.8 The Council may also interview senior members of management of the Playing Fields.

10 Discrimination

- 10.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

11 Health and Safety

- 11.1 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement which causes any personal injury, breach of the peace or damage to the Playing Fields.
- 11.2 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply in the performance of the Agreement.
- 11.3 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

12 Data Protection Act

- 12.1 The Provider shall comply with any registration requirements under the Data Protection Act 1998 ("DPA") and the Provider shall provide a copy of its registration under the DPA to the Council on request.
- 12.2 Where the Provider is processing personal data (as defined by the DPA) it shall comply fully with the requirements of the DPA.

- 12.3 The Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data):
 - 12.3.1 as required under the Seventh Data Protection Principle in Schedule I to the DPA; and
 - 12.3.2 provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA; and
 - 12.3.3 Promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 12.2.
- 12.4 The provisions of this clause shall apply during the continuance of the Agreement.

13 **Confidentiality**

- 13.1 Each Party:
 - 13.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 13.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.
- 13.2 Neither Party shall use any Confidential Information it receives from the other otherwise than for the purposes of the Agreement.
- 13.3 The provisions of clauses 13.1 and 13.2 shall not apply to any Confidential Information received by one Party from the other:
 - 13.3.1 which is or becomes public knowledge (otherwise than by breach of this clause);
 - 13.3.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 13.3.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 13.3.4 is independently developed without access to the Confidential Information; or
 - 13.3.5 Which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 14.
 - 13.3.6 Nothing in this clause shall prevent either Party disclosing any Confidential Information for the purpose of

- 13.3.6.1 the examination and certification of their respective accounts; or
- 13.3.6.2 any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Provider/Council has used its resources; or
- 13.3.6.3 Disclosing any Confidential Information obtained from the other Party to any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
- 13.3.6.4 to any person engaged in the performance of the Services for any purpose relating to or ancillary to the Agreement provided that in disclosing information under sub-paragraph 13.4.3 the disclosing Party discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

14 Freedom of Information

- 14.1 The Provider acknowledges that Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with these information disclosure requirements.

15 Publicity and Media

- 15.1 Without prejudice to the Parties' obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to the timing and form of the announcement or publicity.
- 15.2 Neither Party shall use the other Party's name or brand in any promotion or marketing or announcement of orders without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 15.3 The Provider shall acknowledge the Council's and external funders support and involvement in the Playing Fields as agreed by the Council and external funders.
- 15.4 The Provider shall ensure that there is no promotion, advertising, sponsorship, merchandising or sale of tobacco based products, by the Provider at or in connection with the Playing Fields at any time during the Term and shall use its reasonable endeavours to procure that no sale of tobacco based products is conducted by any other person at the Playing Fields.

- 15.5 The name of the Playing Fields shall be 'London Marathon Playing Field, Hervey Road'. In the event that the Provider wishes to change the name of the Playing Fields, the Provider shall seek prior consent of the Council.

16 Dispute Resolution

- 16.1 If there is a dispute between either Party concerning the interpretation or operation of this Agreement then either one of the Parties may notify the other that it wishes the dispute to be referred to a meeting of senior managers of each of the Parties to resolve, negotiating on the basis of good faith.
- 16.2 If after 21 days (or such longer period as the Parties may agree) of the date of the notice referred to in clause 16.1 the dispute has not been resolved then either one of the Parties may notify the other that it wishes to attempt to settle the dispute by mediation or in accordance with the Playing Fields for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.
- 16.3 If the Parties do not agree on the mediator, then either one of the Parties may request CEDR to appoint one.
- 16.4 The Parties must:
- 16.4.1 use their best endeavours to ensure that the mediation starts within 20 Working Days of service of notice referred to in clause 16.2; and
- 16.4.2 Pay the mediator's fee in equal shares.
- 16.5 Any agreement reached between the Parties as a result of mediation shall be binding on them, as set out in the Model Procedure. If the dispute has not been settled by mediation within 10 Working Days of the mediation starting then either Party may commence proceedings.
- 16.6 Neither Party shall be precluded by anything in this clause 16 from taking such steps in relation to court proceedings as they may deem necessary or desirable to protect their respective positions.
- 16.7 The use of the dispute resolution procedures set out in this clause shall not prevent the Council from exercising the rights of termination set out in clause 18 where it has the right to do so should it consider that necessary.
- 16.8 All notifications under this clause 16 must be made in accordance with clause 24 (Notices).

17 Liability and Insurance

- 17.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

- 17.2 Subject to clause 17.1, the Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever (including liability to any third parties and loss of or damage to the Playing Fields, or any other loss) arising out of or, in respect of the Provider's breach or negligent performance or non-performance of this Agreement.
- 17.3 The Provider shall effect and maintain with a reputable insurance company throughout the Term the following policies of insurance:
- 17.3.1 public liability insurance for not less than £10 million for each occurrence or series of occurrences arising from a single event; and
- 17.3.2 Employer's liability insurance for not less than £5 million for each occurrence or series of occurrences arising from a single event.
- 17.4 The Provider shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

18 Termination

- 18.1 The Council has the right to terminate this Agreement:
- 18.1.1 by providing written notice to the Provider of not less than 3 months.; or
- 18.1.2 In accordance with clause 7.5.
- 18.2 If any one or more of the following occurs the Council may terminate the Agreement in writing immediately:-
- 18.2.1 the Provider or any of its Staff (whether with or without the Provider 's knowledge) directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
- 18.2.1.1 induce that person to perform improperly a relevant function or activity; or
- 18.2.1.2 reward that person for improper performance of a relevant function or activity;
- 18.2.1.3 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; or
- 18.2.1.4 committing any offence under the Bribery Act 2010;
- 18.2.2 the Provider or any of its employees shall:
- 18.2.2.1 have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
- 18.2.2.2 have given any reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or

