

DATED 22 JUNE 2010

- (1) LONDON DEVELOPMENT AGENCY
- (2) GREENWICH LEISURE LIMITED

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**DEED OF VARIATION AND CONSOLIDATION OF A  
LEISURE MANAGEMENT CONTRACT DATED 1 OCTOBER 2004  
for the operation of the  
Crystal Palace National Sports Centre and Athletics Stadium**

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**BETWEEN**

- (1) **LONDON DEVELOPMENT AGENCY** of Palestra 197 Blackfriars Road, London SE1 8AA ("LDA")
- (2) **GREENWICH LEISURE LIMITED** (registration number IP 27793R) whose registered office is at Middlegate House, 1 Seymour Street, The Royal Arsenal, London SE18 6SX (the "Contractor")

**BACKGROUND**

- (A) LDA have selected the Contractor to provide a range of sport programmes for the public and operate the Crystal Palace National Sports Centre and Athletic Stadium.
- (B) The English Sports Council and LDA agreed under a Leisure Management Contract dated 1 October 2004 to appoint the Contractor to act on behalf of The English Sports Council ("Sport England") and the LDA and provide the services referred to at (A) above and to grant to the Contractor the Licence in respect of the Crystal Palace National Sports Centre and Athletic Stadium.
- (C) The Leisure Management Contract referred to at (B) is due to expire on 31 March 2009 and this agreement extends this contract between LDA and the Contractor until 31 March 2014 ("the Agreement") subject to the terms contained herein.

**IT IS AGREED AS FOLLOWS:**

**1. VARIATION OF CONTRACT AND PRELIMINARY**

LDA and the Contractor agree that the Contract shall, with effect from the date of the Extension Commencement Date be varied as set out in this Agreement.

**2. DEFINITIONS**

In this Agreement, other than where the context otherwise requires, the following definitions shall have the meanings hereby assigned to them:

- |                             |   |
|-----------------------------|---|
| <b>"Actual Income"</b>      | means the Income actually and properly received by the Contractor in accordance with Clause 15;   |
| <b>"Agency Regulations"</b> | means the Commercial Agents (Council Directive) Regulations 1993;   |
| <b>"Agency Supplies"</b>    | means supplies of goods and services made by the Contractor (or by any sub-contractor or agent on behalf of the Contractor) acting as agent of LDA including, without limitation the following: <ul style="list-style-type: none"><li>(a) supplies of goods and services in the course of the operation of the Centre or the provision of the Services;</li><li>(b) supplies of property interests in the Centre; and</li><li>(c) any other supplies expressed to be provided as agent of LDA under this Agreement.</li></ul> |

<b>“Annual Service Plan”</b>	means the annual service delivery plan submitted by the Contractor for approval by the LDA in accordance with Clause 9;
<b>“Applicable Laws”</b>	means all regional, national and international laws, regulations and standards which apply to the person or activity in the circumstances in question (including those imposed by any governmental or regulatory authority) and all industry standards and standards determined by any self-regulatory body (including, without limitation, the QUEST) from time to time;
<b>“Authorised Officer”</b>	means the person nominated from time to time by LDA pursuant to Clause 44 (and where the context so permits any person nominated by the Authorised Officer as his deputy or representative in accordance with Clause 44.2);
<b>“Average Earnings Index”</b>	means the index referred to as the “National Average Earnings Index GB: Whole Economy Seasonally Adjusted Index” and published by the Office of National Statistics (or any government department upon which duties in connection with the compilation and maintenance of such index shall have devolved) (or any replacement thereof);
<b>“Break Point”</b>	means each anniversary of the Extension Commencement Date;
<b>“Breakage Costs”</b>	<p>means Direct Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of termination of this Agreement or Partial Termination, as applicable, but only to the extent that:-</p> <ul style="list-style-type: none"> <li>(a) the Direct Losses are incurred in connection with termination of the Services and in respect of the provision of the maintenance Services including:- <ul style="list-style-type: none"> <li>(i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Direct Losses being incurred;</li> <li>(ii) any expenditure incurred in anticipation of the provision of the Services in the future which will not now be required;</li> <li>(iii) unamortised Capital Expenditure and associated finance costs incurred by the Contractor in accordance with the terms of the Service Specification and this Agreement;</li> <li>(iv) the cost of demobilisation including the cost of any relocation of equipment</li> </ul> </li> </ul>

used in connection with the Services;  
and

- (b) the Direct 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; and
- (c) the Contractor has used its reasonable endeavours to mitigate the Direct Losses;

**“Business Day”**

means a day (other than a Saturday or a Sunday) on which the banks in the City of London are generally open for business;

**“Capital Works”**

means any capital works to be undertaken by the LDA in accordance with Clause 19;

**“Centre”**

means Crystal Palace National Sports Centre and Athletic Stadium as set out in the "Site Plan of Crystal Palace National Sports Centre" attached as Appendix D;

**“Centre Manager”**

means the person appointed from time to time by the Contractor to be the Contractor's authorised manager at the Centre or in respect of the Services which are delivered at the Centre;

**“Change in Law”**

means the coming into effect after the date of the Extension Commencement Date 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; or
- (b) any applicable judgment of a relevant court of law which creates or changes a binding precedent in either case, where (a) or (b) was not known, or should not reasonably have been known by the Contractor;

**“CHP Contractor”**

means the contractor that enters into the Design and Build Contract and the Operations and Maintenance Agreement with the LDA;

**“CHP Contracts”**

means the Design and Build Contract and the Operations and Maintenance Contract between the LDA and the CHP Contractor;

<b>“CHP Services”</b>	means the works and services to be provided to the LDA by the CHP Contractor pursuant to first the Design and Build Contract and thereafter the Operations and Maintenance Agreement;
<b>“Change of Control”</b>	means in relation to the Contractor, if any person (or persons acting in concert) acquires (or agrees to acquire or has options over) direct or indirect control (a) of the affairs of that party, or (b) over more than 50% of the total voting rights conferred by all the issued shares in the capital of that party which are ordinarily exercisable in general meeting or (c) of the composition of the main board of directors of a party. For these purposes "acting in concert" has the meaning set out in the City Code on Takeovers and Mergers;
<b>“Commencement Date”</b>	means the date of commencement of the Leisure Management Contract dated 1 October 2004 as referred to in Recital B;
<b>“Compensation Event”</b>	means: <ul style="list-style-type: none"> <li>(a) a material breach by LDA of any of LDA's material obligations under this Agreement which have a material adverse impact on the Contractor's ability to perform the Services; or</li> <li>(b) LDA Variation in respect of which the provisions of Clauses 18.1.6-18.1.12 have not applied; or</li> <li>(c) a Qualifying Change in Law pursuant to Clauses 18.1.6-18.1.12 or a Contractor Variation pursuant to Clause 18.3.1-18.3.9; or</li> <li>(d) the opening up or conduct of any Capital Works for any reason (other than where the Contractor is at fault or where such opening up is carried out pursuant to the Building Act 1984) by LDA in accordance with the provisions of Clause 19.1) to the extent not treated as a Contractor Variation pursuant to Clause 18.3.1-19.1;</li> </ul>
<b>“Contract”</b>	means the contract between Sport England, LDA and the Contractor dated 1 October 2004 for the performance of the Services in accordance with its terms and conditions, including the Schedules and Appendices together with the Licence ;
<b>“Contract Manager”</b>	means the person appointed by the Contractor from time to time to be the authorised representative of the Contractor and to liaise with any Authorised Officer for all matters dealing with this Agreement;
<b>“Contract Period”</b>	means five years from the Extension Commencement Date to the Expiry Date subject to early termination in accordance with the terms of this

Agreement;

**“Contract Year”**

means the period from 1 April to 31 March in each Contract Year save that in the first period following the Extension Commencement Date, the Contract Year shall be from the Extension Commencement Date to 31 March 2010;

**“Contractor Default”**

means

- (a) any material breach of this Agreement including for the avoidance of doubt the Licence;
- (b) a Persistent Breach of this Agreement;
- (c) the Contractor receiving 4 or more Warning Notices in any 12 months period;
- (d) the Contractor receiving a Default Notice served in accordance with Clause 22.5.1;
- (e) the Contractor being unable to pay its debts under s.123 of the Insolvency Act 1986 or entering into a composition of debts or arrangement for the benefit of the Contractor's creditors approved under the Insolvency Act 1986 or the Companies Act 1985, or (being a body corporate), having a receiver appointed pursuant to the Insolvency Act 1986 or by the Court or any debenture holder, or having an administrator appointed pursuant to the Insolvency Act 1986, or going into liquidation (other than for the purpose of amalgamation or reconstruction) or being the subject of any resolution, court order petition or instrument for winding up or dissolution (or any equivalent procedures to the extent applicable to the Contractor as an Industrial and Provident Society registered under the Industrial and Provident Societies Acts 1965-78); and/or
- (f) the Contractor having assigned or purported to assign this Agreement in breach of Clause 43 (Assignment and Subcontracting); and/or
- (g) the Contractor having been subject to any Change of Control; and/or
- (h) the Contractor ceasing to provide all or a substantial part of the Services for a continuous period of 2 months (other than because of a Compensation Event, Excusing Cause or Force Majeure Event); and/or
- (i) the Contractor failing to meet the termination thresholds for non-availability.



<b>“Contractor Equipment”</b>	means any items of plant, machinery, equipment, apparatus, fixtures and fittings, stationary, consumables and chattels used by the Contractor at the Centre (as set out in Schedule 12 (Equipment Inventory));
<b>“Contractor Notice of Variation”</b>	means a notice served by the Contractor on LDA requesting a Variation in accordance with Clause 18.3.1 (Contractor Variation);
<b>“Contractor Surplus Share”</b>	means the proportion of the Surplus specified in Schedule 6 (Management Fee/ Payment);
<b>“Customers”</b>	means the persons or organisations who from time to time use or are permitted to use the Centre and/or Services provided by the Contractor under this Agreement;
<b>“Default Notice”</b>	means a Notice served by LDA on the Contractor pursuant to Clause 22.5.1 (Default Notices);
<b>“Design and Build Contract”</b>	means an agreement between the LDA and the CHP Contractor for the design, build, installation, testing and commissioning of a natural gas fired combined heat and power unit (“CHP Unit”) and the re-engineering of the existing energy centre at the Centre, including the installation of a CHP Unit, the replacement of existing boilers with high efficiency condensing boilers, the installation of monitoring and control systems, and the testing and commissioning the same and the hand over of the re-configured and re-engineered Energy Centre (including the CHP Unit) to the LDA. The Design and Build Contract further requires the CHP Contractor to carry out other supplementary energy efficiency works including the installation of a ventilation air heat recovery system and heat insulating pool covers at the Centre;
<b>“Direct Losses”</b>	means all damage, losses, liabilities, claims, actions, costs (including the for the avoidance of doubt, limb (iii) of the definition of Breakage Costs), expenses (including the cost of legal or professional Services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
<b>“DPA 1998”</b>	means the Data Protection Act 1998;
<b>“Equipment Inventory”</b>	means the Contractor Equipment listed in Schedule 13 (Equipment Inventory);
<b>“Energy Centre”</b>	means the energy centre at the Centre as upgraded by the Contractor pursuant to the Design and Build Contract, as delineated for information purposes only on the drawing contained in the Schedule to the Design and Building Contract;
<b>“Excusing Cause”</b>	means

- (a) any breach of any provision of this Agreement by LDA (unless, and to the extent, caused or contributed to by the Contractor) which results in the Contractor's failure to provide the Services in accordance with this Agreement;
- (b) the implementation of any LDA Variation;
- (c) the proper compliance by the Contractor with the instructions of a LDA Party in the event of an emergency;
- (d) the proper implementation of a Change in Law,

save to the extent that any of the events listed in paragraphs (a) to (e) inclusive arises as a result of any wilful act or default of the Contractor;

**“Expenditure”**

means all bona fide arm's length costs comprising the Contractor's actual expenditure incurred in providing the Services, calculated in accordance with generally accepted accounting principles in the United Kingdom from time to time;

**“Expert”**

means a person appointed in accordance with Clause 47 (Disputes) to resolve a Dispute under this Agreement;

**“Expiry Date”**

means 31 March 2014 (subject to any right of earlier termination as provided for in this Agreement, including without limitation, in Clause 24 (Termination));

**“Extension  
Commencement Date”**

means the commencement of this agreement on 1 July 2009 following the expiry of the Leisure Management Contract dated 1 October 2004;

**“Equalities Legislation”**

means Race Relations Act 1976 and/or act incompatibly with the Sex Discrimination Act 1975 Disability Discrimination Act 1995 Employment Equality (Religion or Belief) Regulations 2003, Employment Equality Sexual Orientation Regulations 2003, Employment Equality Age Regulations 2006, Gender Recognition Act 2004, Equal Pay Act 1970, Civil Partnership Act 2004 and the Human Rights Act 1998 and the Carers Equal Opportunities Act 2004 (in each case as amended) (together "the Equalities Legislation");

**“FOIA 2000”**

means Freedom of Information Act 2000;

**“Force Majeure Event”**

means the occurrence after the date of the Agreement of:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake, riot and civil commotion;

- (b) the failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any failure or shortage of power, fuel or transport for any reason beyond the reasonable control of the defaulting party;
- (d) discovery of an unexploded ordnance; and
- (e) war, civil war, armed conflict or terrorism; or
- (f) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Contractor; or
- (g) 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;

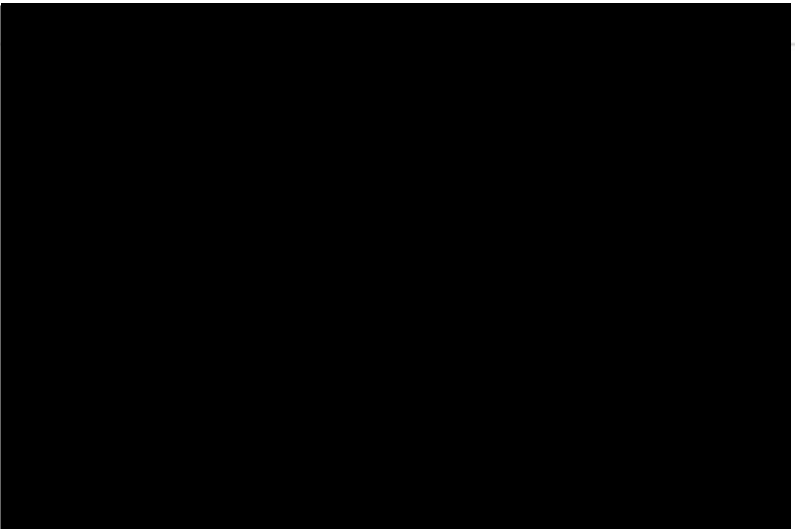
**"Good Industry Practice"**

means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator engaged in the same type of services as the Services under this Agreement and under the same or similar circumstances;

**"Income"**

means the aggregate of all income and receipts exclusive of VAT both actual and accrued for collection by the Contractor on behalf of LDA in connection with the provision of the Services or the operation of the centre or the making of Agency Supplies, comprising cash, cheques, benefit in kind, rent receipts, sports events, sports services, grants or subsidies, ticket sales and any other income in providing the Services or raised from Contractor initiatives to generate additional income (excluding the Management Fee);

**"Indexation"**



<b>“Intellectual Property”</b>	means any patent, copyright (including, without limitation, copyright in any marketing materials), trademark (registered and unregistered), trade name, domain name, design right, database right, registered designs, unregistered designs, utility model, application for any of the foregoing, database, trade secret and other confidential information or know-how together with all or any goodwill attending or relating thereto;
<b>“Intellectual Property Rights”</b>	means rights and/or ownership in and to the Intellectual Property;
<b>“LDA Default”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) a failure by the LDA to make payment within 30 days of service of a formal written demand by the Contractor, without reasonable justification for such failure, of any undisputed amount of money exceeding the value equivalent to the Management Fee in respect of the first Quarter (Indexed) that is due and payable by the LDA under this Contract, where that amount fell due and payable one Month prior to the date of service of the written demand;</li> <li>(b) a breach by the LDA of its obligations under this Contract the effect of which is to substantially frustrate or render it impossible for the Contractor to perform its obligations under this Contract for a continuous period of at least three Months;</li> </ul>
<b>“LDA Party”</b>	means LDA, its employees, agents and subcontractors;
<b>“LDA Variation”</b>	means a change in the Services or other obligations of the Contractor which the Contractor is obliged to implement and/or accept under Clause 18.1.1 (Variations) including without limitation a requirement to suspend or cease an element of the Services or close temporarily or permanently any part of the Centre;
<b>“Licence”</b>	means the licence provisions set out Clause 6 in respect of the Centre;
<b>“Loss of Modelled Profits”</b>	means the Contractor’s projected profits for the period of six months from the Termination Date;
<b>“Maintenance Threshold”</b>	means:

**“Managed Premises”**

means all those premises described in Schedule 2 (Matters to which the lease of the Centre is subject) and any other parts of the Centre which LDA may approve for letting or licensing to occupiers from time to time;

**“Management Fee”**

means the sum set out in Schedule 6 (Management Fee Payment) and subject to the terms of this Agreement;

**“Materials”**

means any items of equipment, plant, machinery and consumable items supplied and used by the Contractor to provide the Services at the Centre during the Contract Period;

<b>“Minor Works”</b>	means the replacement or maintenance of plant and equipment as set out in the Service Requirements;
<b>“Month”</b>	means one calendar month, and “Monthly” shall be construed accordingly;
<b>“Monthly Report”</b>	means the report to be submitted by the Contractor to the Authorised Officer as further described in Schedule 4 (Monitoring Requirements);
<b>“Notice”</b>	means a formal written notification between the Authorised Officer and the Contractor;
<b>“Notice of Variation”</b>	means a notice served by LDA on the Contractor requesting or (as the case may be) requiring a Variation in accordance with Clause 18.1.1 (Variations);
<b>“Operations and Maintenance Agreement”</b>	means an agreement between the LDA and the CHP Contractor for the ongoing operation and maintenance services in respect of the primary energy functions within the Energy Centre.
<b>“Party”</b>	means a party to this Agreement;
<b>“Persistent breach”</b>	means a breach which has recurred 3 or more times within a 6 month period after the date on which a Final Warning Notice has been issued;
<b>“Planned Preventative Maintenance”</b>	means the planned preventative maintenance works referred to in the Service Requirements (including the Minor Works but excluding any Capital Works exceeding the Maintenance Threshold);
<b>“Pricing Schedule”</b>	means the schedule of prices in respect of the Centre to have effect from the Extension Commencement Date as set out in Schedule 10, Appendix C (Pricing Schedule) and as reviewed on an annual basis in accordance with Clause 14.1;
<b>“Prohibited Act”</b>	means <ul style="list-style-type: none"> <li>(a) offering, giving or agreeing to give to LDA or any or LDA Party any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> <li>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with LDA; or</li> <li>(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with LDA;</li> </ul> </li> <li>(b) entering into this Agreement or any other</li> </ul>

contract with LDA in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to LDA (as appropriate);

(c) committing any offence:

under the Prevention of Corruption Acts 1889 – 1916;

under Section 117 of the Local Government Act 1972 or any re-enactment thereof;

under Legislation creating offences in respect of fraudulent acts;

at common law in respect of fraudulent acts;

in relation to this Agreement or any other contract with LDA; or

(d) defrauding or attempting to defraud or conspiring to defraud LDA;

**“Provisionally Approved Investment Programme”**

means GLL’s Investment Programme to be agreed between the parties in accordance with Clause 12;

**“Qualifying Change in Law”**

means a Change in Law which comes into effect during the Contract Period and which materially affects the actual operation of the Services;

**“Quarter”**

means a continuous period of three Months as follows: from 1 April to 30 June; 1 July to 30 September; 1 October to 31 December and 1 January to 31 March as appropriate; and Quarterly shall be construed accordingly;

**“Quarterly Report”**

means the report to be submitted by the Contractor to the Authorised Officer in accordance with Schedule 4 (Monitoring Requirements);

**“QUEST”**

means the UK Quality Scheme for Sport and Leisure of the same name as is in place from time to time (supported by, inter alia, Sport England) or any successor scheme thereto (to the extent that the same is no more onerous) that is supported by Sport England (or its successor);

**“Relevant Employees”**

means the employees who are the subject of a Relevant Transfer;

**“Relevant Transfer”**

means a relevant transfer for the purposes of TUPE, and includes, without limitation, the relevant transfer of the employment of Relevant

	Employees to the Contractor on the Relevant Transfer Date;
<b>“Remedial Process”</b>	means the process of rectifying any of the events listed in Clauses 22.1 to 22.4;
<b>“Retail Price Index”</b>	means the general index of the retail prices as published in the monthly digest of statistics by the Office for National Statistics or if such index shall cease to be published such other index as may be officially published in substitution thereof;
<b>“Service Level Requirement”</b>	means in respect of any particular aspect of the Services means the standard of service designated as the 'Service Level Required' in the service level agreements set out in the Service Requirements;
<b>“Service Personnel”</b>	means any and all persons (including employees) engaged from time to time in the provision of the Services whether employees or agents of the Contractor or of any subcontractor or agent of, or provider of services to, the Contractor;
<b>“Service Requirements”</b>	means the requirements set out in Schedule 3 (Service Requirements);
<b>“Services”</b>	means the services for the operation of the Centre for use by the public in accordance with the terms of this Agreement (including the service of acting as agent of LDA in relation to Agency Supplies) to be provided by the Contractor to the LDA in accordance with the terms of this Agreement including the Service Requirements;
<b>“Sports Development Requirements”</b>	means the Sports Development Requirements specified in Part 2 of Schedule 3 (Service Requirements);
<b>“Surplus”</b>	means the amount (if any) by which the Actual Income exceeds the Actual Expenditure (excluding utilities);
<b>“Surplus Share”</b>	means the proportion of the Surplus specified in Schedule 6 (Management Fee/ Payment);
<b>“Target Income”</b>	means the amount set out in Schedule 6 (Management Fee Payment);
<b>“Tender Response”</b>	means the Contractor's response to the Invitation to Tender;
<b>“the Tenants”</b>	means all those tenants or proposed tenants details of which are set out in Schedule 2 (Matters to which the lease of the Centre is subject) and any other tenancies, licences or other occupational arrangements which may be in existence at the Centre from time to time;



<b>"Termination Notice"</b>	means a notice of termination issued in accordance with this Agreement;
<b>"Transfer Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI No 1794) (as amended);
<b>"Variation"</b>	means a variation to the Services in accordance with Clause 18 (Variations).

### **3. INTERPRETATION**

- 3.1 References to gender shall be taken to include both feminine and masculine gender.
- 3.2 References to words in the singular can include the plural and vice-versa.
- 3.3 References to individuals shall be treated as including the organisation they represent.
- 3.4 References to any party shall, where relevant, be deemed to references to or to include, as appropriate, their lawful successors, assigns or transferees.
- 3.5 References to Clauses, Paragraphs and Schedules are references to the clauses, paragraphs and schedules of this Agreement.
- 3.6 Clause headings are for ease of reference only and shall not affect the construction of the Agreement.
- 3.7 Reference to any enactment order, regulation or other similar instrument shall be construed (subject to the provisions of this Agreement) as a reference to an enactment, order, regulation or instrument for the time being in force, or as amended or re-enacted by any subsequent enactment, order, regulation or, instrument.

### **4. COMMENCEMENT DATE AND TERM**

- 4.1 This Agreement shall commence on the Extension Commencement Date and subject to Clause 4.2, shall continue in full force for five years from the Extension Commencement Date subject to earlier termination of the Agreement in accordance with the terms of this Agreement including, without limitation, Clause 4.2 and 24 (Termination).
- 4.2 In addition to any other rights it has, LDA may at any time on or before the Expiry Date terminate this Agreement by giving the Contractor at least 90 days' notice that the Agreement will terminate at the Break Point immediately following the expiry of such period of notice. The right of LDA to terminate the Agreement set out in this Clause 3.2 is notwithstanding the provisions of Clause 24 (Termination).

### **5. PROVISION OF THE SERVICES**

- 5.1 The Contractor shall provide the Services at the Centre from the Extension Commencement Date in accordance with the terms of this Agreement and:
  - 5.1.1 the Service Requirements;
  - 5.1.2 the Centre procedures and policies as agreed and amended from time to time in consultation with the Authorised Officer;

- 5.1.3 the terms of the Licence;
- 5.1.4 all applicable laws and legislation;
- 5.1.5 Good Industry Practice; and
- 5.1.6 in a manner which does not infringe the Intellectual Property Rights of any third party;
- 5.2 The Contractor must provide the Services in such a manner so as to maintain QUEST accreditation for the Centre throughout the Contract Period.

## **6. LICENCE**

- 6.1 LDA hereby grants the Contractor a non-exclusive Licence to access and use the Centre for the purpose of delivering the Services and performing its obligations under this Agreement in respect of the period from the Extension Commencement Date. Such Licence is personal to the Contractor and is not assignable and is provided solely for the purpose of enabling the Contractor to fulfil its obligations under this Agreement and does not grant to the Contractor exclusive possession of the Centre or any part of it and at no time will the Contractor impede in any way the officers servants or agents of LDA in the exercise by them of the LDA's rights of possession of the Centre.
- 6.2 Without prejudice to its other obligations, on termination or expiration of this Agreement this Licence shall automatically terminate and the Contractor shall forthwith vacate the Centre.
- 6.3 The Contractor shall be fully liable for the national non domestic rates levied in relation to its occupation of the Centre but shall apply to the relevant billing authority for all applicable reliefs in relation to such. For the avoidance of doubt, the Contractor shall not be entitled to an adjustment to the Management Fee in the event that it is no longer entitled to mandatory rate relief or the level of mandatory relief varies other than in relation to any "top up" rate relief awarded by the relevant billing authority in relation to registered or exempt charities.

## **7. AGENCY SUPPLIES**

- 7.1 Save in respect of the Agency Supplies the Contractor acts as an independent contractor in respect of the provision of the Services and the operation of the Centre and the Contractor is not LDA's servant or agent except as expressly set out in the Agreement. The Service Personnel shall not hold themselves out to be and shall not be held out by the Contractor as being, servants or agents of LDA.
- 7.2 The Contractor shall provide the Agency Supplies to Customers as agent for and on behalf of LDA.
- 7.3 The Contractor is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of LDA or in any other way bind LDA to the performance, release, variation or discharge of any obligation save as is necessary to enable the Contractor to provide the Agency Supplies in accordance with the terms of this Agreement.
- 7.4 In providing the Agency Supplies the Contractor may enter into contractual arrangements that are in the normal course of business as agent for and on behalf of LDA. Such contractual arrangements are, without limitation, to be provided in accordance with Applicable laws and in a manner consistent with good industry practice and the Service Requirements and their terms are subject

to the prior approval of LDA (such approval not to be unreasonably withheld or delayed).

- 7.5 The Contractor shall indemnify and keep indemnified LDA in respect of any liability to third parties incurred by LDA arising in connection with such contractual arrangements or the provision of the Agency Supplies. This indemnity shall continue in force after termination or expiry of this Agreement.

## **8. SPORTS DEVELOPMENT**

- 8.1 GLL acknowledges the importance of Sports Development to the LDA. GLL will take all reasonable steps to continuously develop the Sports Development opportunities at the Centre.
- 8.2 Without prejudice to the generality of the above, with effect from the Extension Commencement Date and throughout the Contract Period the Contractor shall implement a sports development programme to deliver the agreed Sports Development Requirements set out in Part 2 of Schedule 3.
- 8.3 The Sports Development Programme shall be reviewed and updated on an annual basis in accordance with the provisions of Clause 9 below.
- 8.4 Without prejudice to Clauses 8.1 to 8.3, the LDA shall be entitled at any time throughout the Contract Period to elect that any area of the Centre that is not otherwise being used for the delivery of the required Services, can be used by the LDA for Sports Development initiatives. The LDA shall pay the direct costs of such use incurred by the Contractor net of any related income received by the Contractor in relation to the use of the Centre by the LDA pursuant to this Clause. The Contractor shall notify the LDA at the earliest opportunity of any cancellations of bookings so enable the LDA maximise its use of the Centre for Sports Development initiatives and in any event the Contractor shall provide to the LDA a copy of each months activity programme not less than seven days prior to the start of each calendar month highlighting any un used/ non programmed areas of the Centre which could potentially be used by the LDA for Sports Development. The LDA at its discretion, shall notify the Contractor wishes to use that area of the Centre or shall otherwise direct the Contractor to arrange for that area of the Centre to be used for Sports Development. If the LDA elect to use the Centre itself then it will give as much notice as reasonably practicable to the Contractor prior to using any area of the Centre for Sports Development initiatives and in any event where requiring the Contractors staff to be in attendance shall give not less than forty eight hours notice.

## **9. ANNUAL SERVICE PLAN**

- 9.1 At the earliest opportunity and in any event no later than 7 October in each Contract Year of the Contract Period, the LDA shall advise the Contractor of its objectives and priorities for the Services which will be applicable as of the commencement of the next Contract Year (or as from the Commencement Date in the first Contract Year).
- 9.2 At the earliest opportunity and in any event by no later than 7 January in each Contract Year throughout the Contract Period the Contractor shall submit to the LDA its Annual Service Plan reflecting the LDA's objectives and priorities for the next Contract Year as notified to the Contractor by LDA pursuant to Clause 9.1. The Annual Service Plan shall contain such information as specified by the LDA from time to time.
- 9.3 The parties shall agree each Annual Service Plan in accordance with the following procedure:

- 9.3.1 the LDA shall give due consideration to the draft Annual Service Plan and will alert the Contractor at the earliest opportunity if the same are not acceptable and/or whether any changes are required. The Contractor shall promptly deal with the LDA's comments (if any) and where relevant, amend and re-submit a revised draft Annual Service Plan; and
- 9.3.2 the parties shall meet as regularly as required to discuss and agree the Annual Service Plan with a view to agreeing the same for every relevant Service Year no later than the Commencement of the next Contract Year.
- 9.4 If the parties have not been able to agree the Annual Service Plan by the target date referred to in Clause 9.3.2 then either party may refer the matter to be resolved by the Dispute Resolution Procedure until such time the existing Annual Service Plan and Charges Schedule shall apply.

## **10. MONITORING AND REVIEW REGIME**

- 10.1 The LDA shall monitor the Contractor's performance of the Services in accordance with the monitoring regime set out in Schedule 4.
- 10.2 Without prejudice to the LDA's rights under Schedule 4, and to any other express rights under this Agreement, where the Contractor has been found to:
- 10.2.1 be fraudulent in the submission of monitoring reports or claims for payment under Schedule 4 in Clause 13; or
- 10.2.2 have submitted two (2) or more materially inaccurate monitoring reports, within a rolling three (3) month period,
- 10.2.3 the LDA may by notice to the Contractor increase the level of its monitoring of the Contractor, and/or (at the LDA's option), of the Contractor's monitoring of its own performance of its obligations under this Agreement in respect of the Services the subject of such fraudulent or materially inaccurate reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement.
- 10.3 If the LDA issues a notice under clause 10.2.1, the Contractor shall bear its own costs and indemnify and keep the LDA indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the LDA in relation to such increased level of monitoring arising due to circumstances under clause 10.2.1.
- 10.4 The Contractor acknowledges the LDA's duty to be accountable for the level and quality of Services provided by the Contractor pursuant to the terms of this Agreement and agrees that, in addition to the provision of information provided pursuant to clause 10.2, that throughout the Contract Period it shall:
- 10.4.1 ensure attendance of the Contractor's Representative at regular (not less than monthly) review meetings with the LDA;
- 10.4.2 ensure attendance of a senior executive of the Contractor at regular (not less than quarterly) review meetings with the LDA;
- 10.4.3 ensure attendance of the Contractor's Representative and such other representatives of the Contractor as appropriate at such meetings of the LDA and other service providers at the Centre as the Authority may require from time to time.

- 10.5 The Contractor shall provide such financial and performance and service improvement information as requested by the LDA prior to each review meeting referred to in clause 10.4 and as a minimum provide the information set out in Schedule 4.

## **11. STAFF, RECRUITMENT, SUPERVISION AND TRAINING**

- 11.1 The Contractor shall employ sufficient levels of appropriately qualified and experienced staff to carry out the Services in accordance with the Service Requirements and as otherwise specified herein and in accordance with the requirements of all relevant professional bodies and institutes.
- 11.2 Without prejudice to Clause 32 the Contractor shall comply with Equalities Legislation and ensure that any Sub-Contractors comply with such.
- 11.3 The Contractor's staff shall:
- 11.3.1 be courteous at all times to all staff, users of the Centre and other persons with whom their duties bring them into contact;
  - 11.3.2 be medically fit for the work that they are required to undertake;
  - 11.3.3 not be on duty if under the influence of alcohol or drugs or other debilitating substances.
- 11.4 The Contractor shall operate a proper staff management policy in accordance with the Service Specification to ensure that:
- 11.4.1 the recruitment process is thorough and ensures the right appointment and that all employees are appropriately trained and qualified to deliver a safe and enjoyable experience for customers;
  - 11.4.2 recruitment and training are implemented in accordance with an equal opportunities policy and legal requirements;
  - 11.4.3 there is appropriate screening of staff working with young children and other vulnerable persons;
  - 11.4.4 a staff development/appraisal scheme is implemented on at least an annual basis.
- 11.5 to the Contractor shall operate proper supervision and staff planning to ensure that:
- 11.5.1 adequate levels of supervision are defined for all activities and areas of service in relation to peak and off peak times;
  - 11.5.2 resources are allocated accordingly to meet the Service Requirements;
  - 11.5.3 staff are suitably competent, qualified and trained to perform their duties and deliver the service;
  - 11.5.4 the shift planning system ensures adequate cover for absences and is prepared and sufficiently in advance; and
- that adequate time is allocated for meetings, handovers, training and personal development of individuals and shifts comply with legal requirements – e.g. Health and Safety at Work Act 1974 and European Commission Working Time Directive 1999.

11.6 Where the Contractor wishes to sub-contract elements of the Services all staff employed by the sub-contractor shall be deemed to be employees of the Contractor for the purposes of delivery of the Services, and such sub-contracting shall not relieve the Contractor of any of its responsibilities to Client under the Contract.

#### 11.7 **Criminal Records Bureau**

11.7.1 Where required by law and in accordance with the Contractor's Criminal Records Policy, the Contractor shall procure that in respect of all potential staff or persons performing any of the Services (each a "Future Employee") before a Future Employee performs any of the Services:-

11.7.1.1 a Future Employee is questioned as to whether he or she has any convictions; and

11.7.1.2 the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each Future Employee; and

11.7.1.3 an assessment of the suitability of each Future Employee with a criminal record is carried out in respect of the position for which they are being considered; and

11.7.1.4 appropriate action is taken in relation to any Future Employee if any relevant convictions are revealed.

11.7.2 For the avoidance of doubt, the Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Records Bureau check, or who is subject to Convictions once appointed which disqualify that person from working with children or the vulnerable is employed or engaged in a position that involves or may involve contact with children and/or the vulnerable on a regular basis. For the purposes of this clause, "regular" shall be defined by reference to the legislation and/or relevant regulations in force from time to time.

#### 11.8 **Removal from the Centres**

Where LDA becomes concerned at the behaviour or performance of an individual employed in or about the execution of the Services he will inform the Contractor in writing of his concern in order that, where appropriate, action may be taken under the relevant disciplinary policy of the Contractor. Should an improvement not be forthcoming or should a single incident be considered by LDA to be so serious as to necessitate immediate removal LDA shall request the Contractor to remove the person from the Services. The Contractor shall take action in relation to LDA's request in accordance with the Contractor's disciplinary policy or otherwise as agreed with LDA.

### 12. **INVESTMENT**

12.1

12.2 A Provisionally Approved Investment Programme is set out at Schedule 11 (Investment Programme). Within 3 months of the Extension Commencement Date the Parties shall meet to discuss and agree the Investment Programme including timescales and procurement methodology. Once agreed between the Parties, the Contractor shall take all necessary steps and seek all relevant

consents and approvals to carry out and complete the Investment Programme in accordance with the agreed Investment Programme timetable.

- 12.3 The Contractor shall be fully responsible for the project management of the Investment Programme and any cost overruns shall be entirely at the Contractor's risk save so far as Clause 20 shall apply.

### **13. MANAGEMENT FEE**

- 13.1 LDA shall pay to the Contractor the Management Fee in accordance with Schedule 6.
- 13.2 The Management Fee shall be paid Monthly in advance.
- 13.3 The Management Fee for the first two Months immediately following the Extension Commencement Date shall (subject to Clause 13.5) be paid to the Contractor by the LDA upon the Extension Commencement Date.
- 13.4 The Contractor shall submit to the Authorised Officer an invoice for each Monthly instalment of the Management Fee (together with applicable VAT) no later than 10 days prior to each Month, save that, in relation to the first two Months immediately following the Extension Commencement Date, the Contractor shall submit invoices for the first two Months no later than two days prior to the Extension Commencement Date.
- 13.5 The LDA shall be entitled to offset from any amounts due to the Contractor pursuant to this Clause 13, any amounts otherwise due to the LDA by the Contractor or seek to recover any such amounts from the Contractor as a debt.

### **14. CHARGES**

- 14.1 The Contractor shall make charges to Customers for Agency Supplies (unless the Service Requirement specifically provides that the goods or services shall be provided at no charge to the Customer in accordance with the Pricing Schedule).
- 14.2 The Contractor shall not charge in excess of the maximum charges set out in the Pricing Schedule without the prior written consent of the LDA. The Pricing Schedule shall be reviewed on an annual basis as part of the Annual Service Plan review.
- 14.3 Without prejudice to its other obligations, the Contractor shall:
- 14.3.1 on a daily basis bank all receipts into its designated bank accounts used solely for the purposes of this Agreement, details of which will be supplied to LDA in the form specified by the Authorised Officer (including, but not limited to, bank statements);
- 14.3.2 invoice all debtors and issue credit notes (in each case in a form to be agreed with LDA);
- 14.3.3 be responsible for all debts and bear the cost of all debt collection functions;
- 14.3.4 issue a formal receipt (in a form agreed with LDA) for all cash sales and retain duplicates;
- 14.3.5 only write off debts with the prior written approval of the Authorised Officer and after every reasonable means has been used to obtain settlement, it being agreed that LDA shall provide such reasonable assistance as the Contractor reasonably requires (but not involving material expense);

- 14.3.6 retain such records as may be necessary for at least six years and make them available for inspection by HM Customs & Excise.

## **15. SURPLUS SHARE**

- 15.1 The Contractor shall submit to LDA within 28 days of the end of each Contract Year a notice setting out the Actual Income for the Contract Year, and identify the Surplus for such period, if any. The notice shall be accompanied by such supporting material as LDA reasonably requests, which shall include, without limitation, updated management accounts in the form required by the LDA. At the request of LDA, the Contractor shall also provide a report (addressed to LDA and the Contractor) from the Contractor's auditors confirming the relevant calculations and underlying figures.

- 15.2 LDA and the Contractor shall agree the Actual Income and Surplus for within 28 days of the submission of the notice. If the parties fail to agree the amount of Actual Income, then the report of the auditors shall be promptly provided (in any event within 28 days and if the parties still fail to agree) it may be determined by reference of any party to the dispute procedure as referred to in Clause 47 (Disputes).

- 15.3 If following such agreement or determination there is a Surplus:

- 15.3.1 the Contractor shall be entitled to retain the Contractor's Surplus Share (as a performance bonus for the provision of the Services and as an additional part of the Management Fee in respect of the provision of the Services) in the percentage identified in Schedule 7; and

- 15.3.2 LDA shall be entitled to retain the LDA's Surplus Share by way of an adjustment to the Management Fee (and the Contractor shall raise an appropriate credit note in respect of this amount and pay such sum directly to LDA within 14 days of the LDA's written request) in the percentage identified in Schedule 7;

each payment referred to above shall be by way of adjustment to the Management Fee and shall be made in accordance with Clause 13.1.

## **16. RECOVERY OF SUMS DUE**

In the event of any failure by any Party to pay any other Party any sum due under these clauses (including, without limitation, the payment of any Surplus), interest shall be payable upon any such sum due from the time it became due for payment in accordance with the provisions of this Agreement at a rate per annum equivalent to three per cent above the base lending rate announced by the Bank of England which is current on the date upon which such sum first became due. Such interest shall accrue daily before and after any judgment and shall from time to time be compounded Monthly on the amount overdue until payment thereof.

## **17. VALUE ADDED TAX**

- 17.1 The Management Fee and any other sums payable under this Agreement are exclusive of any Value Added Tax ("VAT") which may be chargeable under the Value Added Tax Act 1994 (the "Act") on the supply by the Contractor of the Services.

- 17.2 Provided that the Contractor shall have provided LDA with a VAT invoice which complies with the Act LDA shall pay to the Contractor in accordance with the terms of this Agreement any VAT properly chargeable on the supply by the Contractor of the Services.



17.3 The Contractor shall pay to LDA a sum equal to the amount of any VAT properly chargeable by the Contractor on behalf of LDA within 7 days of the end of each month.

17.4 The Contractor shall in respect of all goods and services supplied to him in order to perform the Services act in his own name and treat the supply as a supply to the Contractor.

## **18. VARIATIONS**

### **18.1 LDA Variations**

18.1.1 The parties acknowledge the need to continuously review the Services to ensure these remain fit for purpose for the needs of the local community and most importantly LDA's aspirations for encouraging participation in healthy recreation.

18.1.2 Without prejudice to Clause 18.1.3, in the event that the LDA seeks to vary the Services in any way, the Contractor shall use all reasonable steps to accommodate that variation within existing operational budgets without requiring an increase in the Management Fee payable by the LDA.

18.1.3 Subject to Clause 18.1.3, if the LDA requires a Variation (including a Variation to take account of any Qualifying Change of Law or the closure of elements of the Centre in whole or in part), it must serve a Notice of Variation on the Contractor. LDA shall not propose a Variation that:

18.1.3.1 requires the Services to be performed in a way that infringes any law; and/or

18.1.3.2 would, if implemented, result in a change in the underlying nature of the Services save that LDA may propose a Variation reducing the Services provided or removing aspects of the Services in whole or in part; and/or

18.1.3.3 (subject to the reduction(s) referred to in (b) above) would materially and adversely affect the Contractor's ability to perform the Services (save that LDA may propose a Variation from time to time requiring the Contractor to make the Centre available for certain specified events).

18.1.4 Any Notice of Variation shall:

18.1.4.1 set out the Variation required in reasonable detail, for example setting out the relevant part of the Service(s) to be suspended or ceased, or the relevant part of the Centre to be closed (and for what period);

18.1.4.2 require the Contractor:

18.1.4.2.1 to provide LDA within 14 days (or such other reasonable period of time as the parties shall agree) of receipt of the Notice of Variation with a calculated estimate of the impact of the proposed Variation on the Income and Expenditure and consequent impact, if any, on the Management Fee "; or

18.1.4.2.2 to implement the relevant Variation within a specified period of time.

18.1.5 Where the Notice of Variation requires a change in the Services which results in a reduced level of Services and/or the closure of any part of the Centre, the relevant Variation shall, at the discretion of LDA, be implemented in accordance with the timetable presented by LDA pursuant to Clause 18.1.4 above, and it

shall be a Compensating Event and an Excusing Event, to the extent that the provisions of Clauses 18.1.6 to 18.1.12 are not followed. LDA may however elect to follow the procedures outlined in such Clauses 18.1.6 to 18.1.12 in these circumstances, and shall in any event follow those procedures where a Variation requires extra services to be provided by the Contractor.

- 18.1.6 Subject to Clause 18.1.5 as soon as practicable and in any event within 14 days (or such other reasonable period of time as the parties shall agree) after having received the Notice of Variation, the Contractor shall deliver to LDA the Estimate. The Estimate shall include the opinion of the Contractor on:
- 18.1.6.1 whether relief from compliance with obligations is required, including the obligations of the Contractor to meet the performance standards contained in the Agreement during the implementation of the Variation;
  - 18.1.6.2 any material impact on the provision of the Services;
  - 18.1.6.3 any amendment required to this Agreement as a result of the Variation;
  - 18.1.6.4 any estimated change in Management Fee required on any change in Expenditure affecting the Fixed Costs and/or any change in likely Income which would result from the Variation (pursuant to the Estimate);
  - 18.1.6.5 demonstrate how the Contractor has taken all reasonable steps to accommodate any change proposed by the LDA within existing operational budgets (taking into account, inter alia, any net income arising from the proposed variation) and to mitigate any potential increase in relation to the Management Fee payable by the LDA.
- 18.1.7 As soon as practicable after LDA receives the Estimate and at least within 7 days of receipt of the Estimate, the parties shall discuss in good faith and use all reasonable efforts to agree the issues set out in the Estimate, and the Contractor shall be required as part of the discussions to:
- 18.1.7.1 provide evidence that the Contractor has used reasonable endeavours (including the use of competitive quotes) to and to oblige its sub-contractors (if any) to minimise any increase in costs;
  - 18.1.7.2 demonstrate that the relevant Variations will be implemented in the most cost effective manner; and
  - 18.1.7.3 demonstrate that any expenditure that would be avoided, which was anticipated to be incurred, by Variation concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 18.1.6.4.
- 18.1.8 In such discussions LDA may modify the Notice of Variation, in which case the Contractor shall, as soon as practicable, and in any event not more than 14 days (or such other reasonable period of time as the parties shall agree) after receipt of such modification, notify LDA of any consequential changes to the Estimate.
- 18.1.9 If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with Clause 47 (Dispute).
- 18.1.10 After the contents of the Estimate have been agreed or otherwise determined pursuant to Clause 47 (Dispute), LDA shall:

- 18.1.10.1 confirm in writing the Estimate (as modified); or
- 18.1.10.2 withdraw the Notice of Variation.
- 18.1.11 If LDA does not confirm in writing the Estimate (as modified) within 30 days (or such other reasonable period of time as the parties shall agree) of the contents of the Estimate having been agreed in accordance with this Clause 18 above or determined pursuant to Clause 18.1.9 above, then the Notice of Variation shall be deemed to have been withdrawn.
- 18.1.12 In the event that the Estimate has been confirmed by LDA, then the adjustment to the Management Fee (and other amounts) shall be as detailed in the agreed Estimate and the Services shall thereafter be performed in accordance with the Variation Notice.
- 18.2 **CHP Interface**
  - 18.2.1 The Contractor acknowledges that during the Contract Period, the LDA shall be entering into the CHP Contracts with the CHP Contractor. Upon the appointment of the CHP Contractor and the entering into of the Design and Build Contract by the LDA with the CHP Contractor the LDA shall issue a LDA Notice of Variation pursuant to Clause 18.2.
  - 18.2.2 Upon receipt of the Notice of Variation then the provisions of Clauses 18.2.3 to 18.2.12 shall apply.
  - 18.2.3 Without prejudice to Clause 18.2.2, upon receipt of the Notice of Variation the following additional provisions of clause 18.2.3 shall apply.
  - 18.2.4 The Contractor, with the purpose of enabling the CHP Contractor to fully and effectively perform and discharge all of its obligations pursuant to the CHP Contracts, shall take all reasonable steps to interface and co-operate with the CHP Contractor, such steps shall include but not be limited to:
    - 18.2.4.1 permitting access to the Centre by the CHP Contractor and any of its agents, sub-contractors and employees to allow the CHP Contractor to perform its obligations pursuant to the CHP Contracts;
    - 18.2.4.2 informing the CHP Contractor and the LDA in writing immediately upon becoming aware of any performance failures in relation to the CHP Services;
    - 18.2.4.3 immediately informing the LDA and CHP Contractor that it becomes aware of any circumstance which will or could impact on the provision of the CHP Services by the CHP Contractor to the extent that it will or could result in a delay to the provision of the CHP Services;
    - 18.2.4.4 ensuring the provision of utilities (being gas, electricity, water, steam or other fuel or substance which is used to provide energy and/or heat to or is otherwise used in the Energy Centre) to the Energy Centre at all times for the duration of the CHP Contracts at the levels requested for the effective and efficient operation of the Energy Centre;
    - 18.2.4.5 carrying out its obligations under this Agreement (except in the cast of an emergency) without disruption to the CHP Contractor, its performance of the CHP Services and the general day to day operation of the Energy Centre;

- 18.2.4.6 working collaboratively with the CHP Contractor with the continuing objective that the Services shall be delivered without interruption and without interruption to the CHP Services;
  - 18.2.4.7 co-operating with the CHP Contractor in relation to the planning and execution of the Services and the CHP Services so as not to obstruct the performance of the Services and/or the CHP Services; and.
  - 18.2.4.8 responding promptly to any notification by the CHP Contractor or any other person to any notification of any failure in the CHP Services including the delivery of the Outputs and/or the achievement of any Service Levels contained in the CHP Contracts.
- 18.2.5 The Contractor shall ensure that it does not:
- 18.2.5.1 prohibit or hinder in any way the CHP Contractor from performing its obligations pursuant to the CHP Contracts;
  - 18.2.5.2 do anything to cause the LDA and/or the CHP Contractor to be in breach of the CHP Contracts;
  - 18.2.5.3 request that the CHP Contractor operates the Energy Centre for any purpose other than for which the Energy Centre was operated as at the date of this Agreement without the prior written consent of the LDA;
  - 18.2.5.4 act in a manner which could endanger the health and safety of the CHP Contractor, its agents, employees or sub-contractors or the public;
  - 18.2.5.5 carry out any activities in or which affect the operation of the Energy Centre and/or the provision of the CHP Services without the prior written consent of the LDA; or
  - 18.2.5.6 make any alterations, additions or changes to or interfere in any way with any of the plant or equipment in the Energy Centre without the LDA's prior written consent.
- 18.2.6 The Contractor shall perform and carry out its obligations under this Agreement at all times in order to:
- 18.2.6.1 work collaboratively with the CHP Contractor;
  - 18.2.6.2 minimise disruption for the LDA, the public and third parties including arising from the provision of and/or any failure to deliver the Services and CHP Services;
  - 18.2.6.3 maintain the highest standards achievable with regard to the provision of the Services; and
  - 18.2.6.4 minimise and give best advance notice to the CHP Contractor and to the LDA of any interruption to the Services and the CHP Services caused by any maintenance (planned or unplanned) or emergency.
- 18.2.7 The Contractor shall have regular (not less than monthly meetings with the CHP Contractor) to ensure the interface between the Contractor and the CHP Contractor is working effectively. The Contractor shall notify the LDA at the earliest opportunity of any issues arising or emerging in connection with the performance of the CHP Services and any interface issues emerging as between the Contractor and the CHP Contractor.