- 18.2.3 the Provider:
- 18.2.3.1 committing an act of fraud or bankruptcy; or
 - 18.2.3.2 suffering any step to be taken by any person for or with a view to the winding up of the Provider; or
 - 18.2.3.3 going into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or re-construction); or
 - 18.2.3.4 suffering an order to be made for a moratorium on any of its indebtedness; or
 - 18.2.3.5 passing a resolution to reduce, redeem or purchase its share capital or (if applicable) convening a meeting as required by Section 656 of the Companies Act 2006; or
 - 18.2.3.6 stopping, suspending or threatening to stop or suspend payment to any of its creditors; or
 - 18.2.3.7 taking or attempting to take proceedings with a view to re-adjustment, re-scheduling or deferment of any indebtedness owed to its creditors; or
 - 18.2.3.8 becoming insolvent or unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (but with the omission of the words “to the satisfaction of the Court” in Sections 123(1) and 123(2) thereof); or
 - 18.2.3.9 proposing or convening a meeting of or entering or proposing to enter into any kind of general assignment, arrangement or composition with or for the benefit of its creditors (including, without limitation, making a proposal under Parts I or VIII (as the case may be) of the Insolvency Act 1986); or
 - 18.2.3.10 applying for or consenting to or convening a meeting for the purpose of approving an application for or consenting to the appointment of a receiver, trustee, liquidator, administrator, administrative receiver or similar officer of itself or of all or substantial part of its assets or suffering any such receiver, trustee, liquidator, administrator, administrative receiver or similar officer being appointed or any steps being taken which are intended to lead to such an appointment; or
 - 18.2.3.11 suffering an encumbrancer to take possession or to exercise or attempt to exercise any power of sale over any of the Provider’s property; or
 - 18.2.3.12 having substantial distress attachment execution or other legal process levied, enforced, sued or threatened upon any of its property; or
 - 18.2.3.13 having any substantial judgment or order made against it which remains unsatisfied for more than 7 days; or
 - 18.2.3.14 suffering any defaults (or having any payment or any other obligation accelerated) under any trust deed, loan agreement, debenture or other agreement or obligation whatsoever or howsoever incurred relating to borrowing or financing (including without limitation, conditional sale or factoring agreements or any other arrangements whatsoever which

facilitate or are designed to facilitate the provision of finance or working capital to the Provider) under any guarantee or any other kind of contingent liability entered into or undertaken by the Provider; or

18.2.3.15 any change occurring in the control of the Provider; or

18.2.3.16 The Lease is terminated in accordance with its provisions.

18.3 [Cross reference with Lease].

18.4 The provisions of clause 19 shall apply following termination.

19 Effect of Termination

19.1 In the event the Agreement is terminated the Lease shall forthwith terminate.

19.2 At the end of the Term (and howsoever arising) the Parties shall forthwith deliver to the other upon request all the other Party's property (including but not limited to materials, documents, reports, information) relating to the Agreement in its possession or under its control and in default of compliance with this clause, either Party may recover possession of its property and both of the Parties grants a licence to the other or its appointed agents to enter (for the purposes of such recovery) any premises of the other Party where any such items may be held.

20 Force Majeure

20.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for 3 months, the Party not affected may terminate this Agreement by giving 14 days' written notice to other Party.

21 Variation procedure

21.1 Any variation of this Agreement must be agreed by both Parties before it can be adopted, and will be formalised by obtaining signatures of both Parties.

22 Assignment and Sub-contracting

22.1 This Agreement is personal to the Provider and the Provider shall not, except insofar as is necessary in the provision of the Services, sub-contract any part or whole of the Agreement without the Council's consent.

- 22.2 The Provider shall not assign its interests under this Agreement to any successor body which takes over that Party's functions.

23 Entire Agreement

- 23.1 The Agreement, the Agreement for Lease, the Lease and the Licence for Alterations referred to in the Agreement for Lease constitute the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

24 Notices

- 24.1 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in this clause 24.1. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

- 24.2 For the purposes of clause 24.1, the address of each Party shall be:

For the Provider:

Address:

For the attention of:

Tel:

E-mail:

For the Council:

Address:

For the attention of:

Tel:

E-mail:

Either Party may change its address for service by serving a notice in accordance with this clause.

25 **Contracts (Rights of Third Parties) Act 1999**

25.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent or representative of either the Provider or the Council), or any Service User shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

26 **Governing Law**

26.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

27 **No Agency or Partnership**

27.1 The Provider shall not in any way whatsoever:

27.1.1 be, act or hold itself out as an agent of the Council; nor

27.1.2 make any representations or give any warranties to third parties on behalf or in respect of the Council; nor

27.1.3 bind or hold itself out as having authority or power to bind the Council; nor

27.1.4 incur liability on behalf of the Council

27.2 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between neither the Parties nor any landlord and tenant relationship.

IN WITNESS whereof the Agreement has been executed by each of the Parties in accordance with their respective constitutions.

Signed by

For and on behalf of the Royal Borough of Greenwich Director / Authorised signatory

Signed by

For and on behalf of Provider

Director

SCHEDULE I
THE COUNCIL REQUIREMENTS

Attached as a separate document

SCHEDULE TWO

Monitoring requirements

Attached as a separate document

SCHEDULE 3

TENDER

To be inserted at on contract completion