- 18.2.8 For the avoidance of doubt, the provisions of this Agreement and specifically the Contractor's maintenance obligations shall remain in full force and effect, save where expressly amended by the LDA pursuant to the provisions of this Clause 18.
- 18.2.9 The Contractor shall indemnify the LDA against all losses suffered by the LDA as a result of any claim brought by the CHP Contractor against the LDA arising from an act or omission of the Contractor.
- 18.2.10 For avoidance of doubt the LDA shall grant the CHP Contractor a personal licence to use the Energy Centre for the duration of the CHP Contracts for the purpose of performing the CHP Services (not otherwise). This right will not be an exclusive right but will be a right in common with the Contractor and any other person permitted to use or access the Energy Centre and the Centre by or on behalf of the LDA, the Contractor or who is otherwise lawfully entitled to do so.
- 18.2.11 The Contractor shall for the duration of the CHP Contracts provide the CHP Contractor with such access to the Centre as it requires in order to perform the CHP Services and the LDA shall use its reasonable endeavours to ensure that the CHP Contractor shall, during any period when they have access to the Centre comply with all rules and regulations applicable to working in the Centre for the safety of persons and convenience of the public.
- 18.2.12 The Contractor shall procure that none of its employees, agents or sub-contractors shall carry out any activities in the Energy Centre or at the Centre which may result in any interruption to, or which may disrupt or delay the performance by the CHP Contractor of the CHP Services.
- 18.2.13 Without prejudice to any other provision in this Agreement in respect of the Contractor's obligations in connection with health and safety matters the Contractor shall liaise with the CHP Contractor to ensure the effective co-ordination of health and safety issues at the Centre to the extent that they relate to the Energy Centre and/or the performance of the CHP Services.
- 18.2.14 In the event of any unplanned works or activities to be carried out by the Contractor which will or may affect the Energy Centre and/or the provision of the CHP Services by the CHP Contractor, the Contractor shall:
- 18.2.14.1 notify the LDA and the CHP Contractor as soon as possible of the nature of such works or activities and the likely disruption or restriction to the Energy Centre and/or the CHP Services; and
- 18.2.14.2 take all such steps as are reasonably practicable to minimise the adverse consequences of such works and activities on the CHP Contractor and its provision of the CHP Services.
- 18.2.15 The CHP Contractor shall have the right to enforce the provisions of this clause 18.2 of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999. Except as stated in this clause 18.2 in accordance with clause 47 the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who are not a party to it.
- 18.2.16 The Contractor acknowledges that it has received and reviewed copies of the CHP Contracts, that the Contractor is aware of the terms of the CHP Contracts and that any breach of this Agreement by the Contractor may obstruct or delay the performance of the CHP Services.
- 18.2.17

### 18.3 Contractor Variations

- 18.3.1 If the Contractor wishes to introduce a Variation (including a Variation to take account of any Qualifying Change of Law), it must serve a Contractor Notice of Variation on LDA.
- 18.3.2 The proposed variation must not be such so as to require the Services to be performed in a way that is materially different from the manner in which the Services are performed as at the Commencement Date or infringes any law or is inconsistent with good industry practice or require an adjustment to the Management Fee Management Fee in respect of the immediately preceding Quarter. The Contractor Notice of Variation must:
- 18.3.2.1 set out the proposed variation in Service in sufficient detail to enable LDA to evaluate it in full;
  - 18.3.2.2 specify the Contractor's reasons for proposing the Variation;
  - 18.3.2.3 request LDA to consult with the Contractor with a view to deciding whether to agree to the variation in Service and, if so, what consequential variations LDA requires as a result;
  - 18.3.2.4 indicate any implications of the variation in Service;
  - 18.3.2.5 indicate, in particular, whether a change to the Management Fee is proposed (and, if so, give a detailed cost estimate and justification of such proposed change by reference to the impact on Income likely to be caused by the Variation);
  - 18.3.2.6 demonstrate how the Contractor has taken all reasonable steps to accommodate any change proposed by the LDA within existing operational budgets (taking into account, inter alia, any net income arising from the proposed variation) and to mitigate any potential increase in relation to the Management Fee payable by the LDA; and
  - 18.3.2.7 indicate if there are any dates by which a decision by LDA is critical.
- 18.3.3 The LDA shall evaluate the Contractor's proposed variation in Service in good faith, taking into account all relevant issues, including whether:
- 18.3.3.1 a change in the Management Fee will occur;
  - 18.3.3.2 the Variation affects the quality of the Service or the likelihood of successful delivery of the Service;
  - 18.3.3.3 the Variation will interfere with the relationship of LDA with third parties;
  - 18.3.3.4 the financial strength of the Contractor is sufficient to perform the Variation in Service;
  - 18.3.3.5 the Variation materially affects the risks or costs to which LDA is exposed.
- 18.3.4 As soon as practicable after receiving the Contractor Notice of Variation, the parties shall meet and discuss the matter referred to in it. During their discussions LDA may propose modifications or accept or reject the Contractor Notice of Variation at its discretion.

- 18.3.5 If LDA accepts the Contractor Notice of Variation (with or without modification), the relevant Variation shall be implemented within 7 days of LDA's acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement which are necessary to give effect to the Variation.
- 18.3.6 LDA may, subject to Clause 18.1.10 reject the Contractor Notice of Variation at its discretion.
- 18.3.7 Unless LDA's acceptance specifically agrees to an increase in the Management Fee, there shall be no increase in the Management Fee as a result of a variation in Service proposed by the Contractor.
- 18.3.8 LDA cannot reject a Variation that is required in order to conform to a Change in Law, provided that without prejudice to any other provisions the Contractor shall use its best efforts to minimise the cost of any such Variation and to manage its implementation in a way which has least impact on the provision of the Services and (notwithstanding the other provisions of this Clause 18) the Contractor may only increase the Management Fee where there is a Qualifying Change in Law. In addition, where such Variation is required, LDA shall be given the opportunity to require reasonable changes in the Services to mitigate its effect. The costs of introducing a Variation resulting from a Qualifying Change in Law (including any resulting variation in the Management Fee) shall, unless agreed otherwise, be dealt with in accordance with this Clause 18.
- 18.3.9 Without prejudice to the generality of this Clause 18, it is acknowledged that where the requested Variation is limited to a one off purchase of equipment or plant the Parties may agree in writing that a one off payment will be made by LDA to the Contractor and no adjustment to the Management Fee will be made.

## **19. CAPITAL WORKS**

- 19.1 Notwithstanding any other provisions of this Agreement:
- 19.1.1 LDA may from time to time procure and conduct Capital Works in relation to the Centre and determine the appropriate procurement methodology; and
- 19.1.2 the Contractor shall fully co-operate with and grant LDA or its nominated third party contractors access to the Centre for the purpose of carrying out any works pursuant to Clause 19.1.1.
- 19.2 Works carried out pursuant to Clause 19.1.1 shall be notified to the Contractor in writing setting out the details of the relevant work programme and giving reasonable notice which shall be no less than 2 months (save in the event of emergency).
- 19.3 To the extent that such works necessitate a change in or suspension of any element of the Services or closure of the whole or any part of the Centre, such change or closure shall be effected by the Contractor within the timescales proposed by LDA as a LDA Variation and shall to the extent not dealt with pursuant to Clause 18.1 be deemed to constitute a Compensation Event and an Excusing Cause.

## **20. EXCUSING CAUSES**

- 20.1 Without prejudice to LDA's rights pursuant to Clause 4.2 if an Excusing Cause causes a failure of, the performance of the Services then to the extent such failure arises as a result of such Excusing Cause:

- 20.1.1 such failure by the Contractor to perform any affected part of the Services shall not constitute a Contractor Default or breach of the provisions of this Agreement by the Contractor nor shall it constitute an act, omission or negligent act on the part of the Contractor nor shall it enable LDA to serve a Default Notice; and
- 20.1.2 LDA shall not be entitled to exercise its rights to terminate this Agreement under Clause 24 (Termination) in connection with such failure; and
- 20.1.3 such failure shall be taken account of in measuring the performance of any affected Service in accordance with the Agreement (including without limitation the Service Requirements and QUEST), which shall be applied as though the relevant Service or other obligation had been performed

so that the Contractor shall be entitled to payment under this Agreement as if there had been no failure to perform its obligations, provided that the Contractor has used its best endeavours to mitigate and avoid the impact of any Excusing Cause, and has immediately notified to LDA of the occurrence of such Excusing Cause and PROVIDED THAT to the extent that such Excusing Cause has been addressed by any agreement between the parties, including any Variation, it shall apply and shall not constitute an Excusing Cause.

## **21. COMPENSATION EVENTS**

21.1 If as a result of the occurrence of a Compensation Event:

- 21.1.1 the Contractor incurs additional Expenditure over and above that expected to be incurred; or
- 21.1.2 the Contractor loses or is prevented from receiving or being entitled to receive Income in respect of the provision of the Services which if reasonably expected to receive (hereafter 'loss of revenue')

such that in either case at the end of the relevant Contract Year, the Contractor is unable to achieve its Target Income or its Expenditure exceeds the Fixed Cost for the relevant period the Contractor shall be entitled to claim compensation from LDA in accordance with this Clause provided that the Contractor has used its best endeavours to mitigate such costs and losses and that the Contractor can prove it has suffered to the reasonable satisfaction of LDA, up to the amounts set out in this Clause 21.1, save to the extent the parties have agreed changes to the relevant payments, for example pursuant to Clauses 18.1.6 to 18.1.12.

21.2 To claim compensation the Contractor must:

- 21.2.1 as soon as reasonably practicable and in any event within 7 days after it became aware that a Compensation Event has occurred, give to LDA a notice of its claim for compensation;
- 21.2.2 within 14 days of receipt by LDA of the notice referred to in Clause 21.2.1 above, give full details of the Compensation Event and likely loss claimed; and
- 21.2.3 within 28 days of the end of the relevant period demonstrate to the reasonable satisfaction of LDA that:
- 21.2.4 the Compensation Event was the direct cause of its Expenditure exceeding the Fixed Costs or its failure to achieve the Target Income; and
- 21.2.5 that the Contractor has used its best endeavours to mitigate the loss it has suffered or that the relief from the obligations under this Agreement could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.



- 21.3 In the event that the Contractor has complied with its obligations under Clause 21.2 above, then LDA shall compensate the Contractor, subject to the provision of Clauses 21.1 and 21.5 to the extent that in the relevant period the Expenditure exceeds the Fixed Costs or the Actual Income is less than the Target Income as a result of the Compensation Event.
- 21.4 If LDA and the Contractor cannot agree the extent of any compensation, relief from the Contractor's obligations under this Agreement, or LDA disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause, LDA and the Contractor shall resolve the matter in accordance with Clause 47 (Disputes).
- 21.5 Any payment of compensation referred to in this clause:
- 21.5.1 shall relate to unavoidable direct losses or added costs which the Contractor has used its best endeavours to mitigate that the Contractor can prove it has suffered as a result of the Compensation Event to the reasonable satisfaction of LDA; and
- 21.5.2 shall be calculated so as to put the Contractor in no better and no worse a position than if the Compensation Event in question had not occurred on assumption that no more than the Target Income would have been achieved in the relevant period; and
- 21.5.3 subject to Clause 21.4, shall be effected by way of an adjustment to the Management Fee; and
- 21.5.4 shall not exceed a sum equal to the Management Fee payable in respect of the immediately preceding Quarter in respect of any one incident or any series of related incidents.
- 21.6 Any payment made by LDA to the Contractor in accordance with this Clause 21 shall constitute the sole and exclusive remedy of the Contractor and the sole and exclusive liability of LDA in connection with the relevant Compensation Event.

## **22. DEFAULT IN PERFORMANCE AND REMEDIAL PROCESS**

### **22.1 Remedial Process**

- 22.1.1 The Contractor shall promptly at the request of LDA, and without prejudice to its other obligations and the rights of LDA in respect thereof follow a Remedial Process wherever:
- 22.1.1.1 service performance entails a deduction from the management fee as set out in schedule 6;
- 22.1.1.2 the Contractor fails to manage the Centre in accordance with QUEST; and/or
- 22.1.1.3 there is any other material default by the Contractor to meet any element of the Service Requirements; and/or
- 22.1.1.4 LDA and the Contractor agree in their absolute discretion that an Action Plan is required to improve the performance of the Contractor (but a failure to agree this is not subject to Clause 47 (Disputes).
- 22.1.2 In implementing the Remedial Process the Contractor shall promptly:
- 22.1.2.1 undertake monitoring and research to identify the cause of the event requiring the Remedial Process as set out in Clause 22.2.1 ("the **Action Plan Event**"); and

- 22.1.2.2 make itself available to meet with LDA within 3 working days of a request for a meeting by LDA at which meeting LDA and the Contractor will agree what action is required (which shall include production of an **Action Plan**). In default of agreement LDA may require the Contractor to produce an Action Plan in accordance with Clause 22.2.1;
- 22.1.2.3 prepare and submit to the LDA an Action Plan as soon as possible and at least within 3 days of any request to provide an Action Plan.

## 22.2 **Action Plan**

### 22.2.1 An Action Plan shall:

- 22.2.1.1 contain an analysis by the Contractor of the reasons why the Action Plan Event occurred;
- 22.2.1.2 set out what steps the Contractor proposes to take to avoid a recurrence of the Action Plan Event;
- 22.2.1.3 set out what additional resources (if any) the Contractor proposes to employ to avoid a recurrence of the Action Plan Event;
- 22.2.1.4 where relevant a proposed period for remedy;

22.2.2 LDA shall decide within 5 days of the receipt of an Action Plan whether to accept or reject it and shall communicate such decision with brief reasons to the Contractor as soon as practicable thereafter.

22.2.3 LDA may propose amendments to the Action Plan proposed by the Contractor. The Contractor shall not unreasonably refuse to incorporate any amendments suggested by LDA.

22.2.4 If LDA rejects an Action Plan proposed by the Contractor, LDA shall give reasons. In these circumstances the Contractor shall within a further 3 days propose a revised Action Plan taking account of the LDA's reason for rejection and any amendments proposed by LDA. LDA may not unreasonably reject an Action Plan proposed by the Contractor. The Contractor shall implement the Action Plan as agreed by LDA.

22.2.5 The LDA shall monitor the Contractor's compliance with an Action Plan as part of the monthly monitoring meetings.

22.2.6 If the same Action Plan Event occurs or is not remedied within the agreed period or recurs without prejudice to its other rights hereunder, the LDA may serve a Warning Notice under Clause 22.3.1.

## 22.3 **Warning Notices**

22.3.1 Pursuant to 22.2.6 the LDA may if the Contractor is in breach of any of its material obligations under this Agreement or the provisions of Clause 22.2.6 apply LDA may, without prejudice to its other rights hereunder, serve a notice ("**Warning Notice**") on the Contractor:

- 22.3.1.1 specifying that it is a Warning Notice;
- 22.3.1.2 giving reasonable details of the breach; and
- 22.3.1.3 stating that if such a breach recurs or is not remedied within the agreed period for remedy LDA may terminate this Agreement.

## 22.4 Final Warning Notice

22.4.1 If, following service of a Warning Notice, the breach specified has continued or recurred after the date of service of such Warning Notice LDA may (without prejudice to its other rights) serve another notice ("**Final Warning Notice**") on the Contractor:

22.4.1.1 specifying that it is a Final Warning Notice;

22.4.1.2 stating that the breach specified has been the subject of a Warning Notice; and

22.4.1.3 stating that if such failure continues or recurs after the date of service of the Final Warning Notice, LDA may serve on the Contractor a Default Notice.

## 22.5 Default Notices

22.5.1 LDA shall be entitled to serve a Default Notice if:

22.5.1.1 the Contractor fails to prepare an Action Plan in accordance with Clauses 22.1.2.3 and 22.2.1 or to implement an action plan in accordance with Clause 21.2.4;

22.5.1.2 the Contractor has failed to monitor the Action Plan Event in accordance with Clause 22.1.2.1; or

22.5.1.3 the Contractor allows a breach specified in a Warning Notice served under Clause 22.3.1 to continue or recur after the date of service of the Final Warning Notice;

22.5.1.4 the Contractor is in material breach of any of its material obligations under this Agreement and where such breach, if capable of remedy, has not been remedied in accordance with this Clause 22 or if incapable of remedy, LDA (acting reasonably) is of the opinion that the rights or interests of LDA under this Agreement are materially and adversely affected.

22.5.2 The right to serve a Default Notice is in addition to any other right under this Agreement.

## 23. STEP-IN RIGHTS

23.1 Notwithstanding any other provisions of this Agreement, LDA may in accordance with Clause 23.2 and 23.3 exercise a right of step-in if in respect of any part or aspect of the Services there is a failure to provide the Services in accordance with Applicable Laws or the Service Requirements including the Service Level Requirements (including, without limitation, a failure that arises as a result of a Force Majeure event). The exercise of LDA's right of step-in shall not prejudice any other rights of either party under this Agreement.

23.2 If LDA wishes to exercise its right of step-in, LDA shall serve a notice on the Contractor:

23.2.1 containing details of the circumstances giving rise to such right pursuant to Clause 23.1 (a "**Step-in Notice**"); and

23.2.2 confirming that it intends to exercise its right of step-in.

- 23.3 In exercising its right of step-in in accordance with Clause 23.1 LDA may use any Contractor Equipment and may itself provide, or may employ a third party supplier to provide the Services or any part of the Services. The Contractor shall co-operate fully with and provide all reasonable assistance to LDA and any third party supplier engaged by LDA to enable the resumption of the Services to a level which meets the Service Requirements (including the Service Level Requirements).
- 23.4 If LDA exercises its rights under Clause 23.1:
- 23.4.1 LDA shall not be obliged to pay or make any payments in respect of such period, (whether by way of the Management Fee or otherwise) to the Contractor in so far as LDA or any third party is providing the Services for the period in which LDA has exercised its rights;
- 23.4.2 LDA shall at all times discuss the exercise of its step-in rights with the Contractor with a view to achieving resumption of the Services to the appropriate standard in an efficient and timely way as possible.

## **24. TERMINATION**

### **24.1 Termination due to Contractor Default**

- 24.1.1 If any Contractor Default occurs LDA may without prejudice to its rights in damages serve notice on the Contractor (a "**Termination Notice**") specifying the type and nature of Contractor Default that has occurred, giving reasonable details and stating that this Agreement will subject to Clause 24.1.2 be terminated with immediate effect.
- 24.1.2 Where the Contractor Default occurs in relation to limb (c) of the definition of "Contractor Default" as set out in Clause 1 hereof, LDA may (without prejudice to its rights in damages) terminate this Agreement upon such notice as it deems appropriate, at the expiry of which notice this Agreement shall terminate.

### **24.2 Termination on Corrupt Gifts and Fraud**

- 24.2.1 The Contractor warrants that in entering the Agreement it has not committed any Prohibited Act.
- 24.2.2 If the Contractor or the subcontractor (or anyone employed by or acting on behalf of any of them), or any of its or their agents commits any Prohibited Act, then LDA shall be entitled to act in accordance with Clauses 24.2.3 to 24.2.7.
- 24.2.3 If a Prohibited Act is committed by the Contractor or by an employee not acting independently (acting either under the authority of or with the knowledge of a director of the Contractor) of the Contractor, then LDA may terminate this Agreement by giving notice as it deems appropriate to the Contractor.
- 24.2.4 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then LDA may terminate this Agreement by giving such notice as it deems appropriate to the Contractor.
- 24.2.5 If the Prohibited Act is committed by any subcontractor, then LDA may terminate this Agreement by giving such notice as it deems appropriate to the Contractor.
- 24.2.6 If the Prohibited Act is committed by an employee of a subcontractor acting independently of that subcontractor then LDA may terminate this Agreement by giving such notice as it deems appropriate to the Contractor.

- 24.2.7 If the Prohibited Act is committed by any other person, then LDA may terminate this Agreement by giving such notice as it deems appropriate to the Contractor.
- 24.2.8 Any notice of termination under this Clause shall specify:
- 24.2.8.1 the nature of the Prohibited Act;
  - 24.2.8.2 the identity of the party whom LDA believes has committed the Prohibited Act; and
  - 24.2.8.3 the date on which the Agreement will terminate, in accordance with the applicable provision of this Clause.
- 24.3 Termination due to Force Majeure**
- 24.3.1 Neither LDA nor the Contractor shall be entitled to bring a claim for a breach of obligations under the Agreement by the other or incur any liability to the other for any losses or damages incurred by the other to the extent that a Force Majeure Event occurs that is beyond the control of the other and such party is prevented from carrying out obligations by that Force Majeure Event, provided that the provisions of Clause 23.1 shall apply where the performance of the Contractor is affected.
- 24.3.2 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.
- 24.3.3 As soon as practicable following such notification, LDA and the Contractor 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 the Agreement.
- 24.3.4 If no such terms are agreed on or before the date falling sixty (60) 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 or is likely to be unable to comply with its obligations under this Agreement for a period of more than ninety (90) days, then, subject to Clause 24.2.3 below, either LDA or the Contractor may terminate the Agreement by giving thirty (30) days' written notice to the other.
- 24.3.5 If the Contractor gives notice to LDA under Clause 24.3.4 above that it wishes to terminate the Agreement, then LDA has the option either to accept such notice or to respond in writing on or before the date falling ten (10) days after the date of its receipt stating that it requires the Agreement to continue. If LDA gives the Contractor such notice, then LDA shall pay to the Contractor the Management Fee as if the Services were being fully provided.
- 24.3.6 LDA and the Contractor shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with industry good practice (but not thereby requiring the Contractor to incur material expenditure) to overcome or minimise the consequences of the Force Majeure Event.
- 24.3.7 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

the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

#### **24.4 Termination due to LDA Default**

24.4.1 If a material LDA Default has occurred and the Contractor wishes to terminate the Contract, it may serve a termination notice on the LDA.

24.4.2 The termination notice must specify the type of LDA Default which has occurred entitling the Contractor to terminate.

24.4.3 The Agreement will terminate on the day falling forty (40) days after the date the LDA receives the termination notice, unless the LDA rectifies the LDA Default within thirty (30) days of receipt of the termination notice.

#### **24.5 Voluntary Termination by LDA at the Break Point**

24.5.1 LDA may at any time terminate the Agreement at a Contract Break Point in accordance with Clause 4.2.

### **25. CONSEQUENCES OF TERMINATION**

#### **25.1 Compensation**

25.1.1 If the Agreement is terminated under Clause 24.3.1 (Termination due to Force Majeure), 24.4.1 (Termination due to LDA Default) (or 24.5.1 (Voluntary Termination by LDA on Break Point) compensation will be payable by LDA in accordance with Schedule 9 (Compensation on Termination).

#### **25.2 Surviving Rights**

25.2.1 Termination or expiration of the Agreement shall be without prejudice to the respective rights and remedies of the Contractor and LDA, as may have accrued before such termination or expiration, and nothing in the Agreement shall prejudice the right of either such party to recover any amount outstanding at the termination or expiration, always subject to the provisions of Clause 27. Termination or expiry shall not affect the enforceability of any terms which are intended to continue in effect after that time, including, without limitation all indemnities given in favour of the LDA which shall survive termination or expiry of this Agreement.

### **26. EXIT AND HANDOVER ARRANGEMENTS**

#### **26.1 Handover by Contractor**

26.1.1 Upon termination or expiry of this Agreement, the Centre shall be left in no worse condition than as at the Commencement Date (if LDA has itself or through an agent or subcontractor carried out any Capital Works above the Maintenance Threshold or where the Contractor has carried out any Improvements or works as part of the Services, in an improved condition consistent with such works or Improvements) subject in all cases to fair wear and tear.

26.1.2 The parties shall co-operate with each other in relation to the termination or expiry of this Agreement in order so far as is reasonably practicable to minimise the overall costs of the process and the impact on their respective business. In relation to such termination or expiry the Contractor shall co-operate with any third party providing services in connection with the Centre including any replacement contractor providing services similar to the Services on the termination or expiry of these arrangements. Such cooperation shall include, without limitation:

- 26.1.2.1 supplying copies (or where appropriate originals) in hard or electronic form (in the latter case in a format reasonably requested by LDA) of all documents reasonably requested, including details of outstanding agreements and debts;
- 26.1.2.2 enabling the transfer of any licences to LDA or its nominee without delay.
- 26.1.2.3 If LDA or any relevant authority wishes to conduct a procurement process for the purpose of entering into a future contract for the operation of the Centre the Contractor, without prejudice to its other obligations give all reasonable co-operation to the relevant authority or LDA as the case may be including by:
  - 26.1.2.3.1 providing any information reasonably requested in connection with such process; and
  - 26.1.2.3.2 providing all participating in the process with access to the Centre
- 26.1.3 it is further agreed that LDA may share information relating to its Agreement with each other and with their respective government departments.
- 26.2 **Exit Strategy**
  - 26.2.1 Prior to the Extension Commencement Date (and to the extent applicable) the Contractor shall produce for approval by LDA (such approval not be unreasonably withheld or delayed) an exit strategy to ensure that upon termination or expiry of this Agreement for whatever reason there is a seamless transition of responsibility for the delivery of Planned Preventative Maintenance and the Services (the "**Exit Strategy**"). The Contractor shall following the Commencement Date complete the Exit Strategy and thereafter, continually update the Exit Strategy to reflect any changes or developments in the provision of the Services or the operation of the Centre and shall ensure any material changes to the Exit Strategy are approved by LDA.
  - 26.2.2 Without prejudice to the generality of Clause 26.2.1 the Exit Strategy shall provide that the following information shall be provided (where the relevant periods have not elapsed, the nearest practical periods shall apply):
    - 26.2.2.1 details of the Services to be transferred;
    - 26.2.2.2 details of all maintenance services, subcontracts, equipment leases and all other agreements and arrangements relevant to the Centre;
    - 26.2.2.3 the Monthly Reports provided pursuant to Schedule 4 (Monitoring Requirements) for the preceding twelve (12) months;
    - 26.2.2.4 profit and loss statements and accompanying trial balance sheets in respect of the Centre for the three (3) years preceding the termination of this Agreement or, if less than three (3) years of this Agreement have expired, profit and loss statements and accompanying trial balance sheets in respect of the Centre from the Commencement Date to the date of termination of this Agreement;
    - 26.2.2.5 a schedule of planned preventative maintenance in relation to the Centre;
    - 26.2.2.6 details of the current activities programme at the Centre, which shall specify the amount of hours and the facilities devoted to each activity;

- 26.2.2.7 a schedule of prices for all activities at the Centre;
  - 26.2.2.8 a list of utilities suppliers;
  - 26.2.2.9 a schedule showing the use of the Centre over the twelve (12) months preceding the date of termination of this Agreement and specifying, without limitation, the facilities used, the amount of hours for which such facilities were used and the revenue received in relation to each category of user;
  - 26.2.2.10 as far as possible, details of arrangements for use of the Centre of the twelve (12) months immediately following the termination of this Agreement including, without limitation, the facilities to be used, the amount of hours for which such facilities are to be used and the revenue to be received in relation to each category of user;
  - 26.2.2.11 a register of all assets and equipment held at the Centre, which shall indicate remaining expected life and market value and net book value;
  - 26.2.2.12 all such information as LDA would reasonably require as a result of the Transfer Regulations (including but not limited to the name, job description, terms and conditions of employment, pay and benefits and any applicable collective agreements of the Service Personnel and the composition of the Service Personnel engaged in the provision of the Services;
  - 26.2.2.13 details of all necessary training in relation to the handover of the provision of Planned Preventative Maintenance and the Services (including without limitation operation and maintenance of the Centre, catering and sports medicine); and
  - 26.2.2.14 proposed timescales for delivery of the Exit Strategy.
- 26.2.3 Without prejudice to its other obligations, the Contractor shall from time to time at no cost to LDA and at LDA's request supply any of the information set out in Clause 26.2.2 to the LDA promptly together with such other information as they reasonably request. The Contractor shall also produce a report which shall contain all the information stipulated in the Exit Strategy (the "**Exit Strategy Report**") and supply a copy of the Exit Strategy Report to LDA as follows:
- 26.2.3.1 in the case of termination by LDA pursuant to Clause 24.1.1, within 5 days after the date of service of the relevant Termination Notice;
  - 26.2.3.2 in the case of termination by LDA pursuant to Clause 24.1.2 within seven (7) days;
  - 26.2.3.3 in the case of termination by LDA pursuant to Clauses 24.2.1 to 24.2.8 inclusive, within 10 days of the date of service of the relevant notice to the Contractor of termination;
  - 26.2.3.4 in the case of termination by either party pursuant to Clauses 24.3.1 to 24.3.7 inclusive, within 10 days of the date of the relevant notice to terminate;
  - 26.2.3.5 in the case of termination by the Contractor pursuant to Clauses 24.4.1 to 24.4.3 inclusive, within 10 days of the date of service of the relevant notice to LDA to terminate; and



- 26.2.3.6 in the case of termination by LDA pursuant to Clause 24.5.1, within 30 days of the date of the relevant notice to the Contractor to terminate.
- 26.2.4 The Contractor shall use its best endeavours in compiling the Exit Strategy Report and shall warrant that the Exit Strategy Report is true and accurate in all respects and acknowledges that it may be shown to any prospective or actual replacement Contractor.
- 26.2.5 Notwithstanding the provisions of Clause 25.2.1, the obligation of the Contractor in Clauses 26.2.1 and 26.2.3 to prepare and provide an Exit Strategy Report shall survive the termination of this Agreement for whatever reason.
- 26.3 Employees on Exit**
- 26.4 In the last six (6) Months of the Contract Period or on the termination of this contract for whatever reason, whether as a consequence of any of the matters referred to in this Clause or on the expiry of the Contract Period, the Contractor shall, prior to any subsequent retendering or letting of a contract for the provision of the Services:
- 26.4.1 supply within twenty-eight (28) days (or such longer period as may be reasonably required) of demand by LDA at no material cost to the Contractor all such information as LDA reasonably requires as a result of the Transfer Regulations (including but not limited to the terms and conditions of service of the Contractor's Staff and the composition of the Contractor's workforce engaged in the provision of the Services);
- 26.4.2 not assign any further staff to the provision of services under this Agreement or remove staff from it without prior notification to and agreement from LDA; and
- 26.4.3 not without the written consent of LDA during the Agreement materially change the terms and conditions of employment or increase the pay and benefits of any Service Personnel save for annual salary increases in the ordinary course of business no greater than any increase in the Average Earnings Index in respect of such period.
- 26.5 Subject to Schedule 9 (Compensation on Termination) (which shall take precedence to this Clause) the Contractor hereby agrees to indemnify and keep indemnified LDA against each and every claim, liability, costs, expense and/or demand by any Service Personnel or any other employee (or former employee) of the Contractor which relates to or arises from the termination of this Agreement (for whatever reason including expiry) including but not limited to:
- 26.5.1 any claims which they incur pursuant to the Transfer Regulations which may arise upon the non-renewal of this Agreement by either LDA with the Contractor including (without limitation) the failure to consult and/or failure to transfer affected employees; and/or
- 26.5.2 any redundancies and/or dismissals made in connection with or as a consequence of the non-renewal of this Agreement.
- 26.6 The following additional obligations shall apply in circumstances where LDA enter into a contract with a new supplier in relation to arrangements similar to those to be undertaken by the Contractor under this Agreement or any activities ancillary thereto. In that event, the Contractor shall:
- 26.6.1 perform and discharge its payment obligations in respect of any Service Personnel or any other employee (or former employee) of the Contractor up to

the date of termination or expiry of this Agreement including meeting all costs and expenses, emoluments, taxation, bonus or commission relating to, payable or accruing in respect of such employees;

- 26.6.2 comply with any obligations on it pursuant to Regulation 10 of the Transfer Regulations relating to the provision of information to and consultation with employee representatives of affected employees;
- 26.6.3 indemnify LDA and keep them indemnified against all claims, losses, liabilities, costs, expenses, actions and/or demands arising out of any act or omission by the Contractor prior to the termination or expiry of this Agreement in relation to the employment of any of the Service Personnel or any other employee (or former employee) of the Contractor and/or in relation to any collective agreement relating to them including, for the avoidance of doubt, any failure by the Contractor to comply with this Clause 26.3; and
- 26.6.4 at the request of LDA extend the benefit of the indemnities contained in Clause 26.6.3 to any third party entering into an agreement in relation to arrangements similar to those to be undertaken by the Contractor under this Agreement or any activities ancillary thereto.
- 26.7 It is agreed and acknowledged that this Clause 26.3 gives rights to third parties under the Contracts (Rights of Third Parties) Act 1999.

## 26.8 **Reconciliation**

- 26.8.1 As soon as reasonably practical after the date of termination of this Agreement for whatever reason, the Contractor shall submit a statement which shall set out the amount due by LDA to the Contractor as part of the Management Fee payable to the Contractor in respect of Services provided pursuant to this Agreement as at the date of termination (the "**Reconciliation Statement**"). The amount stated to be due from LDA to the Contractor in the Reconciliation Statement shall (unless LDA acting reasonably considers it to be inaccurate in which event it shall pay such part as it accepts and the disputed element shall be resolved in accordance with Clause 47 (Dispute) be due and payable to the Contractor within twenty eight (28) days of whichever is the later of the receipt by LDA of:

- 26.8.1.1 the Reconciliation Statement; or

- 26.8.1.2 the Exit Strategy Report.

## 26.9 **Equipment**

- 26.9.1 On expiry or termination of this Agreement, LDA may at any time after giving notice of termination and no later than 10 days of termination by notice require the Contractor to sell to it some or all of the Contractor Equipment which it shall be entitled to buy at the lesser of the open market value and the net book value, or, where such Contractor Equipment is hired or leased procure an assignment of the agreements relating to the Contractor Equipment to LDA. The Contractor shall transfer title to the relevant Contractor Equipment with any associated warranties to LDA on termination or such other time specified by the Contractor and shall deliver the relevant Contractor Equipment to LDA as seen at the Centre.
- 26.9.2 The Contractor shall:
  - 26.9.2.1 at its own cost maintain the Contractor Equipment in good and serviceable condition and ensure that the Contractor Equipment is fit

for purpose (save for fair wear and tear) and keep or procure to be kept throughout the Contract Period accurate, complete and current records of all maintenance carried out on the Contractor Equipment **PROVIDED THAT** for the avoidance of doubt, the Contractor shall not be required to put the Contractor Equipment into a better state of repair than at the Extension Commencement Date as evidenced by the Equipment Inventory;

- 26.9.2.2 repair as soon as reasonably possible any items of Contractor Equipment which are broken or in disrepair in any way or are no longer in good and serviceable condition (unless agreed otherwise with LDA such agreement not to be unreasonably withheld or delayed;
- 26.9.2.3 (unless agreed otherwise with LDA such consent not to be on reasonably withheld or delayed) replace any items of Contractor Equipment which are worn out or beyond economic repair or incapable of repair and maintain such replacement items in a good and serviceable condition so that a full and proper working stock is maintained so that the Centre can operate fully for the delivery of the Services;
- 26.9.2.4 be responsible for and bear the cost of ensuring that at all times the Contractor Equipment complies with all applicable legislative requirements and industry codes of practice;
- 26.9.2.5 Update as required the Equipment Inventory to include all new, modified or replacement Contractor Equipment to be procured by the Contractor in accordance with the terms of this Agreement and notify LDA on an annual basis in writing of any variations to the Equipment Inventory. The Contractor shall provide a copy of the Equipment Inventory to LDA on an annual basis and following a request by LDA on reasonable prior notice;
- 26.9.2.6 maintain all appropriate and prudent insurances relating to the Contractor Equipment (in its own name and on behalf of LDA) for its full replacement value against all risks on a comprehensive policy without restriction or excess or as reasonably requested by LDA to the level so requested;
- 26.9.2.7 insure LDA and the Contractor against all liability to third persons for death, personal injury and damage to or loss of property;
- 26.9.2.8 pay punctually all premiums due for all insurances and produce to LDA on request the policy or policies together with evidence of payment of the premiums and the Contractor agrees that LDA may effect the insurance if the Contractor has failed to do so (though LDA is not under any obligation to do so) and the Contractor shall reimburse LDA on demand the cost of doing so;
- 26.9.2.9 permit LDA to inspect the Contractor Equipment at all reasonable times upon giving reasonable notice to the Contractor;
- 26.9.2.10 ensure that the Contractor Equipment is operated and used by properly skilled and trained personnel.

## **27. LIABILITY**

- 27.1 Nothing in this Agreement shall limit any party's liability to each other for death or personal injury caused by negligence or fraudulent misrepresentation, or in circumstances where and to the extent that liability cannot be excluded or limited by law.
- 27.2 Subject to Clause 27.1 and 27.4 no party shall be liable to the other, except where expressly stated to the contrary, for any loss which:
- 27.2.1 arises as a result of misrepresentation, negligence or breach of statutory duty;
- 27.2.2 comprises economic loss or loss of profit.
- 27.3 Subject to Clause 27.1, LDA shall not be liable to the Contractor for any sum(s) exceeding the aggregate of the Management Fee Management Fee (not Indexed) for the Contract Period.
- 27.4 The Contractor shall indemnify and keep indemnified LDA against all loss, costs, damages or expenses in connection with any claim made against either of them by a third party (which shall include any employee, agent or subcontractor of the Contractor) arising as a result of the provision of the Services, save where such claim arises as a result of a negligent act of the relevant indemnified party. This indemnity shall survive termination, and shall (without limitation) include any claim made by a party contracting with LDA through the agency of the Contractor. The limitations set out in this Clause 27 shall not apply to any indemnity given by the Contractor.

## **28. INSURANCES**

- 28.1 The Contractor shall during the Contract Period at its own cost and expense maintain throughout the term of this Agreement at least the following insurances:
- 28.1.1 insurance of not less than £10,000,000 in respect of any one accident involving the personal injury or death of any person arising out of an incident occurring during the course of such person's employment (which shall include any employee, subcontractor or other person(s) used by the Contractor or their subcontractors in performing this Contract) and shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof;
- 28.1.2 public and third party liability insurance of not less than £10,000,000 with a minimum of £5,000,000 in respect of any one claim; and
- 28.1.3 appropriate "all risks" insurance for all assets owned or under the control of the Contractor at the Centre; and
- 28.1.4 such other insurance as are required by Applicable Laws and as a prudent insurance broker would recommend in connection with their provision of the Services and the liability assumed by it hereunder.
- 28.2 The Contractor shall maintain its insurances with a reputable insurance company and shall provide LDA with details of such cover and shall use reasonable endeavours to procure that the interest of LDA is noted on the policies effecting such cover.
- 28.3 The Contractor shall, upon the reasonable request by the Authorised Officer, provide to the Authorised Officer copies of all such policies of insurance and evidence that the insurances are in full force and effect.

- 28.4 LDA shall for the period of the Extension Commencement Date to the date on which this Agreement is terminated maintain adequate building insurance in respect of LDA's interest in the Centre (including any Improvements thereto such as may be made pursuant to this Agreement with a reputable broker and shall provide the Contractor with reasonable details of such cover.

## **29. PROPERTY MATTERS**

- 29.1 If the Centre is affected by any covenants (restrictive or otherwise), stipulations, easements, profits a prendre, wayleaves, licences, grants, restrictions, overriding interests or any other rights in favour of any other person which materially and adversely affect the Contractor's access and use of the Centre for the purpose of performing its obligations under this Agreement other than the rights granted to third parties and their successors in title who occupy parts of the Centre pursuant to interests to which the lease of the Centre is subject including those interests set out in Schedule 2 (Matters to which the lease of the Centre is subject) then such matter shall be deemed to be a Compensation Event and shall be dealt with in accordance with Clause 21.2 to the extent that such matters are not within the control of the Contractor pursuant to the Service Requirements.

## **29.2 LITIGATION AND PROTECTION OF LDA'S INTERESTS**

- 29.3 If the Contractor shall become aware of any burglary, vandalism, accidental damage or breach of statutory provision which hinders or is likely to hinder the performance of any works or Services under the Agreement it shall as soon as reasonably practicable notify the Authorised Officer.
- 29.4 The Contractor shall notify the Authorised Officer as soon as reasonably practicable of any circumstances relating to the or concerning the Services which the Contractor knows would or might reasonably justify LDA taking legal action to protect its interests (including its reputation) and/or lead to litigation by or against LDA and/or the Contractor for any reason whatsoever (including relating to any contract entered into by the Contractor on behalf of LDA).
- 29.5 If requested to do so by the Authorised Officer (acting reasonably and proportionately in the circumstances) the Contractor shall (subject to Clause 38 (Data Protection) and subject to any legal advice) provide to LDA any relevant information in connection with any legal inquiry or court proceedings in which LDA may become involved or any relevant disciplinary hearing internal to LDA.

## **30. UNLAWFUL DISCRIMINATION, EQUAL OPPORTUNITIES AND HUMAN RIGHTS**

- 30.1 The Contractor shall at all times comply with all Applicable Laws pertaining to the employment of persons engaged in connection with this Agreement.
- 30.2 The Contractor shall comply with the Equalities Legislation.
- 30.3 The Contractor shall operate an equal opportunities policy which, so far as practicable, complies with relevant legislation as detailed in Clause 30.1 and Clause 30.2.
- 30.4 The Contractor shall inform the Authorised Officer as soon as reasonably practicable after becoming aware of any legal proceedings (whether civil or criminal) brought against the Contractor under the Equalities Legislation.
- 30.5 Insofar as the Parties carry out activities which are a function of a public nature for the purposes of the Human Rights Act 1998 under this Agreement, the Parties shall comply with the provisions of such Act.

- 30.6 The Contractor shall comply with the Disability Discrimination Act 1995 (including, without limitation, provisions relating to disabled access) provided that LDA shall bear the cost of such compliance. Any works required shall be done either as Capital Works or in accordance with the Service Requirements.

### 31. HEALTH AND SAFETY

- 31.1 The Contractor shall during the Contract Period perform the Services at the Centre in compliance with the Health and Safety at Work etc. Act 1974 and any regulations made pursuant to the HSWA ("**HSWA**").
- 31.2 The Contractor shall as soon as reasonably practicable report to LDA any accidents (or any circumstances which in the Contractor's reasonable opinion might prejudice the health and safety of Customers) to the Contractor's or any subcontractors' employees or agents or any Customers which require reporting pursuant to the HSWA or any regulation made under it.
- 31.3 The Contractor shall at all times comply with the Control of Substances Hazardous to Health Regulations 1999 ("**COSHH**").

### 32. CDM REGULATIONS

- 32.1 For the purposes of Clause 32:
- 32.1.1 the "**Regulations**" means the Construction (Design and Management) Regulations 1994 (S.I. 1994/3140) (and "**Regulation**" shall be construed accordingly); and
- 32.1.2 "the client" and "the Health and Safety Executive" have the same meanings as in the Regulations.
- 32.2 Within thirty (30) Working Days of the Date of this Agreement, the Contractor shall make and serve on the Health and Safety Executive a declaration pursuant to and in the form (if any) required by Regulation 4 that the Contractor will act as the client in relation to the Services for all the purposes and to the extent that the Services fall within the scope of the Regulations. The Contractor shall forthwith send a copy of the declaration to the Authorised Officer and upon receipt of notice from the Health and Safety Executive that it has received the declaration the Contractor shall send a copy of such notice to the Authorised Officer. The Contractor shall not and shall not seek to withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the client for all the purposes of the Regulations.
- 32.3 For the avoidance of doubt the Contractor shall observe, perform, discharge and comply with and shall procure the observance, performance, discharge and compliance with:
- 32.3.1 all the obligations, requirements and duties arising under the Regulations in connection with the Services; and
- 32.3.2 any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the Regulations,
- the Contractor shall indemnify and keep indemnified LDA against each and every claim, liability, costs, expense and/or demand which relates or arises in connection with the failure of the Contractor to perform its obligations under this Clause 32.

32.4 Subject to the provisions of this Clause 32.4, to the extent that any of the Services are to be undertaken by a subcontractor and which fall within the scope of the Regulations, LDA agrees with the Contractor that the Contractor may appoint the subcontractor to act as client's agent for the purposes of Regulation 4(1) of the Regulations and the Contractor shall procure that the Subcontractor shall make and forward to the Health and Safety Executive a declaration in accordance with Regulations 4(3) and 4(4) of the Regulations.

32.5 LDA shall provide such information as is held by LDA, its employees, agents and subcontractors concerning the Centre and such assistance as the Contractor may reasonably request in connection with its duties under the Regulations. The Contractor's obligations in Clause 32.4 shall be subject to the provisions of this Clause 32.5.

### **33. PROCUREMENT**

33.1 The Contractor shall develop a procurement strategy ("**Procurement Strategy**") in relation to the procurement of all goods and services required in the delivery of the Services or otherwise required in accordance with the terms of this Agreement including but not limited to the procurement of contractors or subcontractors in relation to any building works, agreed capital investments, ongoing repairs and maintenance, equipment repair and replacement and goods and services generally and submit this to the LDA for approval within 20 Business Days of the Commencement Date of this Agreement and thereafter on an annual basis as part of the Annual Service Plan.

33.2 The Contractor shall at all times ensure that the procurement of any goods or services represents best value and shall advertise of contracts for goods and services in accordance with the Contractor's Procurement Strategy and the value thresholds set out therein.

33.3 The Contractor shall at all times ensure that any contractors and/or subcontractors are fully qualified and experienced in relation to the provision of relevant goods and services.

33.4 The Contractor shall discuss and agree with the LDA its procurement methodology in relation to the agreed Investment Works any future capital works in relation to the Centre.

33.5 In respect of the Investment Works and any other capital works the Contractor shall submit to the LDA a procurement plan for each element of the works and the specific scope of the works to be delivered/procured including details relating to:

33.5.1 where delivered by the Contractor directly utilising in-house expertise;

33.5.2 where delivered by the Contractor utilising existing supply chains;

33.5.3 where delivered by the Contractors specialists not otherwise as part of an existing supply chain and the procurement route for procuring such.

33.6 The Contractor shall co-operate with the LDA with regards to any audit requests in relation to Procurement Strategy to satisfy the LDA and any external auditors that best value has been achieved.

### **34. SECURITY**

The Contractor shall be responsible for the security of all buildings, Contractor Equipment and Materials used by the Contractor in connection with the provision

of the Services, as well as personal belongings of the Contractor or the Contractor's Staff whilst on or in the Centre.

### **35. STATUTORY LICENCES**

35.1 The Contractor shall advise LDA of:

35.1.1 all statutory licences necessary for the operation of the Centre in accordance with the Service Requirements and all Applicable Laws; and

35.1.2 any act or obligation required to be fulfilled by LDA in connection with such licences or certificates in order to enable the Contractor to obtain or retain any such licences or certificates.

35.2 The Contractor shall obtain and comply with the conditions of any fire certificates and electrical certificates and obtain all other statutory and other licences required for the provision of the Services (including but not limited to any gaming, liquor or entertainment licences) and shall forward a copy of each such certificate to the Authorised Officer as soon as reasonably practicable upon issue.

35.3 The Contractor shall comply with all statutory and other requirements relevant to the Services and shall obtain, at its own expense, all approvals, permissions and other things necessary in connection with the Services.

### **36. MAXIMUM OCCUPANCY LEVELS**

36.1 The Contractor shall comply with maximum occupation levels for the Centre as stipulated in any applicable fire certificate and/or public entertainment licence, or otherwise in accordance with Applicable Laws.

36.2 The Contractor shall have regard to safe occupancy levels bearing in mind the numbers and qualifications of staff on duty at the time and the nature of the activity taking place.

### **37. MALADMINISTRATION**

37.1 Without prejudice to the generality of Clause 29.1 (Litigation and Protection of LDA's interest), if the Commission investigates any of the activities or practices of the Contractor, LDA, the Contractor shall promptly and fully co-operate with such investigation (including, without limitation, allowing the Commission, LDA access to all books, accounts and other records and making available directors and employees of the Contractor to give evidence to the Commission to LDA).

37.2 Where, as a result of such investigation, the Commission or the Local Commissioner (as such term is defined in the Local Government Act 1974) (the "**Commissioner**") issues any report in which it or he is of the opinion that any injustice or maladministration has taken place and LDA is of the opinion that such injustice or maladministration is in whole or in part caused by or attributable to the Contractor, the Contractor shall:

37.2.1 fully and promptly co-operate with LDA in formulating a reply to such report;

37.2.2 take all reasonable steps to rectify or remedy the injustice or maladministration;

37.2.3 take all reasonable steps to prevent a recurrence of the injustice or maladministration; and

37.2.4 take such other steps as LDA may reasonably require in order to comply with any recommendations in the report (or any other report issued by the Commissioner in relation to LDA or the Contractor so far as the same does not require a



variation to the Contractor's rights and obligations under this Agreement otherwise LDA shall be required to seek a Variation under Clause 18 (Variations)).

37.3 For the purposes of any examination under the National Audit Act 1983 of the economy, efficiency and effectiveness with which each Party has used its resources, each Party undertakes to:

37.3.1 provide the comptroller and Auditor General of the National Audit Office such documents as he may reasonably require which are owned, held or otherwise within the control of it; and

37.3.2 procure that all professional advisers, contractors, agents or any other person it engages in relation to this Agreement shall provide the Comptroller and Auditor General of the National Audit Office with such documents as he may reasonably require which are owned, held or otherwise within their control.

### **38. DATA PROTECTION ACT 1998**

38.1 For the purposes of this Agreement LDA and the Contractor are or may be acting as a Data Controller as defined by the DPA 1998.

38.2 In relation to any personal data (as defined by the DPA 1998) ("**personal data**") obtained directly or indirectly as a result of this Agreement, the processing of which is governed by the provisions of the DPA 1998, LDA and the Contractor each warrant that:

38.2.1 it will comply with the obligations imposed by the DPA 1998 on Data Controllers;

38.2.2 it will not knowingly, by any act or omission, place the other party in breach of the DPA 1998;

38.2.3 it will only use the personal data disclosed under the terms of this Agreement in accordance with the purposes (as notified to the other) for which the personal data are collected and in accordance with the current registration or notification held by the disclosing party under the DPA 1998;

38.2.4 it will notify the other party of any amendment, alteration, inaccuracy or update to the personal data obtained directly or indirectly as a result of this Agreement;

38.2.5 it will not disclose or allow access to the personal data except to such partners, directors, employees or third parties engaged by that party to enable it to perform its obligations under this Agreement and to ensure that any such persons are subject to written contractual obligations concerning the personal data which are no less onerous than those imposed on the parties under this Agreement;

38.2.6 it will notify the person with overall responsibility within the other organisation, as notified by the other from time to time, of any breach or suspected breach of security or of any accidental or unauthorised access to the personal data;

38.2.7 it will provide the other with reasonable assistance in complying with any subject access request served on it under section 7 of the DPA 1998;

38.2.8 it will promptly inform the other of any subject access request received by it;

38.2.9 it will not disclose or release any personal data in response to a subject access request without first consulting with the other;

38.2.10 it will co-operate with the other and the Office of the Information Commissioner in respect of any enquiries received from that office in accordance with its powers

and/or duties under the DPA 1998 and, subject to legal advice received by the receiving party in specific cases, abide by the advice and/or requirements of the Information Commissioner with respect to the processing of personal data;

- 38.2.11 it will provide all reasonable assistance to the other to enable it to deal properly, in accordance with the DPA 1998, with any complaint, enforcement notice or information notice received by it from data subjects (as defined in the DPA 1998) or their authorised representatives or the Information Commissioner as appropriate;
- 38.2.12 it will retain all relevant personal data in accordance with Principle 7 of the DPA 1998 and only retain such personal data for as long as necessary for the purposes for which the personal data were collected; and
- 38.2.13 it will comply with all relevant codes of practice issued by the Information Commissioner under section 51(3) of the DPA 1998.
- 38.3 LDA and the Contractor both agree that they will each maintain an up to date registration (under the Data Protection Act 1984) or notification (under the DPA 1998) with the Information Commissioner for the duration of this Agreement.
- 38.4 Subject to all Applicable Laws relating to data protection, the Contractor will on termination or expiry of this Agreement pass all personal data collected in connection with the provision of the Services to LDA, and without limitation, will take steps to procure that it can lawfully comply with the provisions of Clause.

### **39. FREEDOM OF INFORMATION**

- 39.1 Without prejudice to the generality of Clause 38 (), if following a request for information received by the LDA, LDA requests the Contractor to provide such information as will enable it to comply with its obligations under the Applicable Laws or the Information Commissioner investigates any of the activities or practices of the Contractor or LDA, the Contractor shall promptly and fully co-operate with such request or investigation (including, without limitation, allowing the Information Commissioner or LDA access to such books, accounts and other records as is reasonably required and making available directors and employees of the Contractor to give evidence to the Information Commissioner and LDA).
- 39.2 Where, as a result of such investigation, the Information Commissioner issues any information enforcement or other notice under his powers under the FOIA 2000 and/or the DPA 1998 in which he is of the opinion that any breach of LDA's obligations under FOIA 2000 and/or the DPA 1998 has taken place and such breach is in whole or in part caused by or attributable to the Contractor, the Contractor shall:
  - 39.2.1 reasonably and promptly co-operate with LDA in formulating a response to such notice at no material cost to the Contractor;
  - 39.2.2 take all reasonable steps to rectify or remedy such breach;
  - 39.2.3 take all reasonable steps to prevent a recurrence of such breach; and
  - 39.2.4 take such other steps as LDA may reasonably require in order to comply with any requirements in the notice or any guidance or recommendation issued by the Information Commissioner in relation to LDA or the Contractor.

#### 40. INTELLECTUAL PROPERTY

- 40.1 LDA hereby grants to the Contractor a royalty-free, non-exclusive licence to use their respective Intellectual Property in relation to the Centre to the extent and in the manner necessary to enable the Contractor to provide the Services and operate the Centre in accordance with the terms of this Agreement, PROVIDED THAT such use shall be strictly in accordance with any guidelines or instructions (for example as to use of logos) issued by the relevant party from time to time. All such use will be subject to prior written approval.
- 40.2 Any Intellectual Property belonging to the Contractor at the date of this Agreement shall remain the absolute property of the Contractor.
- 40.3 Any Intellectual Property created, obtained or procured by the Contractor or otherwise coming into being in connection with the Centre shall vest in and be the absolute property of LDA, to the extent it derives exclusively from the provision of the Services at the Centre.

#### 41. CONFIDENTIALITY

- 41.1 No party to this Agreement shall, without the prior written consent of the other parties at any time hereafter (including after termination of the Agreement) make use of for its own purposes or disclose, reveal to or discuss with any person the Agreement or any information contained herein or any documents, information or material provided pursuant to or in contemplation of the Agreement or any document or information provided or prepared pursuant to or in contemplation of the Agreement, all of which information shall be deemed to be confidential ("**Confidential Information**"), and the parties shall treat all Confidential Information as strictly private and confidential except insofar as is necessary for LDA to publish or otherwise disclose information in order to comply with its duties under the FOIA 2000 or as otherwise set out in Clause 41.2 below.
- 41.2 The obligations under Clause 41.1 shall not apply to:
- 41.2.1 Information which at the time of disclosure is in the public domain;
- 41.2.2 Information which is or was lawfully in the possession of or becomes available to the recipient from a source other than the other parties provided that the source of such information was not (to the knowledge of the Contractor) subject to any agreement or other duties relating to confidential information;
- 41.2.3 Any disclosure of information required by law or the order of any court of competent jurisdiction or under the conditions of any governmental or regulatory authority;
- 41.2.4 Any disclosure of information by the Contractor to its legal, financial or other professional advisers provided that such advisers have been informed by the Contractor in advance of its confidential nature; or
- 41.2.5 Any disclosure or other use of information to the extent reasonably required for and in connection with the proper performance of this Agreement.
- 41.2.6 Any disclosure by LDA or any other disclosure by them contemplated by this Agreement (including but not limited to the NAO, government departments and successor contractors).
- 41.3 Nothing in this Clause 41 shall require any party to carry out any act which would put it in breach of any law, court order or banking or other regulatory requirement.

**42. ADVERTISING**

- 42.1 The Contractor shall consult with LDA in respect of any advertising or promotion of the Centre, having regard to the objectives agreed in the Service Requirements, for example policy on fitness/obesity.
- 42.2 Without prejudice to 42.1, the Contractor shall not:
- 42.2.1 permit advertising or promotion:
- 42.2.1.1 of cigarettes, other tobacco products or nicotine-based products for chewing;
  - 42.2.1.2 of any products likely to give offence (in particular but not limited to pornography);
  - 42.2.1.3 which is designed to affect public support for a political party; or
  - 42.2.1.4 (unless there is a licensed bar and cafeteria area of the Centre) of alcohol or alcoholic beverages; or
  - 42.2.1.5 of such a nature as from time to time LDA may reasonably dictate having regard to their policies from time to time;
- 42.2.2 grant naming rights in respect of the Centre or any part thereof.
- 42.3 The Contractor shall, as reasonably requested (and in line with practice as at the Commencement Date), and without charge, advertise and promote LDA and their connection with the Centre without charge, at all times using logos and other similar marks in accordance with the guidelines relative to each in place from time to time. Such request may include a requirement that any events may be jointly promoted by LDA, in accordance with the guidelines relative to each in place from time to time (and with particular regard to such wording as is appropriate in light of the provisions in this Agreement relating to VAT and Agency Supplies), that any promotional or other literature (including, without limitation, invoices and contract terms) refers to and/or contains the logo of such persons and that a number of permanent advertising hoardings up to 16 x 8 foot be made available to LDA to promote its development or regeneration projects in the locality of the Centre and its support of the Centre.
- 42.4 The Contractor shall display in a part of the Centre to be agreed with LDA (and with particular regard to such wording as is appropriate in light of the provisions in this Contract relating to VAT and Agency Supplies) a notice which states the following (or other wording as required by LDA):

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“This Centre is managed by Greenwich Leisure Limited on behalf of LDA.”

**43. ASSIGNMENT AND SUBCONTRACTING**

- 43.1 The Contractor shall not be permitted to assign or transfer the whole or any part of this Agreement.
- 43.2 The Contractor may subcontract part of the Services to any person or organisation with the consent of LDA which consent LDA shall not unreasonably withhold. The Contractor may only subcontract any part of the Agency Services to the extent and in the manner that the Contractor provides such Agency Services or any part of the Agency Services as agent for and on behalf of the Contractor.

43.3 In addition to and without prejudice to the provisions of Clause 12 and Clause 43.4 LDA may assign and/or transfer this Agreement to any of their respective successor bodies and otherwise may only assign or transfer this Agreement with the consent of the Contractor which consent shall not be unreasonably withheld or delayed.

43.4 Notwithstanding Clause 43.3, LDA may assign and/or transfer the whole or any part of this Agreement .

43.5 This Agreement shall ensure to the benefit of and bind the respective successors and permitted assigns of the parties.

#### **44. AUTHORISED OFFICER**

44.1 Except as is provided in the Clauses, the functions, rights, duties and powers conferred by this Agreement upon LDA shall be exercised by the Authorised Officer whose identity shall be notified by LDA to the Contractor in writing from time to time.

44.2 The Authorised Officer shall be entitled to nominate in writing such deputies or representatives as he shall see fit to act on his behalf and any such deputy or representative shall for all purposes connected with this Agreement (save as may be expressly provided) be treated as though they were the Authorised Officer.

44.3 LDA shall ensure that as far as reasonably practicable the Authorised Officer or his deputy or representative is available on reasonable notice for consultation with the Contractor at times during which any part of the Centre is open and/or the Services (or any part thereof) are to be provided and that a readily available means of emergency contact is identified to the Contractor at all times. The Contractor shall ensure that the Authorised Officer is granted the same right to use and occupy the Centre as is enjoyed by the Centre Manager and the Contractor shall treat the Authorised Officer in a fair and non-discriminatory manner.

#### **45. CONTRACT MANAGER**

45.1 The Contractor shall during the Contract Period, appoint or procure the appointment of a Contract Manager and Centre Manager to act on behalf of the Contractor and such Centre Manager shall be available to be contacted by the Authorised Officer at all times when the Centre is open for business and that a means of emergency contact with the Contract Manager is available at all other times or where the Centre Manager is unable to resolve the matter to the reasonable satisfaction of the Authorised Officer.

45.2 The Contract Manager and Centre Manager shall be a suitably qualified and competent persons, with relevant experience with regard to the requirements of the Agreement.

45.3 The Contractor shall by the Commencement Date give reasonable written notice to the Authorised Officer of the identity of the persons proposed to be appointed as the Contract Manager and Centre Manager and shall forthwith give notice of any subsequent proposed appointments to such posts. The Contractor will liaise with LDA in connection with any such appointment.

45.4 The Contract Manager and Centre Manager shall be the authorised representative of the Contractor for all purposes connected with this Agreement. Any written Notice, information, instruction or other communication given or made to the Contract Manager and Centre Manager shall be deemed to have been given or made to the Contractor.

- 45.5 The Centre Manager shall be based at the Centre and the Centre Manager and Contract Manager shall:
- 45.5.1 inspect the Centre at least once during each Month in relation to the performance of the Agreement; and
- 45.5.2 consult with the Authorised Officer and with such other of LDA's staff as may from time to time be reasonably specified by the Authorised Officer; and
- 45.5.3 at such intervals as are reasonably required from time to time by the Authorised Officer, meet the Authorised Officer at a mutually convenient time and place (in each case provided the Authorised Officer has given reasonable notice of the same).
- 45.6 Without prejudice to any, remedies, reliefs or compensation available to the Contractor or other rights under this Agreement, the Contract Manager shall inform the Authorised Officer as soon as reasonably practicable after becoming aware of any instances of activity or omission on the part of LDA or the Contractor which prevent or hinder or may prevent or hinder the Contractor from meeting their contractual obligations.

## 46. NOTICES

- 46.1 Any notice or other communication to be given under this Agreement shall be in writing, shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the authorised address of that party, posted by first class or registered post addressed to that party at such address, or sent by facsimile transmission to a machine situated at such address and shall if:
- 46.1.1 personally delivered, be deemed to have been received at the time of delivery;
- 46.1.2 posted to an inland address in the United Kingdom, be deemed to have been received on the second Business Day after the date of posting and if posted to an overseas address, be deemed to have been received on the fifth Business Day after the date of posting; or
- 46.1.3 sent by facsimile transmission, be deemed to have been received upon receipt by the sender of a facsimile transmission report (or other appropriate evidence) that the facsimile has been transmitted to the addressee,

Provided that where, in the case of delivery by hand or facsimile transmission, delivery or transmission occurs after 6.00 pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00 am on the next following Business Day.

- 46.2 For the purposes of this Clause the authorised address of each party shall be the address set out below (including the details of the facsimile number and person for whose attention a notice or communication is to be addressed) or such other address (and details) as that party may notify to the others in writing from time to time in accordance with the requirements of this Clause:

### 46.2.1 LDA

Address: Palestra, 197 Blackfriars Road, London SE1 8AA

Facsimile No: 0207 593 8002

Attention: Mark Lloyd

### 46.2.2 Greenwich Leisure Limited

7475993.13

Address: Middlegate House, 1 Seymour Street, The Royal Arsenal,  
London SE18 6SX

Facsimile: 020 8317 5021

Attention: Justin Jardine

## **47. DISPUTES**

### **47.1 Dispute Resolution**

47.1.1 The procedure set out in this Clause 47 shall apply to any dispute, claim or difference arising out of or relating to this Agreement ("**Dispute**") except where it has been excluded from this procedure by an express term of this Agreement.

47.1.2 This dispute resolution procedure pursuant to this Clause 47 shall not impose any pre-condition on any party or otherwise prevent or delay any party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party requires either:

47.1.2.1 an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or

47.1.2.2 summary judgment, being a judgment for a liquidated sum to which there is no arguable defence.

47.1.3 In the event of a Dispute LDA and the Contractor shall attempt to resolve the dispute in discussion between themselves acting by the Authorised Officer or the Contract Manager. If the parties shall have been unable to so resolve the Dispute within 7 days it shall be referred to the Chief Executive of LDA and the Managing Director, or his nominated representative, of the Contractor.

### **47.2 Mediation**

47.2.1 If the Dispute has not been resolved within 7 days of it being referred to the Chief Executive of LDA and the Managing Director of the Contractor, it may (if the parties so agree) be referred to mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") *Dispute Resolution Procedure for PFI and Long-Term Contracts* (Version: September 2002, or any later version thereof) ("**the Model Procedure**") or on such conditions as may be agreed between LDA and the Contractor. Any mediation shall be completed within 30 days of such referral and any decision arising therefrom shall be final and binding unless otherwise agreed by LDA and the Contractor.

### **47.3 Expert**

47.3.1 If LDA and the Contractor have not agreed to refer the Dispute to mediation and the dispute relates to a financial matter, either LDA or the Contractor may by notice to the other refer the Dispute to an independent expert agreed by LDA and the Contractor to act as Expert in resolution of the Dispute. If LDA and the Contractor fail to agree the appointment of the Expert within 7 days of such notice, either of LDA or the Contractor shall then be entitled to request that the President of the Institute of Leisure and Amenity Management or a person appointed by him nominate an Expert of repute with experience in leisure management.

47.3.2 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to LDA and the Contractor within a maximum of three (3) Months of the matter being referred to the Expert.

- 47.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause then:
- 47.3.3.1 either LDA or the Contractor may apply to the Institute of Leisure and Amenity Management to discharge the Expert and to appoint a replacement Expert with the required expertise; and
  - 47.3.3.2 this Clause 47 applies in relation to the new Expert as if he were the first Expert appointed.
- 47.3.4 All matters under this Clause must be conducted, and the Expert's decision shall be written, in the English language.
- 47.3.5 LDA and the Contractor are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 47.3.6 To the extent not provided for by this Clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 47.3.7 LDA and the Contractor shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other reasonably requires to make a submission under this Clause.
- 47.3.8 The Expert shall act as an expert and not as an arbitrator and shall act fairly and impartially. The Expert shall determine the Dispute which may include any issue involving the interpretation of any provision of this Agreement, his jurisdiction to determine the matters and issues referred to him or his terms of reference.
- 47.3.9 The Expert's written decision shall be final and binding on LDA and the Contractor in the absence of manifest error or fraud.
- 47.3.10 LDA and the Contractor shall bear their own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by LDA and the Contractor equally or in such other proportions as the Expert shall direct.

#### **48. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save as expressly stated, nothing in this Agreement confers or purports to confer on any party which is not a party to this Agreement any benefit or any right to enforce any term of this Agreement.

#### **49. ENTIRE AGREEMENT AND VARIATION OF TERMS**

- 49.1 This Agreement contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 49.2 Each of the parties acknowledges and agrees that:
- 49.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether a party to this



Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be a claim for breach of contract under this Agreement; and

- 49.2.2 this Clause 49 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by fraud for which the remedies shall be all those available under the law governing this Agreement.
- 49.3 No variation, supplement, deletion or replacement of or from this Agreement or any of its terms shall be effective unless made in writing and signed by or on behalf of each party.

## **50. WAIVER**

- 50.1 Any waiver of a breach of any of the terms of this Agreement or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.
- 50.2 No failure to exercise and no delay on the part of any party in exercising any right, remedy, power or privilege of that party under this Agreement and no course of dealing between the parties shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

## **51. SEVERABILITY OF PROVISIONS**

If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or in part this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

## **52. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which when taken together shall constitute a single instrument.

## **53. FURTHER ASSURANCE**

The Contractor agrees at its cost to execute and deliver all such instruments and other documents and to take all such actions as LDA may from time to time request in order to give full effect to the purposes of this Agreement.

## **54. COMMERCIAL AGENTS**

- 54.1 The parties agree that whilst the Agency Supplies are provided as agent, they do not consider the Agency Regulations to apply to this Agreement and it is intended that none of them shall be construed as the agent of any other party for the purposes of the Agency Regulations. In any event, the parties agree that the activities which they undertake pursuant to this Agreement are secondary for the purposes of the Agency Regulations.
- 54.2 Without prejudice to Clause 54.1, in the event that a court determines that the Agency Regulations do apply to this Agreement and that a payment is due to any party in accordance with Regulation 17 of the Agency Regulations, then the

parties agree that any such payment shall be calculated on whichever basis set out below as gives rise to the lesser payment:

- 54.2.1 the indemnity provisions specified in paragraphs 3 to 5 of Regulation 17 of the Agency Regulations; or
- 54.2.2 the compensation provisions specified in paragraphs 6 and 7 Regulation 17 of the Agency Regulations.

**55. GOVERNING LAW AND JURISDICTION**

- 55.1 This Agreement (together with all documents to be entered into pursuant to it which are not expressed to be governed by another law) shall be governed by, construed and take effect in accordance with English law.
- 55.2 Subject to the provisions of Clause 47, the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Agreement (including without limitation claims for set-off or counterclaim) or the legal relationships established by this Agreement.

## SCHEDULE 1

### ASSET DESCRIPTION{ TC "SCHEDULE 1 - ASSET DESCRIPTION" \f C \l "1" }

The Centre is comprised of the Facilities listed within Table 1 below.

Facility	Components	Comments
Athletics Stadium	<p>Concourse approx .... m<sup>2</sup></p> <p>8-lane 400m track (10-lane straight), jumps &amp; in-field</p> <p>West Stand (plus north &amp; south aprons, total ... seats)</p> <p>Jubilee Stand (... seats)</p>	<p>Changing facilities incorporated under northern arm of West Stand</p> <p>Spectator toilets incorporated behind West Stand, access from main concourse</p> <p>Offices (some let out, including areas adopted as classrooms, physiotherapy clinic and children's mini-gymnastics facility), and plant located within Jubilee Stand</p>
Main Building	<p>Sports</p> <p>Teaching Pool, 18.28 m x 7.62 m x 0.83 m</p> <p>Racing Pool, 50m x 20m x 1.80 – 2.03 m</p> <p>Diving Pool, 20.10 m x 15.85 m x 4.78 m</p> <p>Dryside sports arena, 46 m x 29 m</p> <p>North Balcony (sports area), 32 m x 16.75 m</p> <p>Activity halls (3), 17.35 m x 10.35 m</p> <p>Health &amp; Fitness hall, 32 m x 16.75 m</p> <p>Squash courts (5)</p>	<p>Spectator gallery to pool hall accommodating 1,600</p> <p>Diving platforms at 5.00 m, 7.50 m &amp; 10.00 m</p> <p>Squash Court 1 and adjacent storage area (beside DDA lift) to accommodate new climbing wall re-located from Training Pool building</p>
	<p>offices, storage areas, reception, catering area, hospitality suites</p> <p>Circulation areas, toilets, changing areas (wet, dryside and fitness)</p>	

Facility	Components	Comments
Training building Pool	Offices Classrooms Climbing wall Changing facilities Training pool, 25 m x 12.5 m Dance studio, 13 m x 10 m	Offices and classrooms used by London Leisure College  Climbing wall to be relocated 2009-10 to accommodate development of London Leisure Academy hub-suite alongside London Leisure College
External grounds and outdoor Sports Areas	Grounds total 15.4 ha. including Access roads and paths, parking areas, grassed areas, grass football  Grass football training pitch (semi-floodlit)  Floodlit Netball courts (2)  Floodlit Tennis Courts (4)  Floodlit Hockey pitch (sand-based), 87.5 m x 49.5 m  Floodlit Artificial turf football pitch (rubber-crumb base)	No drainage, not to full playing dimensions, floodlighting to one side only  Courts unserviceable reinstatement as multi-use games areas planned subject to funding and planning approval     Artificial football pitch sub-divided into 2 x 5-a-side courts, 1 x 6-a-side pitch and 1 covered 6-a-side pitch (temporary air-dome, owned by Crystal Palace FC)
Central facilities Walkway	Indoor sprint-straight, 110 m x 10m	Sprint straight includes jumps pits and throwing cage
	Weight-training suite Covered 5-a-side pitch, 43 m x 21 m Bar Café / functions room (not currently in use)	Covered 5-a-side pitch currently (March 2009) adapted as temporary dry diving facility

Facility	Components	Comments
The Lodge accommodation Block	Accommodation (85 rooms, 144 beds)  Conference Rooms  Kitchen  Dining Room	
Residential property	7 properties	All properties available for letting  2 properties currently sub-divided into bed-sits

**SCHEDULE 2{ TC "SCHEDULE 2 - MATTERS TO WHICH THE LEASE OF THE CENTRE IS SUBJECT" \F C \L "1" }**

**MATTERS TO WHICH THE LEASE OF THE CENTRE IS SUBJECT**

Ref	Entity	Description of Space	Document	Term	Annual Rent
2.	ASA - Diving Development	Small office in Jubilee Stand	Tenancy Agreement (to be excluded from the Landlord and Tenant Act 1954) - not yet completed but tenant in occupation		
3.	Southern England Athletics Association	Office in Jubilee Stand	Tenancy Agreement (to be excluded from the Landlord and Tenant Act 1954) - not yet completed but tenant in occupation		
4.	Physiotherapy Solutions	Large area and offices in Jubilee Stand	Tenancy Agreement (excluded from the Landlord and Tenant Act 1954)		
5.	The Commonwealth Games Council for England	Offices	Tenancy Agreement (to be excluded from the Landlord and Tenant Act 1954) - not yet completed but tenant in occupation		
6.	An individual	House 5/6	Tenancy to be contracted outside 1954 Act - not completed yet		
7.	Sublet by an	House 1	Assured		

Ref	Entity	Description of Space	Document	Term	Annual Rent
	individual and Sports Workshop Limited		Shorthold Tenancy (not yet signed but tenant in occupation)		
8.	Capel College Manor	....			
9.	Capel College Manor	...			

## SCHEDULE 3{ TC "SCHEDULE 3 - SERVICE REQUIREMENTS" \F C \L "1" }

### SERVICE REQUIREMENTS

#### 1. INTRODUCTION, PRINCIPLES AND OBJECTIVES

- 1.1 The Crystal Palace National Sports Centre (the Centre) is both a major sporting events venue and a community sports facility for London, which attracts visits from regional, national and international markets while regularly serving the needs of its immediate community. It is uniquely placed to support the development of sporting opportunities in the city - particularly leading into, and following from, the hosting of the 2012 Olympic and Paralympic Games.
- 1.2 In managing the facility from 2009 to 2014, the parties wish to ensure that this opportunity is exploited to the full; that the quality of service, and the range of opportunities on offer to the community, fulfil the potential of the facilities; and that the Centre's business is well-positioned to meet future changes in the strategic sporting landscape. The service requirements outlined within this Schedule reflect these aspirations, and are fully consistent with the business plan and the underlying operating assumptions of the Contractor. In particular, the parties aim:
- 1.2.1 To optimise the productivity, quality of service and business performance at the Centre - to be reflected in its financial results, event profile, community usage, and customer feedback.
- 1.2.2 To ensure that the condition and value of the property is maintained and where possible enhanced over the lifetime of the contract
- 1.2.3 To secure the development of a structured and coherent programme of activities at the Centre, with associated promotional and pricing strategies, which systematically and demonstrably facilitates new long-term participation and progression in sport across the entire community and is directly consonant with the aims and objectives of the London Legacy Plan for Sport
- 1.2.4 To work with partner agencies, both sport- and community-based, to support the regeneration of the area; and to build community engagement and capacity, in and through sport
- 1.2.5 To maintain effective and efficient reporting and contract management arrangements which support both the provision of clear and productive stakeholder information and the continuance of proper business records.

#### 2. SCOPE OF SERVICE REQUIREMENTS

- 2.1 The service requirements for the contract may be summarised as follows:
- 2.1.1 **Provision of facilities:** to ensure that throughout the determined opening hours, and without interruption, the Centre is open for business; facilities are available and fit for use; core customer-related services and functions are fully operative; and that all facilities and services meet and are responsive to user requirements and expectations. This objective is defined further in:
- **Part 1 (Minimum Opening Requirements and Fitness for Purpose)**
- 2.1.2 **Building Services:** to ensure that all facilities, plant and apparatus at the Centre are properly maintained in fit and safe condition; that reactive repairs and programmed maintenance are carried out in accordance with statutory and regulatory standards and industry best practice; that all landscaped and planted areas are developed and maintained to a standard appropriate for their purpose



and which enhances the appearance of the site; that all areas of the Centre are consistently clean and free of litter to meet user expectations and relevant hygiene standards; and that systems are in place to manage and monitor access to the Centre, and to respond as and when necessary to intrusions of any kind. This requirement is defined further in:

- **Part 3 (Building Services)**
- **Part 4 (Grounds maintenance)**
- **Part 5 (Cleaning and Waste Disposal)**
- **Part 6 (Security)**

2.1.3 **Service & Business Processes:** to ensure that service and business processes are adequate to maintain a consistent and optimal level of service to customers and to the client; and that the services and programme offered to the community are aligned with the strategic objectives of the contract. This requirement is defined further in:

- **Part 2 (Sports Development)**
- **Part 7 (Finance, Business Records and Information Systems)**
- **Part 8 (Marketing)**
- **Part 10 (Management and Organisation)**

2.1.4 **Health & Safety:** to ensure that processes and systems are in place to secure the health, safety and welfare of all staff, sub-contractors and visitors to the Centre. This requirement is defined further in:

- **Part 9 (Health & Safety)**

### SCHEDULE 3 (PART 1) OPENING HOURS

#### *Objective*

To ensure that throughout the determined opening hours, and without interruption, the Centre is open for business; facilities are available and fit for use; key services including reception and catering are fully operative; and that all facilities and services meet and are responsive to user requirements and expectations.

Adherence to this schedule is a core **contractual** requirement, and where this is not achieved – and subject always to the Excusing Causes provisions of this contract - the Client may at its discretion make deductions from the management fee as detailed in Schedules 5 and 6

#### *General Requirements*

All facilities will be available and fit for use daily from 7:00 am to 10:00 pm (9:00 am to 5:00 pm at weekends) throughout the year, with the exception of Christmas Day and Boxing Day.

The Contract Manager may propose that opening hours are reduced, or very exceptionally that the Centre remains closed, on: Christmas Eve; all English public holidays; Easter Sunday; and exceptionally on any other two dates in the year, in order to facilitate staff training and team development. Such proposal is subject always to business requirements and to the agreement of the Authorised Officer. Such agreement may be given subject to conditions in order to meet reasonable user expectations.

The Centre shall be open for not less than 45 minutes before and after the times of public opening, for customers to change and depart; and for access by staff, deliveries, waste disposal, maintenance, sub contractors and any other services.

The contractor is expected to facilitate access whenever required so far as reasonably possible for tenants of leased premises on the site, as detailed in Schedule 2 to this Agreement and as amended from time to time.

Facilities will be considered available and fit for use where all of the criteria below are met in full and where there are no other conditions present which prevent activities from taking place in any given area.

Unavailability shall not be deemed to apply where caused by factors beyond the reasonable influence or control of the Contractor; where the unavailability has been caused by the agreed closure of the facility for planned maintenance activities or with agreement of or direction by the Client; or where the Excusing Causes provisions of this contract otherwise apply.

#### *Specific Service Level Requirements*

<i>Issue</i>		<i>Service Level Required</i>
1	Health and Safety	<p>Full compliance with:</p> <ul style="list-style-type: none"> <li>▪ All relevant legislative requirements (e.g. Chemical storage, COSHH, public liability insurance etc)</li> <li>▪ All relevant Health and Safety Executive and Sport England guidance and recognised industry safe practice (e.g. water treatment, activity supervision ratios, qualifications, etc).</li> </ul>

2	Lighting	Lighting levels meet statutory limits and are in accordance with recognised industry good practice for the intended use.
3	Working condition	All room finishes and surfaces are unimpaired.
4	Equipment	<p>Adequate and appropriate equipment are available on appropriate terms (loan, hire or purchase) for all activities on offer at the Centre as reflected in the programme; stocks are monitored and maintained or renewed as required</p> <p>All equipment is safe and ready for use as required: appropriate procedures, guidance and controls are in place for the storage and setting out of all equipment, with particular consideration for user safety</p>
5	Space Heating and Ventilation	All room and pool water temperatures, room humidity levels and ventilation are maintained at comfortable levels for the intended use, consistent with agreed Centre policy, statutory limits and recognised industry good practice.
6	Changing Rooms and toilets	Changing rooms and toilets, including all services, fixtures and fittings, are clean, tidy and in good working order
7	Fire Alarm	Alarms have been tested at the prescribed intervals, are fully functioning and are audible to all users in all areas.
8	Access Means and of Escape	<p>Access and egress routes in all areas are in line with fire regulations, other relevant legislation, and recognised industry good practice for the intended use. Access and egress arrangements for disabled persons are in accordance with the Disability Discrimination Act (2004).</p> <p>Vehicular and pedestrian access to all facilities is kept clear and safe</p>
9	Housekeeping	All facilities, including non-public areas such as offices and staff welfare facilities, are visibly clean and free from dirt, litter and debris; hygiene items are fully stocked as appropriate
10	Security	<p>All facilities, including parking areas and access routes within and around the site, are so far as is reasonably practical secure and safe for users, staff and their vehicles and belongings</p> <p>All CCTV and security alarm systems are fully operative</p>

11	Reception	<p>The Reception desk is fully operational under the supervision of trained and competent staff, and in accordance with agreed procedures and standards of service; users and visitors are acknowledged as quickly as possible and served without any unnecessary delay</p> <p>Bookings, payments and security systems are fully functioning</p> <p>Telephone and ICT systems are fully functioning</p> <p>Public address system is fully operational and effectively utilised to provide communication with users throughout the Centre</p> <p>Entrance and exit routes through the reception area are clear and operating effectively, providing unobstructed access to bona fide visitors while maintaining appropriate levels of security both to the reception desk and to the Centre as a whole</p> <p>Appropriate working procedures are in place to handle customer difficulties such as lost property, lost children, first aid requests, etc</p>
12	Catering	<p>A range of refreshments to be available, always including snacks, hot and cold drinks, and free drinking water; and where applicable including prepared food and beverages.</p> <p>Refreshments to be offered through vending and or counter services as appropriate and at the Contractor's discretion according to anticipated demand, provided that:</p> <ul style="list-style-type: none"> <li>▪ Vending services including snacks, hot and cold drinks are available and fully maintained and stocked throughout opening hours</li> <li>▪ Opening hours of counter services are clearly displayed and services are maintained throughout these times</li> <li>▪ The choice of prepared foods, drinks and beverages is, so far as reasonably practical and financially viable, responsive to the needs and preferences of those using the Centre at the time, particularly taking account of dietary, nutritional and cultural considerations</li> <li>▪ The quality and presentation of refreshments (including residential catering) is of good standard and represents reasonable value for money</li> </ul>
13	Staffing Levels	Staffing levels and competence in all functional areas are adequate for the intended use in accordance with established industry good practice and Centre operating policies.
14	Service Checks & remedial processes	Comprehensive facility and service checks are carried out daily, and processes are in place to address defects identified within requisite timescales
<b>Monitoring and Evaluation</b>		

Client Audits

External Customer Service Audits

Contract Reports

Contractor service checks

SCHEDULE 3 (PART 2) SPORTS DEVELOPMENT		
<i>Objective</i>		
<p>To work with partner agencies, both sport- and community-based, and with appropriate delivery partners secure the development of a structured and coherent programme of activities at the Centre, with associated promotional and pricing strategies, which</p> <ul style="list-style-type: none"> <li>• Contributes as fully as possible to the development of sporting opportunities for the community at large</li> <li>• Systematically and demonstrably facilitate new long-term participation and progression in sport across the entire community</li> <li>• Is consonant with the aims and objectives of the London Legacy Plan for Sport</li> <li>• Supports the development of capacity within the sports system at community, regional and (where appropriate) national level - particularly in respect of coaching, officiating and management.</li> </ul>		
<i>Scope of Service and General Requirements</i>		
<p>The service objectives will be fulfilled both through direct intervention by the contractor on behalf of the LDA – for example by offering specific programmes to prospective participants - and through support to delivery partners – for example by offering priority booking arrangements, discounts on facility charges, or technical support.</p>		
<i>Resources</i>		
<p>Work in this area will be led by a designated and suitably qualified and experienced member of staff, appointed by the contractor in consultation with the client. Programme time will be utilised to best effect, in accordance with the principles identified below and elsewhere.</p>		
<i>Specific Service Level Requirements</i>		
Activity		Service Level Required
1	Community & agency communications	Development of comprehensive working network including relevant community and sports agencies, in order to ensure that all relevant partner interests are known and understood, and help to inform the development of the programme and services at Crystal Palace
2	Marketing	Clear, distinct and adequately resourced provision for appropriate marketing activity which :
		<ul style="list-style-type: none"> <li>• specifically supports sports development activities</li> <li>• ensures that all services and opportunities at Crystal Palace are effectively accessible and communicated to the local community, are related to community needs and aspirations, and support wider community objectives</li> </ul>



3	Programming	<p>Development of structured and coherent programme of participation, coaching and competition in identified focus sports, which:</p> <ul style="list-style-type: none"> <li>• offers opportunities to new participants from across the community</li> <li>• Offers opportunities for all participants to develop and progress at their own</li> <li>• is integrated into the wider sports systems at local, regional and national level as appropriate</li> </ul>
4	Pricing	<p>Development of flexible and responsive pricing strategy which balances financial parameters with sporting outcomes and particularly captures opportunities for programme developments at under-utilised times or in under-utilised spaces</p> <p>Active collaboration with the Client will be a strong element of this but should not always be a pre-requisite for pricing innovation</p>
5	Partnerships	<p>Development and maintenance of effective delivery partnerships across a range of activities, with particular reference to:</p> <ul style="list-style-type: none"> <li>▪ Clarity of purpose, roles, timescales, resources, outcomes and review processes - preferably reflected in a formal Partnership Agreement</li> <li>▪ Qualitative standards, which may be reflected in affiliation to recognised governing bodies and accreditation to recognised quality standards, particularly in relation to child protection, coaching qualifications and club organisation</li> <li>▪ Maintaining financial integrity and consistency of treatment between partners and programmes, allowing for differing circumstances across sports and target markets</li> </ul>

#### **Key Performance Indicators**

Participation capacity

Coaching capacity

Facility utilisation

Coaching opportunities take-up

Throughput excluding spectators and event participants

National Benchmarking Service access & utilisation indices

#### **Monitoring and Evaluation**

Annual Service Plan

External Customer Service Audits

Contract Reports

### SCHEDULE 3 (PART 3) BUILDING SERVICES

#### *Objectives*

To achieve systematic, responsive and timely maintenance of buildings, plant, installations and services, and response to defects and damage, in order to ensure efficient and safe facility operation, continuity of service and a safe, comfortable and consistent environment for customers

#### *Scope of Service*

The Contractor shall provide a fully comprehensive building service, including maintenance programmes, repairs, and asset renewal and replacement. The service shall include but not be limited to:

- General Monitoring and Inspection
- Asbestos management
- Portable Appliance Testing
- Planned Preventative Maintenance
- Responsive Maintenance, including minor works agreed where appropriate with the Client
- Environmental Management
- Procurement and delivery of capital works, as agreed between the parties from time to time
- Records

#### *General Requirements*

The Contractor shall ensure that:

- A programme of planned preventative maintenance is implemented to ensure the safe and uninterrupted continuation of critical plant and services
- A comprehensive management structure and reporting process is in place to identify and respond to defects and minimise service disruption
- All works are undertaken by competent and qualified personnel, whether employed directly by the Contractor or commissioned through a sub-contractor. The Contractor shall not be required to put the Centre into a better state of repair than at the Commencement Date evidenced by the Condition Survey
- It notifies the LDA at the earliest opportunity of any potential overspend in relation to its maintenance obligations. The Contractor shall provide full details of the overspend and reasons for the overspend. The Contractor shall take all reasonable steps to avoid any overspend and mitigate the extent of any overspend.

#### *Specific Service Requirements*



1.	General Monitoring and Inspection	Regular inspections to be carried out throughout site and findings to be recorded and fed into responsive maintenance process and/or PPM programme as appropriate
2.	Asbestos management	Procedures and documentation to be in place to ensure that the Asbestos Management Plan is maintained up to date and that all necessary remedial works are carried out in the appropriate manner by competent contractors.
3.	Portable Appliance Testing	Testing regime to be planned and implemented in accordance with legislation and statutory requirements.
4.	Planned Preventative Maintenance	Planned, systematic and comprehensive preventative maintenance to be implemented for all building services, systems, fixtures, fittings and structural elements. Work to comprise checks, inspections (including statutory inspections) and tests, necessary to ascertain and monitor the condition and operational efficiency; locate, identify and diagnose any actual or potential fault or defect; and recommend and instigate the necessary remedial action.
5.	Responsive Maintenance	<p>To include attendance to and repair of all service elements, operational and capital assets, and structures including accidental damage; adjustments, repair or replacement of parts to correct any fault or defect and ensure effective operational use; emergency maintenance such as power failure, pipe bursts and flooding, lift failure and passenger rescue or any other incident which may be a risk to either the health, safety or integrity of personnel, assets and facilities; and repairs to the external and internal fabric of the Centre following vandalism and to repair the effects of graffiti.</p> <p>To include supply and stock-keeping of all consumables necessary to execute the Contract; procurement of sufficient spare parts, equipment, tools and materials to ensure the efficient day to day operation of all Facilities. The Contractor may, with the agreement of the Authorised Officer, provide temporary plant and equipment to keep the Services operational. This will not attract extra payment without the prior written agreement of the Authorised Officer, which will not normally be given.</p> <p>If the Contractor considers that it would not be economically viable to replace certain plant or equipment on a like for like basis, the Contractor may, subject to the prior written consent of the Client, implement alternatives which in its opinion is more economically viable.</p> <p>All emergency and responsive maintenance to be carried out within agreed response and rectification times as detailed below.</p> <p>Repairs and other Minor Works which require specialist sub-contractors to be commissioned in consultation with the Authorised Officer: in such cases the Contractor shall define the full specification; prepare all drawings, plans and tender documents for external contractors; and will commission and manage the works in accordance with the agreed processes.</p>

6.	Environmental Management	<p>Clear, coherent and realistic Environmental Strategy to be in place to manage and optimise use of energy and water over the period of the agreement, reviewable annually in consultation with the Authorised Officer through the Annual Service Planning process</p> <p>Clear standards to be defined for all key environmental operating conditions, including room temperatures, humidity levels and air circulation rates</p> <p>Clear and effective systems and processes to be in place for the monitoring, adjustment and management of environmental conditions</p>
7.	Capital Works	<p>Provision of project management to support in the scoping, specification and commissioning of Capital Works Projects. The scope of this Service may include but not be limited to:</p> <ul style="list-style-type: none"> <li>• Preparation of specifications, tender and contract documentation</li> <li>• Preparation of drawings</li> <li>• Awarding of contracts</li> <li>• Project management of the works</li> </ul> <p>Where this Service utilises resources not employed at the Centre as part of the Services the parties shall agree in advance a fee for the completion of the works, to reflect the costs of such resources to the Contractor.</p>
8.	Records	<p>All assets to be logged on a computerised asset management system that records assets in a hierarchical manner, and details:</p> <ul style="list-style-type: none"> <li>▪ relevant Health And Safety data</li> <li>▪ statutory inspection and testing protocols</li> <li>▪ prescribed maintenance procedures and schedules</li> <li>▪ results of scheduled inspections and diagnostic tests</li> <li>▪ recorded faults, referenced to observation logs, and responsive maintenance.</li> </ul>
<b>General Performance Standards</b>		
<b>Item</b>		<b>Service Level Requirements</b>
1	Building Structures	<p>Buildings maintained to be structurally sound and secure.</p> <p>Flues structurally sound and secure. No damp penetration, flaunchings and terminal sound, flues free from blockages.</p> <p>Service ducts structurally sound and secure, access safe and secured against unauthorised entry.</p> <p>Thermal and acoustic insulation sound and performing to CIBSE</p>

		guidelines, free from unsealed asbestos
2	<p>External Fabric</p> <p><i>(including all external wall finishes, rendering and cladding, external doors and windows, balconies, canopies and fire escapes)</i></p>	<p>No damp. Cladding, copings &amp; parapets structurally sound and secure</p> <p>Maintained sound and secure, free from undue deterioration, breaks in surface and colour loss.</p> <p>All walkways, fire escapes, handrails, balustrades and safety barriers, access ways and ladders sound and secure, ladders securely fixed access free from obstruction</p> <p>Windows and external doors sound, secure and weatherproof, easily operated, ironmongery in operating order.</p>
3	<p>Roofs</p> <p><i>(including insulation, felt, tiles, slates, flashings, roof lights &amp; rainwater goods.)</i></p>	<p>Maintained free from leaks, structurally sound and secure</p> <p>Drainage, guttering and outlets free from blockages, not overflowing, free from corrosion and erosion</p>
4	<p>Internal Fabric</p> <p><i>(including non load bearing partitions &amp; finishes to walls, floors &amp; ceilings, windows, glazed partitions, doors, plaster work, tiles and floor coverings)</i></p>	<p>Walls structurally sound and secure, free from structural cracks and deflection, adequately fixed and secure, free from pest, vermin and damp</p> <p>Finishes free from undue damage and of reasonable appearance for location and use.</p> <p>Internal windows and doors including glazing and smoke stop attachments easily operated, furniture and ironmongery sound and secure, complete and in operating order. All magnetic door holders functioning correctly, key boxes intact and in place.</p> <p>All floors sound and secure with no excess deflection or uplift, no hollowness or unevenness.</p> <p>All floors coverings safe, sound, secure and of even surface, adequate drainage where necessary.</p> <p>Stairs and balustrades sound, safe and secure including handrails.</p>
5	<p>Internal fixtures &amp; fittings</p> <p><i>(including all sanitary fittings, cupboards, cabinets, work surfaces, built in fittings, fixed seating, hat &amp; coat stand/hooks, blinds, racking, benches, platforms, shutters, notice boards, mirrors, curtain rails)</i></p>	<p>Maintained sound and secure, doors easily operated, furniture, ironmongery sound, complete, free from corrosion and in operating order, shutters and curtain rails lubricated.</p> <p>All fittings securely fixed and complete.</p> <p>All sanitary fittings, showers, toilets etc free from leaks and all sealant intact, water tight and free from fungal growth. Free from corrosion and erosion.</p>

6	<p><b>External Works</b></p> <p><i>(including roads, car parks and other hard landscaping including drainage systems and sewers, boundary walls and fences)</i></p>	<p>All paving, paths, driveways, road and car parks maintained with a sound and even surface with no potholes or sinking, free from weeds moss or algae, non slippery, kerbs and edgings sound, no loose kerb or paving stones, clearly marked road lines and parking places.</p> <p>Foul and surface drains, trays, interceptors, manholes, gullies, sumps and access points maintained free flowing and structurally sound. Fresh air inlets and vent pipes sound and clear, free from debris and obstruction</p> <p>External pipe work sound and secure, free from blockages, not overflowing and free from corrosion and erosion.</p> <p>All sewage plant and pump operational with no leaks. Brickwork and tanks sound and channels clear. All output maintained in accordance with statutory requirements.</p>
7	<p><b>Electrical Systems</b></p> <p><i>(including HV supplies, transformers, switchgear, electrical distribution, wiring, section boards, distribution boards, fuses, circuit breakers, outlets, fittings lumaires, emergency lighting and standby systems)</i></p>	<p>Maintain all electrical installation to comply with statutory requirements.</p> <p>Ratings and locations served clearly marked, circuit breaker mechanism and switch mechanisms in working order, contacts and connections clean and mechanically tight. No overheating, equipment covers secured against unauthorised access, recording instrument operational where fitted.</p> <p>No signs of over heating, chaffing or cuts to wiring and cables, cable joint boxes free from compound leaks, cable supports secure.</p> <p>Internal and external light fittings sound and secure, no exposed conductors, all earth connections secure. Internal lux levels maintained to 100 lux where installed lighting systems are sufficient or else 90% of all installed lighting operational unless otherwise agreed. Cable protective coatings intact, all covers in place and secure.</p> <p>Standby generators sound, secure and operational with no excessive vibration or noise when operational. Able to provide required operational outputs with no overheating.</p> <p>Batteries and UPS adequately ventilated with no acid leaks or spillage. Batteries topped up and charged</p>
8	<p><b>Heating Systems</b></p> <p><i>(including radiators, pipes, insulation, controls, valves, electric heating systems and other heating systems)</i></p>	<p>All systems maintained sound, secure and operational, adequately fixed and free from leaks. Free from corrosion and exhibiting no excessive vibration. No exposed conductors and with all earth conductors secure.</p> <p>Temperatures maintained in accordance with the local requirements for science and to provide a comfortable working environment.</p> <p>All storage and expansion tanks clean and free from foreign objects and debris with covers in place.</p>

9	Air Conditioning & Ventilation Systems.  <i>(including mechanical extract, all types of air conditioning systems including ducting, controls, refrigeration and air handling plant, humidifiers, heat and cooling coils, filters, scrubbers, sight glasses and insulations.)</i>	<p>All systems maintained sound, secure and operational, adequately fixed and free from leaks. Free from corrosion and exhibiting no excessive vibration. No exposed conductors and with all earth conductors secure.</p> <p>Ductwork maintained clean, sound, secure and free from corrosion.</p> <p>Temperatures maintained in accordance with the local requirements for the delivery of sport or with <math>\pm 3^{\circ}\text{C}</math> of <math>21^{\circ}\text{C}</math>.</p>
10	Building Management, Alarms, Communications and Safety Systems	<p>All Building Management System alarms, fire alarms, intruder and safety alarms maintained to provide continuous service.</p> <p>All alarms to be connected to helpdesk or other systems to ensure continuous monitoring during and out of Core Service Hours.</p> <p>All fire extinguishers and other fire safety system complete, in designated positions, colour coded with certified test dates displayed. All systems to be maintained in date.</p>
11	Drainage Systems	<p>All drainage systems maintained sound and secure, free from overflows, blockages and smells.</p> <p>All access points, manholes, vents, rodding eyes, fresh air inlets and gratings maintained clean and accessible, free from debris and obstruction</p> <p>All pumps operational, free from leaks, operating free from excessive vibration</p>
12	Hot and Cold Water Systems	<p>All storage tanks sound and secure with no leaks, adequate insulation and free from obstruction and debris.</p> <p>All valves, gauges, pumps and controls operational, no excessive vibration with no exposed conductors and with all connections secure.</p>
		All insulation adequate and fit for purpose and maintained in good condition.
13	Lifts & Conveyors	To be maintained to supply continuous operation.
14	Boilers & Calorifier Plant	<p>To be maintained sound, secure, free from leaks, with no corrosion or erosion, operating with no excessive vibration, no exposed conductors and with all earth connections secure</p> <p>Combustion efficiencies to be maintained at optimum levels in accordance with the energy conservation policy.</p>

## Response And Rectification Requirements

Unless otherwise specified within individual service specifications, the response and rectification times for all responsive calls shall be defined as below. For these purposes:

**"Respond and make safe"** means respond to the place of the incident fault or failure and diagnose the problem, take action to stop any health and safety risk and plan and agree timescale for permanent repair with the Client.

**"Make good and return to service"** means revisit the place of the incident, fault or failure and undertake appropriate action to allow normal operations to continue.

Outside Core Service Hours an additional 2 hours is allowed for each category of response.

Nature of Event	Priority	Respond & Make Safe	Make Good & Return to Service
Incident, fault or failure resulting in a health and safety risk, or in the loss from use of any sports facilities as detailed in Schedules 1 and 6	1	30 Minutes	4 Hours
Incident, fault or failure that does not result in a health and safety risk and/or affects operational services	2	2 Hours	1 Working Day
Incident, fault or failure that does not result in a health and safety risk or affect operational service but leads to reduced user satisfaction	3	8 Hours	5 Working Days
Incident, fault or failure that does not affect user satisfaction	4	1 Working Day	28 Days

## Monitoring and Evaluation

Client Audits

External Customer Service Audits

Contract Reports

Contractor service checks

### SCHEDULE 3 (PART 4) GROUNDS MAINTENANCE

#### *Objectives*

The objective of this service is to ensure that all landscaped and planted areas, trees, shrubs, seasonal bedding etc. are developed, monitored and maintained to a level appropriate for use and function and to enhance the aesthetic appearance of the Centre.

#### *Scope of Service and General Requirements*

The Contractor shall provide a comprehensive grounds maintenance service to all external soft and hard landscaping. The service shall include but not be limited to:

- Grassed areas, lawns and verges
- Sports Surfaces
- Shrubs and plants
- Bedding areas, including rotation of plants, seasonal bedding and external planters
- Trees, hedges and bushes
- Cleaning and maintenance to hard landscaped areas including all paths, walkways, roads, hard standing and parking areas, steps and street lighting
- Litter picking to all hard and soft landscaped areas
- Fixed and mobile external furniture and waste bins
- External signage
- Street furniture
- Boundary walls, ditches, fencing and gates
- Watercourses and features
- Pest control

#### *Service Level Requirements*

*Item*

*Service Level Required*



1	General	<p>Keep all areas waste and litter free and remove waste from the Centre.</p> <p>Tend all plants, shrubs, hedges, trees and flower planted areas and cut off damaged or dead growth, prune and shape</p> <p>Maintain a weed control programme of inspections, manual hoeing and application of chemical weed killers</p> <p>Keep all areas free from graffiti.</p> <p>Replace any broken ties and stakes, additionally leaves and other vegetation falling from plants and trees etc. should be gathered up and removed from the Contract Area</p> <p>Apply fertilisers, insecticides and weed killers as required to meet the service levels</p> <p>Operations to be carried out in compliance with all preservation orders relating to all listed areas and relevant building consents</p> <p>Gathered waste material to be disposed of in a managed way</p> <p>Chemical treatments used with regard to health and safety and in accordance with related regulations and legislation including COSHH</p>
2	Grassed Areas	<p>Grass cutting to be carried out in all gardens, grassed and lawn areas and their edges.</p> <p>Grassed areas to be trimmed and edged, of uniform colour and texture with height maintained according to species, variety of grass, location, use and prevalent weather conditions. Grass length to be maintained as follows:</p> <p>General Areas – no higher than 150mm</p> <p>Prestige Areas – no higher than 50mm</p> <p>Grassed areas to be maintained substantially free from weeds, grass cutting, litter and other debris</p> <p>Re-seed or sod to when bare spots are present</p> <p>Locations where bulbs are present shall be maintained to ensure the following year's growth</p>
3	Sports Surfaces	<p>Maintenance to all sports surfaces shall be carried out in accordance with best practice, National Governing Body guidelines and Sport England performance requirements for each surface and the sport for which it is intended.</p> <p>All sports surfaces shall be maintained such that sports can be played in a safe and competitive manner with regard to the performance of the surface.</p>



4	Trees and Shrubs	<p>Maintenance shall be carried out in accordance with best horticultural practices to promote healthy plant growth, solid branch development and proportional trunk and branch structure</p> <p>Trees and shrubs should be pruned and trimmed in order to prevent excessive or untidy growth and to ensure that access routes are safe and unobstructed</p> <p>All maintenance shall be carried out to allow proper use of lighting, CCTV, roads, security fencing and pathways where appropriate and permissible</p> <p>To be maintained litter free</p> <p>Immediate action to be taken to make safe damaged branches and trees</p>
5	Bedding and Floral Displays and External Planters	<p>All plants maintained to optimum growth needs and to extend the flowering season as long as possible</p> <p>Seasonal planting of bedding plants to maintain colourful displays in planting areas and replace diseased and dead plants and shrubs with similar species.</p> <p>Beds are attractive, trim and weed and litter free</p> <p>Plants shall be maintained to sustain proper size and good growth habits</p>
6	Roads, paths, cycle paths, car parks, site access roads, hard standings and building entrances	<p>Maintain car parks and kerbs, paved areas, road surfaces and kerbs, entrance areas and footpaths.</p> <p>To be free from litter, weeds, accumulations of leaves, debris and soilage, standing water.</p> <p>Snow clearance, gritting and salting of all roads and paths carried out such that they remain, so far as practicable, materially free of snow and ice, promoting accessibility and mitigating risk to users, so as not to cause a hazard.</p> <p>All lines and road markings maintained to be clear, visible and fit for purpose</p> <p>All surfaces to be maintained to provide safe access to cars, cyclists, pedestrians and wheelchair users. Hard surfaces are to be re-levelled as necessary and broken paving of kerb stones replaced or repaired as necessary.</p> <p>Channels gullies, culverts, surface and storm drainage entries cleared of obstructions and free running</p> <p>Lights to be cleaned and luminaries replaced to maintain no failure.</p>

7	Street Furniture and Street Signage	<p>Furniture to be free from dust, dirt, smears, stains, chewing gum and cigarette ends</p> <p>Signs and notices clear and legible and visibly free from dust, dirt, smears and stains</p> <p>Applications of weatherproof coatings as applicable to use and location to ensure longevity of the furniture</p> <p>Fixed and mobile garden furniture to be safe, accessible and maintained in good, sound and decorative order</p>
8	Boundary walls, Ditches Fences and Gates	<p>Save to the extent maintained by a third party:</p> <p>Perimeter fences and gates inspected and maintained.</p> <p>Metal and wire fencing maintained free from climbing plants and weeds</p> <p>Wooden fences maintained in sound order, applications of weather proof coatings as applicable to ensure longevity of the fences</p> <p>Walls to be maintained in good repair and pointed where required</p> <p>Ditches to be clear of debris, litter and other obstructions</p> <p>Gates to be maintained in good working order, oiled and coated when necessary</p>
9	External waste bins and butbins	Waste bins to be emptied on a regular basis such that no bin is more than 75% full
10	Water courses and features	To be free flowing and free from debris, litter and other potential pollutants or obstructions
11	Emergency and Responsive Maintenance	All emergency and responsive maintenance to be carried out within the response and rectification times as detailed in Part 3 to this Schedule (Building Services).
12	Pest Control	<p>Contract Area to be maintained free from infestation of pests through the implementation and management of a routine planned pest control service.</p> <p>Response to reports of infestations to be carried out within the response and rectification times</p>
<b>Monitoring and Evaluation</b>		
<p>Client Audits</p> <p>External Customer Service Audits</p>		

Contract Reports
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### SCHEDULE 3 (PART 5) CLEANING AND WASTE DISPOSAL

#### *Objectives*

To ensure that all areas of the Centre are consistently kept clean and free from litter, without compromising user-experience or user safety.

To maintain a consistently high level of cleanliness throughout the Centre

To maintain consistently high standards of hygiene in health-sensitive areas

#### *Scope of Service*

The Contractor shall provide a full cleaning and waste disposal service to the Centre. The service shall include but not be limited to:

- routine, comprehensive internal and external cleaning
- responsive cleaning
- special cleaning
- provision of consumables
- waste disposal service

#### *General Requirements*

The Contractor will ensure that:

Cleaning and hygiene standards are clearly defined and documented for all areas of the Centre, with particular consideration for health-sensitive areas such as catering areas, changing rooms and toilets, and including non-public areas such as offices and staff welfare facilities

Processes and adequate resources (including equipment, staff and materials) are in place to ensure that these cleaning and hygiene standards are maintained throughout operating hours, irrespective of usage levels and with due consideration for the comfort and safety of both staff and visitors

Arrangements are in place to plan, document, monitor and review the delivery of these standards and processes

Comprehensive and effective arrangements are in place for to maximise the recycling of waste

#### *Specific Service Level Requirements*

<i>Item</i>		<i>Service Level Required</i>
1.	Equipment and Consumables	<p>All cleaning equipment to be maintained in working order and safely stored when not in use</p> <p>Consumable stocks to be maintained at usable levels at all times.</p>

2.	Floors	<p>All floor areas including barrier and dust control matting to be visibly free from dust, dirt, fluff and refuse; maintained in safe condition, and free of slip or trip hazards</p> <p>Carpeted areas to have an even pile appearance</p> <p>Vinyl and hard polished areas to be free from accumulations of polishes or dressings which become detrimental to the surface; and treated at appropriate intervals with polishes or dressings necessary for the preservation and maintenance of the surface.</p> <p>Sports surfaces to be maintained in accordance with proprietary requirements and to standards required for the relevant activities</p>
3.	Walls and solid partitions	<p>All surfaces to be visibly free from dirt, dust, smears, stains and other marks.</p> <p>Polishes or dressings necessary for the preservation / maintenance or enhancement of surfaces shall be applied at appropriate intervals.</p>
4.	Doors and door furniture	Visibly free from dust, dirt, finger marks and have a uniform appearance.
5.	Door glazing and glass partitions	Glazing, ledges, sills and frames to be clear of dirt, stains, smears and marks.
6.	<p>Furniture, fixtures and fittings</p> <p>(including all ledges, skirting, pictures, frames, pipes, radiators, fire equipment, notice boards, signs, clocks, mirrors, sockets and vents etc.)</p>	<p>Visibly free from dust dirt, finger marks and smears. Metalwork bright and streak free.</p> <p>No marks from other cleaning operations.</p> <p>Hard surfaces that require either polishing or an application of dressing to enhance their appearance shall be attended to at intervals appropriate to usage.</p> <p>Soft, upholstered surfaces that require a full clean shall be cleaned at intervals appropriate to usage</p>
7.	Surfaces above 2 metres	Visibly free from removable dirt, dust, smudges, stains marks or debris such as cobwebs.
8.	<p>Toilets, urinals and toilet cubicles (including mirrors, towel dispensers, incinerators, soap dispensers and sanibins, etc.)</p>	<p>All walls, panels, surfaces and fittings to be free from dust, soiling, stains, smears, streak marks, sediment and mineral deposits, watermarks, finger marks, soap deposits;</p> <p>Mirrors to be of uniform appearance</p> <p>Sanitary fittings to be free from soap deposits, limescale, hair and debris; taps and metal surfaces to have bright appearance;</p> <p>All areas including drains to be free from offensive odours</p>

9.	External finishes, cladding and window glazing	<p>All surfaces to be visibly free from smears, marks, dust, dirt and soiling</p> <p>Windows to be cleaned inside and out as required and practicable, taking account of access constraints; external cladding shall be cleaned once per year</p> <p>Staff to comply with the Health and Safety Guidance Note G25, "Prevention of Fall to Window Cleaners"</p>
10.	Waste	<p>All waste bins to be cleared at least daily and more often when necessary; inside and outside surfaces of bins to be kept thoroughly clean.</p> <p>All waste material to be recycled wherever possible: in particular, it is expected that plastic containers, cans, glass, paper, card and food waste will be recycled within the normal waste disposal arrangements</p>
<i>Monitoring and Evaluation</i>		
<p>Contractor service checks</p> <p>Client Audits</p> <p>External Customer Service Audits</p>		

### SCHEDULE 3 (PART 6) SECURITY

#### *Objectives*

To maintain the security and safekeeping of all premises, persons and property throughout the site, and to more particularly to prevent loss, damage or injury to the facilities, and to staff and legitimate visitors.

#### *Scope of Service & General Requirements*

The Contractor shall control and monitor access to the Centre at all times by means of both manned and automated systems and processes. The scope of the service shall include comprehensive and systematic arrangements to ensure:

- Effective processes are in place to keep areas secure, and to manage the distribution of keys
- 24-hour management and monitoring of access to all buildings and facilities
- Effective response to intrusions and security threats of all kinds

All arrangements shall comply with relevant legislation and government guidelines, and industry good practice (including the British Security Industry Association's Code of Practice, or equivalent).

All electronic access control and alarm systems, CCTV surveillance systems, mechanical security systems and equipment is to be operated in accordance with their operating schedules.

Manned and automated security systems must be integrated to ensure the successful deployment of each

Security arrangements, and particularly those relating to secondary entrances and exits to the Centre, must at no time compromise emergency evacuation provisions or in any other way compromise the health and safety of visitors or staff

Security staff who carry out mobile patrols must at all times be equipped with fully maintained communication equipment and remain in communication with the Centre manager and others on patrols

The Contractor is expected to review all incidents occurring at the Centre, and to consider any remedial actions required to prevent or mitigate reoccurrence. Appropriate change control arrangements are to be implemented whenever there is reason to believe that security arrangements have been compromised.

The Contractor is authorised to initiate further action as appropriate, including formal complaint, prosecution and / or permanent exclusion of individuals from the Centre as appropriate.

#### *Service Level Requirements*

<i>Item</i>		<i>Service Level Required</i>
1	Management arrangements	<p>Effective arrangements to be implemented and maintained to manage access to all areas of the Centre throughout opening hours; this should include provisions to ensure that visitors use only authorised entrances and exits</p> <p>All non-public areas, particularly offices, stores and areas presenting potential hazards to health and safety, to be secured at all times</p> <p>All areas to be secured outside of public opening hours</p> <p>Effective arrangements to be in place for the documentation, safe-keeping and issue of keys to all areas, enabling a current and accurate record to be produced at all times and keys to be recalled as appropriate if and when required.</p> <p>Effective arrangements to be in place for the admission and identification of contractors, staff and trade or professional visitors; these provisions may include the issue of identity or secure access cards, provided that all such cards are fully documented and that change procedures are in place and can be immediately implemented</p>



		<p>if the security of these arrangements is compromised.</p> <p>Appropriate arrangements to be in place when required for manned patrols of the Centre and its grounds; such staff to be at all times equipped with fully maintained and operative communication equipment and to remain in communication with the Centre manager</p>
2	Alarms and CCTV systems	<p>Comprehensive intruder alarm system, compliant with police response requirements, to be fitted and maintained to all principal buildings; 24-hour monitoring service to be engaged to monitor and validate all alarm activations, and initiate police and management response as required</p> <p>Closed circuit television or similar technology to be used as appropriate and where possible to:</p> <ul style="list-style-type: none"> <li>▪ Monitor high-security areas of the Centre at all times</li> <li>▪ Monitor areas of the Centre, and of the site as a whole, which cannot be directly supervised</li> <li>▪ Monitor entry to the Centre outside of public opening times</li> </ul> <p>Arrangements to be in place to capture all images at all times, permitting review in the case of incident or intrusion, and to be made available to the Authorised Officer and / or Police as required. All such recordings to be indexed and retained for not less than 10 working days; any required by the Authorised Officer or Police to be retained until disposal is authorised by the Authorised Officer.</p>
3	Incident Response arrangements	<p>Arrangements to be in place to ensure that:</p> <ul style="list-style-type: none"> <li>▪ Appropriately trained staff attend, and appropriate responsive action is taken, to all alarm activations, reported security incidents and requests for security assistance by any authorised person in the Centre, in accordance with the agreed response and rectification times</li> <li>▪ Police service is immediately advised of, and asked to respond to and / or to follow up, all such incidents, as appropriate</li> </ul>
<b>Monitoring and Evaluation</b>		
<p>Client Audits</p> <p>External Customer Service Audits</p> <p>Contract Reports</p> <p>Contractor service checks</p>		



### SCHEDULE 3 (PART 7) FINANCE, BUSINESS RECORDS & INFORMATION SERVICES

#### Objectives

- To ensure full and proper recording and accounting of all income and expenditure relating to the Centre and to the fulfilment of the Agreement
- To ensure that recording systems and reporting processes are aligned to ensure the efficient and effective provision of management and stakeholder information as required
- To ensure that full and proper records are maintained in respect of all statutory obligations, and to meet the requirements of the exit and handover processes detailed elsewhere in this Agreement

#### Scope of Service

The contractor will maintain sound and comprehensive processes and systems in respect of all business processes, including but not limited to:

- Business records
- Financial controls
- Bookings and sales processes
- Leasehold management processes
- Purchasing and procurement processes
- Information systems
- Business continuity provisions

#### Service Level Requirements

Item		Service Level Required
1	Business Records	<p>Comprehensive records to be maintained in respect of:</p> <ul style="list-style-type: none"> <li>▪ Bookings and tenancies – including all legal documentation, financial records (see also below) and correspondence material to the booking or tenancy</li> </ul>
		<ul style="list-style-type: none"> <li>▪ Health &amp; Safety – including all relevant certification, procedures, checks and inspections, accidents and notifiable occurrences; and any and all other records required for compliance with statutory and regulatory provisions, and to conform with recognised best practice</li> <li>▪ Premises management – including records of all tests and inspections, planned and preventative maintenance, service checks and performance records</li> <li>▪ Personnel - in accordance with statutory requirements and requirements of the contract (eg in relation to exit and handover / transfer arrangements)</li> <li>▪ Service improvement and development – including service quality</li> </ul>

		<p>checks, customer feedback and complaints, accreditation processes</p> <ul style="list-style-type: none"> <li>Financial transactions, including full analysis and audit</li> <li>Business performance – to meet the reporting requirements detailed elsewhere in this Agreement, and as amended from time to time</li> </ul>
2	Financial controls	<p>Detailed and robust processes and systems to be in place to control and manage:</p> <ul style="list-style-type: none"> <li>Cash receipts, including control of variances</li> <li>Debtors</li> </ul> <p>Systems to be in place to ensure that monies are properly received and retained for all bookings and tenancies; and that cash variances are monitored and investigated as appropriate</p>
3	Bookings and sales processes	<p>Sound, efficient and customer-accessible procedures and systems to be in place to receive, record and process all enquiries and bookings, by telephone, correspondence, electronic media and in person as appropriate</p> <p>Clear processes to be implemented to document, administer and service all bookings, including robust arrangements for payment and credit control as appropriate</p> <p>All procedures to balance customer-focus with process integrity, so that service is efficient, consistent, and meets all customer requirements to the extent so far as the capacity of the Centre allows.</p>
4	Leasehold management	<p>Effective processes to be in place to:</p> <ul style="list-style-type: none"> <li>document, administer and service all tenancies</li> <li>Receive rents and any other payments due from the Tenants in accordance with the occupational arrangements, including the recovery of arrears where appropriate</li> <li>Budget, calculate and collect service charges</li> <li>Provide detailed reports to the Client in accordance with Schedule 4 and otherwise as required from time to time.</li> </ul>
5	Purchasing and procurement processes	<p>All sub-contracted work to be commissioned in accordance with company and LDA procurement provisions as appropriate, with due regard for operational exigencies where necessary in consultation with the Authorised Officer</p> <p>Standard terms and conditions to be adopted and applied to all sub-contracts in consultation with the Authorised Officer</p> <p>Authorised Officer to be fully consulted in the specification, and procurement all sub-contracts</p> <p>Collateral warranties in favour of the IDA and its successors in title to be secured from all appointed design consultants and sub-contractors</p>

		in respect of all minor and capital works, installations and supplies of capital equipment and plant
6	Information Systems	<p>All Information Technology systems to be designed to support the business processes and information requirements for the Centre, and for the successful delivery of the services detailed in this Agreement. This should particularly include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Ensuring the provision of management information as required by the monitoring and reporting procedures detailed in Schedule 4</li> <li>• Facilitating detailed analysis of income and usage patterns as required</li> </ul> <p>Digital business records to be subject to appropriate levels of security and control, allowing access only by authorised users</p> <p>Systems and processes to be in place to ensure regular back-up of digital records, and recovery when required</p>
7	Business Continuity	Arrangements to be in place to ensure, so far as reasonably practical, continuity of services and operations in the event of technical failure
Monitoring and Evaluation		
<p>Client Audits</p> <p>External Customer Service Audits</p> <p>Contract Reports</p>		

### SCHEDULE 3 (PART 8) MARKETING

#### *Objectives*

To ensure that the parties' aims for the Centre are met; and more specifically that the capacity of the Centre to support the development of sporting opportunities in the city is fully realised, and that social and business objectives and outcomes are balanced to best effect.

To support the development of the Centre's business position, by optimising income generation, facility utilisation and throughput figures through targeted promotional, pricing and programming strategies

To ensure that the development of the Centre's services and facilities is actively informed by, and responds to, a sound understanding of:

- Current business patterns, and strengths and weaknesses as perceived by users and stakeholders
- The needs and expectations of both users and wider stakeholders, in particular recognising the differing business opportunities and user requirements arising from differentiated lifestyle, cultural and socio-economic influences
- Current market trends and relevant best practice

To build productive long-term working relationships with the various stakeholders, communities and sports agencies served by the Centre; and to support work with partner agencies in the development of sporting opportunities for the community at large, by ensuring that the programme and associated promotional and pricing policies are responsive to sporting and wider community needs; and are effectively communicated to partners and the community at large

To raise the profile of the Centre and reflect positively upon the involvement of the Contractor, the LDA, and the Mayor of London

#### *Scope of Service & General Requirements*

The Contractor will, in consultation with the Authorised Officer through the Annual Service Plan process, develop and implement a coherent and co-ordinated marketing strategy for each year, to include:

- Programming
- Pricing
- Promotion
- Presentation
- Partnerships
- Customer care
- Quality management
- Market research & management information

The strategy should reflect the purposeful use of market research and management information to develop the service, and a dynamic, flexible and creative approach to programming, pricing and promotion – linked through responsive arrangements for customer care and quality management

#### *Service Level Requirements*

Item	Service Level Required
1 Programming	<p>Programme to:</p> <ul style="list-style-type: none"> <li>• Reflect the overall Centre objectives and business development strategy as identified in this Schedule, and as agreed and reviewed annually through the Annual Service Plan process;</li> <li>• Offer a coherent and diverse range of opportunities for participation and progression - covering a range of activities, and mechanisms for participation, to all sections of the community; and particularly to provide routes into sports participation for low-participant groups in the community</li> <li>• Link clearly, coherently and purposefully with programmes elsewhere, as appropriate to each segment of the market</li> <li>• Meet the expectations and aspirations of users and stakeholders, both at community and at strategic levels</li> </ul> <p>Outline programme proposals to be agreed and reviewed annually through the Annual Service Plan process</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The Authorised Officer may propose the adoption of specific programming initiatives in order to address identified community needs or aspirations. Such proposals will be treated as Client variations for the purpose of this agreement, as set out in <b>Clause 18</b></li> <li>• Priority will at all times be given to sports over non-sporting use, but non-sport bookings may be accepted where it is clear that no regular or committed sporting activity will be affected</li> <li>• The Centre is used to host regional, national and international sports events which are booked and managed by the Contractor. Appropriate procedures and policies to manage and mitigate the effect of such event commitments on community usage are to be agreed with the Authorised Officer and implemented accordingly</li> <li>• The Client may at its discretion reserve facilities for the conduct of LDA business or events under the auspices of the Mayor of London; the Contractor will in these cases not charge the Client for such use, but will be entitled to recover any costs directly incurred in supporting such events, or income which can reasonably be demonstrated to have been foregone as a result of such events, through the Compensation Events process (Clause 21)</li> </ul>



2	Promotion	<p>Promotional strategy to:</p> <ul style="list-style-type: none"> <li>• Reflect overall Centre objectives and business development strategy as identified in this Schedule and agreed through the Annual Service Plan process; to support current programming or pricing initiatives, and to respond as appropriate to emerging business opportunities</li> <li>• Achieve active engagement with all of the various communities served by the Centre, thereby optimising its profile in its strategic markets</li> <li>• Ensure production of materials to a consistently high professional standard</li> <li>• Utilise a full range of media and communications channels appropriate in each case to the intended audience</li> </ul> <p>Outline promotional proposals to be agreed and reviewed annually through the Annual Service Plan process</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The Authorised Officer may propose the adoption of specific promotional initiatives in order to address identified community needs or aspirations. Such proposals will be treated as Client variations for the purpose of this agreement, as set out in Clause 18</li> <li>• All promotional materials and media – including websites, advertisements and printed literature and notices - will carry the identity of both the Client and the Contractor, in a manner approved by both parties, and the content of all such materials will be approved by the Authorised Officer.</li> </ul>
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3	Pricing	<p>Pricing policy to reflect the Centre's current strategic objectives as identified in this Schedule and agreed and reviewed annually through the Annual Service Plan process; to demonstrably support current programming or pricing initiatives, and to respond as appropriate to emerging business opportunities</p> <p>Specific consideration to be given to creative and targeted pricing initiatives where appropriate to address identified business and / or sports development objectives or opportunities; such initiatives to be agreed with the Authorised Officer, whose agreement will not be unreasonably withheld.</p> <p>Outline pricing proposals to be agreed and reviewed annually through the Annual Service Plan process</p> <p><b>Notes:</b></p> <p>The Authorised Officer may propose the adoption of specific pricing initiatives in order to address identified community needs or aspirations. Such proposals will be treated as Client variations for the purpose of this agreement, as set out in Clause 18</p> <p>The current standard pricing structure for use and activities at the Centre is included at Schedule 18. The Contractor may increase the prices with effect from 1 April in each year of this Contract provided that such increase shall not without the consent of the Client (such consent not to be unreasonably withheld) exceed the higher of 5%, or the rate of increase in the 'Retail Prices Index' for the immediately preceding calendar year.</p> <p>Access may be offered at reduced or no cost to identified individuals under the auspices of recognised performance and development programmes, including the BOA Passport Scheme and the GLL Sport Foundation. The terms of such access will be reviewed between the Contract Manager and Authorised Officer, and will be subject to review through the Annual Service Plan process and otherwise as required</p>
4	Presentation	<p>Reception area and reception operation to be consistently efficient and customer-friendly, while maintaining the security of the Centre and of the reception desk itself</p> <p>All signage, notices and information displays to be clear, attractive, properly mounted and professional in appearance</p> <p>All staff to maintain appropriate and professional standards of presentation and appearance, and to be able to respond to customer enquiries and feedback in a helpful, positive, informed and professional manner - which properly reflects the nature of the enquiry and captures potential opportunities to develop the business</p> <p>Public address operation (where installed) to be clear, professional and communicative to users</p>

5	Partnerships	<p>Key strategic, local and delivery partners to be identified</p> <p>Partnerships to be formulated and developed with a clear understanding of all partners' objectives, roles, resources and responsibilities (as appropriate) in relation to the Centre as a whole, and / or to individual programme or development initiatives</p>
6	Customer Care	<p>Clear policies and effective procedures to be in place to ensure that:</p> <ul style="list-style-type: none"> <li>• The highest possible standards of service are established and consistently maintained, so that all customers have a consistently positive and professional experience of the Centre</li> <li>• Customers know the scope and quality of services they may expect from the Centre, and have ready access to a range of channels and processes through which they can raise queries, points of dissatisfaction, or proposals to improve the service</li> <li>• Staff are empowered to respond to customer queries and concerns positively and productively, to the extent that equity and Centre policy allow</li> <li>• Opportunities to encourage and foster repeat visits and bookings are captured, both at individual and organisational levels</li> </ul> <p>Customers' views are regularly and actively solicited and effectively gathered through a range of channels, including surveys, feedback mechanisms and surgeries as appropriate; and customer feedback, both positive and negative, is effectively captured and receives a meaningful response</p>
7	Quality management	<p>Clear and effective processes to be in place to ensure that:</p> <ul style="list-style-type: none"> <li>• Services are formally planned for the safety and enjoyment of users.</li> <li>• Documented systems, with appropriate document controls, are in place to ensure that key service elements are specified and service standards clearly defined in accordance with user and Client expectations; and that services are and consistently delivered to the standards expected by users and the Client</li> <li>• Responsibilities for implementing, monitoring and reviewing service delivery are clearly defined; services and service-processes are subject to regular, competent and appropriate inspection and review; and review findings are referred back to responsible managers and services reviewed accordingly</li> </ul>



8	Management Information and Market Research	<p>Market intelligence – including changes to demand and competing provision – and strategic horizon-scanning to be undertaken systematically and shared with the Authorised Officer through the Monitoring and Reporting and/or Annual Service Plan processes as appropriate</p> <p>All relevant management information – including but not limited to, usage data and customer feedback – to be reviewed on a regular and systematic basis by departmental managers in order to evaluate the effectiveness of the Centre’s marketing strategy; relevant lessons to be fed into the monitoring and reporting process detailed in Schedule 4</p> <p>Relevant leisure-specific external evaluation to be undertaken at the agreed intervals, viz (at minimum):</p> <ul style="list-style-type: none"> <li>▪ Quality accreditation programme (Quest or similar) – biennial</li> <li>▪ Strategic performance benchmarking service (National Benchmarking Service or similar) - biennial</li> <li>▪ External customer service benchmarking (eg ISPAL or similar) – six-monthly, in October and March</li> </ul> <p>Conclusions from such evaluations to be fed into the monitoring and reporting process detailed in Schedule 4</p>
<i>Monitoring and Evaluation</i>		
<p>Client Audits</p> <p>External Customer Service Audits</p> <p>Contract Reports</p> <p>Quest assessments</p>		

SCHEDULE 3 (PART 9) HEALTH & SAFETY		
Objectives		
<p>To ensure that measures consistent with all relevant legislation and industry best practice are in place to ensure, so far as reasonably practicable, the health, safety and welfare of all staff, contractors and visitor to the Centre</p> <p>To ensure that staff, contractors and visitors adhere to these measures at all times</p> <p>To ensure that processes are in place to plan, organise, control, monitor and review these measures so that they remain current and effective</p>		
Service Level Requirements		
Item		Service Level Required
1.	Policy	<p>The Centre to maintain a planned approach and a documented policy to health and safety for customers, staff and others who may be effected by the work activity e.g. Contractors and community</p> <p>All safety performance information to be regularly and systematically reviewed by management, and procedures and documentation to be amended as appropriate.</p>
2.	Procedures & practices	<p>The Centre to have procedures in place to ensure effective planning, implementation, operation, monitoring and review of health and safety requirements</p> <p>Arrangements to be in place to ensure that all procedures are regularly and systematically updated to take account of changes in legislation, corporate policy, industry best practice and local requirements</p> <p>Safe working practices to be implemented in all working areas covering both customers and staff.</p>
3.	Responsibilities	<p>Responsibilities for health and safety to be defined, including the on-site competent person for managing the Health and Safety programme</p> <p>Organisational arrangements to specifically (but not exclusively) cover:</p> <ul style="list-style-type: none"> <li>▪ Risk assessments</li> <li>▪ Safe working practices</li> <li>▪ Fire Safety</li> <li>▪ Training</li> <li>▪ Emergency Evacuation Procedures</li> <li>▪ bomb alerts</li> <li>▪ Building security</li> <li>▪ Accident reporting and investigation</li> <li>▪ First Aid</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Personal Protective Equipment</li> <li>▪ Plant &amp; equipment</li> <li>▪ COSHH</li> <li>▪ Manual handling</li> <li>▪ Pregnant and nursing mothers</li> <li>▪ Young people</li> <li>▪ Contractor management</li> <li>▪ Asbestos management</li> <li>▪ Permit to work</li> <li>▪ Safety inspections</li> <li>▪ Electrical safety</li> <li>▪ Working at height</li> </ul>
4.	Training	<p>To engage or employ sufficient, properly trained, skilled, competent and resourced personnel to ensure effective health and safety management on site. Staff to be trained to carry out Health and Safety responsibilities</p> <p>Arrangements to be in place to ensure that this training is updated to ensure that it remains current and takes account of new issues and changes in procedure</p> <p>Arrangements to be in place to identify training requirements in respect of Health &amp; Safety and ensure provision of training such that staff are able to carry out allocated functions without undue risk</p> <p>Specific information and instruction to be provided to staff, contractors and trade or professional visitors, and updated as appropriate, in respect of:</p> <ul style="list-style-type: none"> <li>▪ Relevant plant and machinery</li> <li>▪ Display Screen Equipment</li> <li>▪ Asbestos</li> <li>▪ Manual handling</li> <li>▪ Fire</li> <li>▪ COSHH</li> <li>▪ Personal Protective Equipment</li> </ul>
		<ul style="list-style-type: none"> <li>▪ Relevant portable equipment</li> </ul> <p>All training to be fully recorded</p>
5.	Risk Assessments	<p>Formal risk assessments to be carried out regularly and systematically in respect of all business and operational activities at the Centre; risk reduction plans to be adopted, implemented and reviewed as appropriate</p> <p>Safe systems of work to be in place in respect of all business and operational activities, and particularly in respect of:</p> <ul style="list-style-type: none"> <li>▪ Major plant &amp; equipment</li> </ul>

		<ul style="list-style-type: none"> <li>▪ COSHH</li> <li>▪ Manual handling</li> <li>▪ Pregnant and nursing mothers</li> <li>▪ Young people</li> <li>▪ Electrical safety</li> <li>▪ Working at height</li> <li>▪ Event management</li> </ul>
6.	Hazardous substances	<p>Formal and comprehensive COSHH assessments to be undertaken and regularly reviewed</p> <p>Procedures, training and appropriate equipment and consumables to be in place to ensure safe handling, control and disposal of hazardous substances at all times and in all areas of operation</p>
7.	Certification & Documentation	<p>Current and valid certificates to be retained and displayed in respect of:</p> <ul style="list-style-type: none"> <li>▪ Public Liability Insurance</li> <li>▪ Employers' Liability Insurance</li> <li>▪ Fire Risk Assessments</li> <li>▪ Gas inspections</li> </ul> <p>Accident and emergency procedures to be documented, in place and tested;</p> <p>Accident Book to be maintained and available for inspection at all times</p> <p>Comprehensive records on all statutory inspections relating to the building, plant and machinery to be maintained and available for consultation when required.</p>
8.	Managing Contractors	<p>Comprehensive procedures and policies to be in place to ensure that contractors working on site:</p> <ul style="list-style-type: none"> <li>▪ are appointed only after appropriate checks have been carried out in relation to their technical competence, and their Health and Safety policies, procedures and documentation; and satisfactory method statements have been supplied for the work proposed</li> <li>▪ are aware of the conditions in which they are working, and of their responsibilities for their own and for others' safety</li> <li>▪ are subject to clear and effective management protocols which will ensure safe conduct and implementation of the work at all times</li> <li>▪ should be monitored to ensure they comply with their method statement and risk assessments.</li> <li>▪ Procurement processes to include adequate weighing for health and safety to comply with Health and safety standards. High risk activities should be</li> </ul>

		managed through a permit to work system
9.	Construction Design & Management regulations	The Contractor is to be responsible for ensuring that the requirements of the Construction, (Design & Management) Regulations 2007 are met; this may include acting as the Client representatives in relation to works as required.
10.	Audits and safety tours	Regular site inspections to be carried out, monitored, documented. Actions identified should be implemented, signed off and maintained on file for inspection.  Comprehensive and systematic (preferably Quarterly)?? internal audit-processes to be in place to ensure the effective maintenance and operation of all policies, procedures and documentation.
11.	Testing & inspections	Regular, comprehensive and systematic Portable Appliance Testing (PAT) to be conducted on all portable electrical equipment on site  Regular and systematic inspections and/or tests as appropriate to be undertaken in respect of: <ul style="list-style-type: none"> <li>▪ Fire alarms &amp; extinguishers</li> <li>▪ Emergency lights</li> <li>▪ Electrical wiring</li> <li>▪ Asbestos</li> <li>▪ Specialist safety equipment</li> </ul>
12.	Asbestos Management	Procedures and documentation to be in place to ensure that the Asbestos Management Plan is maintained up to date and all necessary remedial works are carried out in the appropriate manner by competent contractors.
13.	Plant and Equipment	To ensure all work equipment, plant and machinery are maintained in good working order and inspected as required to comply with H&S Regulations. To ensure all defective plant and equipment is made safe or remains out of service until replaced or repaired.  Procedures and lines of responsibility to be clearly laid out to ensure that PPM schedules are followed and that all building plant is safe for operation at all times.
14.	Signage	Signage to be maintained in accordance with statutory obligations and recognised industry best practice, with particular consideration for:  Fire safety arrangements  Electrical, chemical and plant room hazards  Pool safety restrictions

		<p>Traffic Management on site</p> <p>Unauthorised and controlled access</p>
15.	First Aid provision	<p>Appropriate First Aid equipment and materials stocks to be maintained at all times</p> <p>Organisational arrangements to ensure presence of adequate trained First Aid staff throughout business hours, with particular consideration for major event requirements</p>
16.	Personal Protective Equipment	<p>Provision of appropriate PPE to be maintained at all times</p> <p>Staff to be trained in use of PPE as appropriate</p>
17.	Emergency Procedures	<p>Specific procedures to be in place, known and rehearsed by staff for all foreseeable forms of accident and emergency, including but not limited to:</p> <p>Fire, chemical or bomb alerts</p> <p>Assault</p> <p>Major injury</p> <p>Procedures to be in place and rehearsed for adoption in both normal and major event settings.</p>
18.	Accident and Incident reporting	<p>To ensure the LDA are to be informed as soon as reasonably practicable of any RIDDOR reportable health and safety incident.</p> <p>All significant accident and incident resulting from the building or premises defects should be investigated and reported to the LDA within 24 hours, and remedial actions planned and implemented.</p>
19.	Maintenance of safe working environment	<p>Regular checks to be carried out to ensure a continued safe working environment, with particular reference to:</p> <p>Slip and trip hazards</p> <p>Electrical cabling and fittings</p> <p>Ventilation and heating, including appropriate testing and monitoring for legionella</p> <p>Lighting</p> <p>Plant and equipment</p> <p>Disposal of waste</p>
Monitoring and Evaluation		

Client Audits

Contract Reports

Annual Service Plan



### SCHEDULE 3 (PART 10) ORGANISATION & MANAGEMENT

#### *Objectives*

To ensure that:

- Appropriately qualified and experienced staff are employed to fulfil all of the requirements of the Agreement; and that all staff are suitably competent, qualified and trained to perform their duties and deliver the service
- The recruitment, development and management of staff reflects industry best practice (including accreditation to Investors in People or similar), conforms with all relevant legislation, and meets the requirements of the Centre over the duration of the Contract
- Organisational and management arrangements support the delivery of optimal service quality and the continuing development and improvement of the Centre's services
- The fitness, presentation and conduct of all staff, whether directly or indirectly engaged by the Contractor, is at all times appropriate to their role, to the general nature of the services being provided, and to the Centre's status as a major publicly funded facility. In particular, all staff employed by the Contractor and its sub-contractors shall be courteous at all times to all staff, users of the Centre and other persons with whom their duties bring them into contact; be medically fit for the work that they are required to undertake; and shall in no circumstances be on duty if under the influence of alcohol or drugs or other debilitating substances

#### *Scope of Service and general requirements*

The Contractor shall ensure that effective arrangements, policies, systems and procedures are in place in respect of:

- Recruitment
- Training & development
- Organisation
- Management

#### *Service Level Requirements*

Item	Service Level Required
1 Recruitment	<p>Robust recruitment process to be in place for all appointments, compliant with Equalities legislation and the recruitment process is fair and thorough and ensures the right appointment and that all employees are appropriately trained and qualified to deliver a safe and enjoyable experience for customers</p> <p>Authorised Officer to be consulted on all senior appointments</p> <p>Policies and procedures to be in place to ensure appropriate screening of staff working with young children and other vulnerable persons. In particular, where required by law and in accordance with the Contractor's Criminal Records Policy, the Contractor shall ensure that in respect of all potential staff or persons performing any of the Services (each a "Future Employee") before a Future Employee performs any of the</p>



		<p>Services:-</p> <ul style="list-style-type: none"> <li>• He or she is questioned as to whether he or she has any convictions</li> <li>• The results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each Future Employee</li> <li>• An assessment of the suitability of each Future Employee with a criminal record is carried out in respect of the position for which they are being considered</li> <li>• Appropriate action is taken in relation to any Future Employee if any relevant convictions are revealed.</li> </ul> <p>For the avoidance of doubt, the Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Records Bureau check, or who is subject to Convictions once appointed which disqualify that person from working with children or the vulnerable is employed or engaged in a position that involves or may involve contact with children and/or the vulnerable on a regular basis, as defined in relevant government guidance of the time.</p>
2	Induction, Training & Development	<p>Comprehensive induction process to be in place for all new members of staff, which is appropriate to the requirements of their job and meets the requirements of all relevant legislation (including that pertaining to equality and health and safety)</p> <p>Comprehensive, systematic and fully documented staff training and development programme to be in place, which:</p> <ul style="list-style-type: none"> <li>• Conforms with equal opportunities policy and legal requirements, and with industry best practice;</li> <li>• Allows the identification and regular (at least yearly) review of individual training needs, in accordance with roles and responsibilities, the Centre's business objectives, and the continuing professional development needs of the individual staff</li> <li>• Is based upon a coherent and recognised structure of professional qualifications relevant to the services provided</li> <li>• Ensures that all staff receive the training required to carry out their responsibilities</li> </ul>
		<ul style="list-style-type: none"> <li>• Supports internal succession planning and contingency cover arrangements as appropriate to ensure continuity of service in all foreseeable circumstances</li> <li>• Reflects so far as possible a clear and coherent career structure within and beyond the company, which provides all staff with opportunities for progression in accordance with their aspirations and capabilities</li> <li>• Is itself subject to regular review and evaluation</li> </ul>
3	Organisation	<p>Organisational structure to:</p> <ul style="list-style-type: none"> <li>• Be consistent with the needs of the Centre, as reflected in</li> </ul>

		<p>the Annual Service Plan and reviewed accordingly in consultation with the Authorised Officer</p> <ul style="list-style-type: none"> <li>• Provide for clear definition of management responsibilities and effective delegation as appropriate</li> </ul> <p>Staffing to be organised and deployed so that:</p> <ul style="list-style-type: none"> <li>• Appropriate levels of staffing and supervision are maintained throughout the Centre during opening hours, with adequate provision for meetings, handovers, training and personal development; and with adequate cover for absences</li> <li>• Shifts comply with legal requirements – e.g. Health and Safety at Work Act 1974 and European Commission Working Time Directive 1999.</li> </ul>
4	Management	<p>It is expected that;</p> <ul style="list-style-type: none"> <li>• The leadership and direction will be clear and consistent with the core values and business objectives both of the organisation, and of the Centre; while fostering a consultative and participative climate which encourages the active participation of staff in developing the business; mechanisms for this may include effective processes for regular and high quality communications, an effective staff suggestion procedure, and provision for cross-team and vertical project groups as appropriate</li> <li>• Clear processes will be in place for management and development of staff performance and capabilities</li> <li>• Consistent and clear lines of communication will be in place at all levels and in all functional areas</li> </ul>
<b>Notes</b>		
<p>1) Where the Contractor wishes to sub-contract elements of the Services all staff employed by the sub-contractor shall be deemed to be employees of the Contractor for the purposes of delivery of the Services, and such sub-contracting shall not relieve the Contractor of any of its responsibilities to Client under the Contract.</p> <p>2) Where LDA becomes concerned at the behaviour or performance of an individual employed in or about the execution of the Services the Authorised Officer will inform the Contractor in writing of his concern in order that, where appropriate, action may be taken under the relevant disciplinary policy of the Contractor. Should an improvement not be forthcoming or should a single incident be considered by LDA to be so serious as to necessitate immediate removal LDA shall request the Contractor to remove the person from the Services. The Contractor shall take action in relation to LDA's request in accordance with the Contractor's disciplinary policy or otherwise as agreed with LDA.</p>		
<b>Monitoring and Evaluation</b>		
<p>Client Audits</p> <p>External Customer Service Audits</p>		

Contract Reports

Quest assessments

liP assessments

## **SCHEDULE 4{ TC "SCHEDULE 4 - MONITORING REQUIREMENTS" \F C \L "1" }**

### **REPORTING & MONITORING ARRANGEMENTS**

Reporting and monitoring arrangements will comprise the following:

#### **Contractor reports**

- Weekly operations report – to be provided weekly, no later than Tuesday of each week: the purpose of this report is to ensure that the Client is kept informed of operational issues.
- Monthly activities and performance report – to be provided within 7 days of the end of each month
- Quarterly activities and performance overview report – to be provided no later than twenty (20) days after the end of the Relevant Quarter.

The anticipated scope of each report are summarised in Table 1 below, but:

In the case of weekly operational reports, where the Contractor considers that there is nothing material to report for any given heading, this may be noted

In all cases the Contractor is expected to ensure that the report contains all information relevant to the performance of the Centre and fulfilment of Service Requirements during the relevant period.

The Authorised Officer may at his / her discretion ask for other information on a regular or ad hoc basis, provided that the cost of providing such information is not disproportionate to its purpose; the Contractor may ask to know the purpose of such information, but may not unreasonably refuse to provide it.

#### **Client Audits:**

- Operation audit – weekly, at the Client's discretion
- Finance & business systems audit – monthly
- Premises audit – quarterly
- Health & safety process audit - annually

All audits will be carried out by the Authorised Officer or his appointed deputy, and in consultation with the Contract Manager or his appointed deputy. The scope of each audit, which shall be related to the requirements of the Service, will be notified to the Contractor by the Authorised Officer from time to time acting reasonably having regard to the LDA's overriding obligation to be accountable for public sector funding.

#### **External audit and accreditation processes:**

- Industry customer service audit - quarterly
- Quest – client / contractor audit – quarterly
- Quest re-accreditation – two-yearly, in 2009, 2011, and 2013
- National Benchmarking Service analysis - annual

## Meetings

The Contractor shall attend both monthly and quarterly review meetings with the Authorised Officer and other personnel as appropriate.

The monthly meetings shall, as a minimum, review:

- Monthly operational performance
- Monthly management and financial reports
- The monthly consolidated invoice
- Other items as agreed

The quarterly meetings shall, as a minimum:

- Review performance against the Annual Service Plan
- Set objectives for the next quarter
- Review revenue generation
- Review Service developments
- Review other items as agreed

In addition, both monthly and quarterly meetings shall:

- Develop proposals for generating revenue
- Develop proposals for reducing costs by solutions that will, so far as possible, be to the benefit of all affected by potential or actual problems
- Consider the issues of advance warning of anything which might raise costs or harm the quality of the Services to be provided

The Contractor shall submit a suggested agenda for the meetings five days prior to each meeting. The meetings shall be minuted by the Contractor's Representative and minutes shall be issued within seven days of each meeting.

Table 1: Anticipated Report Contents

Heading	Weekly	Monthly	Quarterly
<b>Finance</b>	N/A	Summary of monthly income and expenditure highlighting any significant variances against budget or any material finance issues emerging.	Income and expenditure fully analysed, including: <ul style="list-style-type: none"> <li>• actual for period</li> <li>• actual to date</li> <li>• actual against target.</li> </ul> Debts exceeding one month Commentary on unusual factors, major trends and prospects, debtors exceeding one quarter
<b>Marketing</b>	N/A	Notification of any new or planned initiatives or community links	Notification of any new or planned initiatives or community links
<b>Availability</b>	All occurrences of facilities being unavailable or not fit for use.	Summary of weekly data on facilities withdrawn or unfit for use	Summary of monthly data for the quarter
<b>Customer feedback</b>	Complaints and comments broken down into type and number.	Summary of weekly data, with commentary on any significant trends and proposed actions.	Summary of monthly data for the quarter, with commentary on any significant trends and proposed actions.
<b>Health and Safety</b>	Notification of accidents and incidents per activity area, including level of severity.	Summary of weekly data, with commentary on any significant trends and proposed actions Notification of any Health and Safety related works being undertaken or proposed	Summary of monthly data for the quarter, with commentary on any significant trends and proposed actions Overview of any Health and Safety related works in progress or proposed

Table 1: Anticipated Report Contents

Heading	Weekly	Monthly	Quarterly
<b>Building Services</b>	Notification of any new significant building or facility condition issues Notification of any changes to current works	Update on condition of the building and any significant maintenance issues/repairs Changes to Works Programme. Report on General Maintenance activities Report on Grounds Maintenance activities	Overview of monthly information for the quarter, with commentary on any key issues or emerging problems
<b>Key (management, supervisory, specialist) staff</b>	Notification of any absences in excess of three working days Notification of any impending or actual departures	Notification of any extended or continuing absences or impending departures among key staff	Overview of monthly information for the quarter, with commentary on any key issues or emerging problems
<b>Throughput &amp; utilisation</b>		Total number of users, including target-groups where appropriate broken down by: <ul style="list-style-type: none"> <li>• Activity (for coaching &amp; development programmes)</li> <li>• Facility / activity &amp; time-zone (for court bookings)</li> </ul> Utilisation of facilities, broken down by area and time-zone	Summary of monthly data for the quarter, with commentary on any significant trends
<b>Quality Management</b>	N/A	Detail of all internal and external audits with reports, results with reference to Action Plan	Review of monthly data for the quarter, with commentary on any significant trends or emerging issues
<b>Security</b>	Notification of any significant damage, security breaches or incidents requiring police attendance	Summary with commentary on any significant trends and proposed actions.	Summary with commentary on any significant trends and proposed actions.
<b>Programme</b>	N/A	N/A	Detailed review of programme with commentary on proposed initiatives

## SCHEDULE 5{ TC "SCHEDULE 5 - PERFORMANCE REGIME" \F C \L "1" }

### PERFORMANCE REGIME

#### INTRODUCTION

1. The delivery of services to the Centre in accordance with the Service Requirements will be evaluated in accordance with the following principles:
2. **Core services**
  - 2.1 The delivery of core services to end-users (as outlined in Schedule 3, Parts 1, 3, 4, 5 & 6); the maintenance of effective financial controls (Schedule 3, Part7); and the maintenance of effective Health and Safety systems and processes (Schedule 3 Part 9) is fundamental to the fulfilment of the contract
  - 2.2 The performance of these services is scalable, and will be monitored through the audit and reporting processes detailed in Schedule 4.
  - 2.3 Where a service failure takes place (and the excusing causes provisions do not apply), deductions will be made from the management fee on a proportionate basis as detailed in Schedule 6 Tables 1 & 2. In cases where service failures are acute or recurrent, the Client will also have recourse to the remedial process outlined in Clause 22
3. **Service and Business Processes**
  - 3.1 The maintenance of service and business processes (as outlined in Schedule 3 Parts 2, 8 & 10) is not quantifiable, and has no absolute value but may be evaluated along a scale. Performance of these services will be evaluated against agreed standards through the audit and reporting processes detailed in Schedule 4. The standards for performance of these services are detailed in Table 2 Schedule 6
  - 3.2 Where the maintenance of these processes falls below the agreed standards, no deductions from the management fee will be made but the Client and Contractor will implement the remedial process outlined in Clause 22
4. **Achievement of strategic targets**
  - 4.1 The achievement of strategic objectives (Schedule 3) is not expressible purely in terms of quantifiable targets; but can to some degree be represented in these terms. Targets which clearly represent progress towards the strategic objectives are outlined in Schedule 6 Tables 3 (a) and 4 (a)
  - 4.2 Where service delivery results in performance exceeding these targets, the surplus share arrangements in Clause 15/Schedule 7 will be varied as outlined in Schedule 6.



## SCHEDULE 12{ TC "SCHEDULE 12 – CURRENT PRICES" \F C \L "1" }

## CURRENT PRICES

**Crystal Palace National Sports Centre Prices 2010**

Activity	Price Level	
		<b>2010</b>
£1 Swim Peak	Junior Wellness Pay & Play	1.00
12 wks Aqua Tots LSS	Junior Wellness Pay & Play	59.60
	Junior Wellness Prepaid	59.60
12 wks Athletics	Junior Wellness Pay & Play	59.30
	Junior Wellness Prepaid	59.30
12 wks Football	Junior Wellness Pay & Play	49.45
	Junior Wellness Prepaid	49.45
12 wks Trampolining	Junior Wellness Pay & Play	43.25
	Junior Wellness Prepaid	43.25
	Wellness Pay & Play	29.15
	Wellness Prepaid	29.15
6 wks LSS	Junior Wellness Pay & Play	44.80
Active Fitness	Junior Wellness Pay & Play	2.85
	Junior Wellness Prepaid	2.85
Arena Events Per Hour	Adult Non Member	150.00
Arena Half Per Hour	Adult Non Member	95.00
Athletics Track Peak	Adult Non Member	3.50
	Club Wellness Pay & Play	1.55
	Club Wellness Prepaid	1.55
	Junior Non Member	2.15
	Junior Wellness Pay & Play	1.60
	Junior Wellness Prepaid 2	1.60
	Wellness Pay & Play	2.25
	Wellness Prepaid	2.25
Athletics Track Off Peak	Adult Non Member	2.40
	Club Wellness Pay & Play	1.55
	Club Wellness Prepaid	1.55
	Junior Non Member	2.15
	Junior Wellness Pay & Play	1.60
	Junior Wellness Prepaid	1.60
	Wellness Pay & Play	1.60
	Wellness Prepaid	1.60
Badminton Peak	Adult Non Member	6.75
	Club Wellness Pay & Play	5.30
	Club Wellness Prepaid	5.30
	Junior Non Member	5.55
	Junior Wellness Pay & Play	4.35

	Junior Wellness Prepaid	4.35
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.30
	Wellness Prepaid	5.30
Badminton Off Peak	Adult Non Member	6.75
	Club Wellness Pay & Play	4.40
	Club Wellness Prepaid	4.40
	Junior Non Member	5.20
	Junior Wellness Pay & Play	3.90
	Junior Wellness Prepaid	3.90
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	4.40
	Wellness Prepaid	4.40
Bar Pitch 11-a-side Astro Peak	Adult Non Member	62.55
	Wellness Pay & Play	62.55
	Wellness Prepaid	62.55
Bar Pitch 11-a-side Astro Off Peak	Adult Non Member	31.85
	Wellness Pay & Play	31.85
	Wellness Prepaid	31.85
Football Astroturf Full Pitch Peak	Adult Non Member	62.55
Football Astroturf Full Pitch Off Peak	Adult Non Member	31.85
GE Class 60 mins Peak	Adult Non Member	5.50
	Club Wellness Prepaid	5.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.00
	Wellness Prepaid	0.00
GE Class 60 mins Off Peak	Adult Non Member	5.45
	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.00
	Wellness Prepaid	0.00
GE Water Workout Peak	Adult Non Member	5.50
	Wellness Pay & Play	5.05
GE Water Workout Off Peak	Adult Non Member	5.50
	Wellness Pay & Play	5.00
GE Yoga Peak	Adult Non Member	7.00
	Club Wellness Prepaid	5.10
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.10
	Wellness Prepaid	0.00
GE Yoga Off Peak	Adult Non Member	7.00
	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.35
	Wellness Prepaid	0.00
General Swim 1+3 Peak	Wellness Prepaid	6.30

General Swim 1+3 Off Peak	Wellness Prepaid	6.30
General Swim 2+2 Peak	Wellness Prepaid	6.30
General Swim 2+2 Off Peak	Wellness Prepaid	6.30
General Swimming Peak	Adult Non Member	4.05
	Club Wellness Pay & Play	1.55
	Club Wellness Prepaid	1.55
	Junior Non Member	2.05
	Junior Wellness Pay & Play	1.70
	Junior Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	3.05
	Wellness Prepaid	0.00
General Swimming Off Peak	Adult Non Member	2.30
	Club Wellness Pay & Play	1.00
	Club Wellness Prepaid	0.00
	Junior Non Member	1.65
	Junior Wellness Pay & Play	1.05
	Junior Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	1.70
	Wellness Prepaid	0.00
Hire - Court Per Hour	Adult Non Member	40.00
Hire - Studio Per Hour	Adult Non Member	29.55
Indoor 5-a-side Peak	Adult Non Member	44.10
Indoor 5-a-side Off Peak	Adult Non Member	22.70
Netball	Adult Non Member	20.00
North Pitch 5-a-side Peak	Adult Non Member	40.00
North Pitch 5-a-side Off Peak	Adult Non Member	22.45
North Pitch 6-a-side Peak	Adult Non Member	46.80
North Pitch 6-a-side Off Peak	Adult Non Member	29.30
North Pitch Bubble	Adult Non Member	99.15
Outdoor Grass Pitch	Adult Non Member	132.30
Pre & Post Natal Session	Adult Non Member	5.75
	Wellness Pay & Play	5.35
Short Course 4 Day LSS	Wellness Pay & Play	23.30
	Wellness Prepaid	23.30
Short Course 5 Day LSS	Wellness Pay & Play	23.85
	Wellness Prepaid	23.85

Spectator (Entry) Fee	Adult Non Member	1.20
	Junior Non Member	0.90
Tennis	Adult Non Member	7.70
	Junior Non Member	6.50
	Junior Wellness Pay & Play	5.30
	Junior Wellness Prepaid	5.30
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.95
	Wellness Prepaid	5.95
Trampolining 1 hr	Adult Non Member	4.50
	Wellness Pay & Play	3.65
	Wellness Prepaid	3.65
Trampolining 1 hr 30 mins	Adult Non Member	6.00
	Wellness Pay & Play	4.95
	Wellness Prepaid	4.95
Wellness Fitness Centre Peak	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	5.00
	Wellness Prepaid	0.00
Wellness Fitness Centre Off Peak	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	4.20
	Wellness Prepaid	0.00
Wellness Fitness Centre Induction Basic	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	16.80
	Wellness Prepaid	0.00
Wellness Fitness Centre Induction Total	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	25.50
	Wellness Prepaid	0.00
Wellness Fitness Centre Programme Review	Club Wellness Prepaid	0.00
	Premier Wellness Prepaid	0.00
	Wellness Pay & Play	13.30
	Wellness Prepaid	0.00

**EXECUTED AND DELIVERED AS A DEED** on the day and year first before written:

The Common Seal of **LONDON** )  
**DEVELOPMENT AGENCY** )  
 was hereto affixed in the presence of: )

[Redacted Signature]

.....  
 Authorised Signatory

[Redacted Signature]

.....  
 Print Name

[Redacted Signature]

.....  
 Authorised Signatory

[Redacted Signature]

.....  
 Print Name



Executed as a deed and delivered by )  
**GREENWICH LEISURE LIMITED** )  
 acting by: )

[Redacted Signature]

Board Member

[Redacted Signature]

.....  
 Print Name *VICE CHAIR*

[Redacted Signature]

.....  
 Board Member *SECRETARY*

[Redacted Signature]

.....  
 Print Name