



WANDSWORTH BOROUGH COUNCIL

INVITATION TO TENDER
IN RESPECT OF A CONCESSION CONTRACT TO RE-DEVELOP AND MANAGE THE
REDGRA SPORTS PITCH AND ASSOCIATED PREMISES ON THE TOOTING BEC
COMMON TRIANGLE FIELD

VOLUME 2: DRAFT CONTRACT

THIS CONTRACT is made the _____ day of _____ 2013

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH of The Town Hall,
Wandsworth High Street, London SW18 2TU ("the Council") of the one part; and

[NAME OF CONTRACTOR] a company registered in England and Wales (Company Number [NUMBER])
with its registered office located at [ADDRESS] ("the Concessionaire") of the other part

WHEREAS

- (1) The Council has certain premises on the Tooting Bec Common Triangle, Wandsworth.
- (2) The Council wished to seek offers from organisations to re-develop and manage the Redgra Sports Pitch and associated facilities at this location. The Council issued an advert and tender documentation seeking such offers.
- (3) The Concessionaire offered by way of tender dated [] to install certain [infrastructure and equipment] at Tooting Bec Common Triangle and to provide the services and activities as set out in the Specification and the Council accepted the Tender on [] .

NOW IT IS AGREED between the Council and the Concessionaire as follows:

- A. This Contract (consisting of the Form of Tender annexed at Appendix 1 and the Conditions and the Schedules annexed at Appendix 2 inclusive) constitutes the sole contract or agreement between the Council and the Concessionaire for the operation by the Concessionaire of the Concession set out in the Conditions and the Schedules.
- B. The Concessionaire shall operate the Concession as set out in the Conditions and the Schedules in accordance with the Conditions for the Concession Period commencing on the Commencement Date and terminating on the Termination Date.

IN WITNESS whereof the parties have executed this Contract as a DEED the day and year first before written.

THE COMMON SEAL OF THE MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF WANDSWORTH was affixed to this DEED)
BY ORDER)

Authorised Officer:
Seal Register No:

SIGNED as a DEED and DELIVERED)
by [])
for and on behalf of)
[])

Core Document
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Draft 5 - 21/01/15

("the Concessionaire") in the presence of: |

Full name of Witness (print)

Full address of Witness (print)

Occupation of Witness (print)

Signature of Witness.....

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**APPENDIX 1
FORM OF TENDER**

[To be inserted from Concessionaire's Tender]

APPENDIX 2
THE CONDITIONS AND SCHEDULES

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SCHEDULE 1

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- Part A. Concession
- Part B. Installation and Renovation Works

SCHEDULE 2

- Concession Fee
- Part 1 – Payment Mechanism
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- Part 3 – Revenue Share

SCHEDULE 3

- Method Statement

SCHEDULE 4

- NOT USED

SCHEDULE 5

- NOT USED

SCHEDULE 6

- Customer Service

SCHEDULE 7

- Lease

SCHEDULE 8

- NOT USED

SCHEDULE 9

- Council's Inter-Agency Guidelines

SCHEDULE 10

- NOT USED

SCHEDULE 11
Form of Sub-Contractor Warranty

1. DEFINITIONS

In this Contract, save where the context otherwise requires the following expressions shall have the meanings hereby assigned to them:

- 1.1 "Annual Concession Fee" means the annual amount set out at Part 2 of Schedule 2 payable by the Concessionaire to the Council in accordance with Clause 11 and Schedule 2.
- 1.2 "Authorised Officer" means the Council's Head of Parks and Leisure Services or such other officer as the Council may appoint hereafter and such representatives as he/she may nominate in writing for general or specific purposes from time to time.
- 1.3 "Best Value Duty" means the duty imposed on the Council by Section 3 of the Local Government Act 1995.
- 1.4 "Charges" means the fees charged by the Concessionaire to the Service Users.
- 1.5 "Commencement Date" means *insert date*, which is to be the commencement date for the operation of the Concession by the Concessionaire.
- 1.6 "Concession" means the Sports and Physical Activities at Tooting Triangle – provided by the Concessionaire to the Service Users as more particularly set out in the Specification which may include such other services as might be introduced over time subject to the concessionaire obtaining the Council's prior written consent.
- 1.7 "Concessionaire" means the person, persons or company described in the Form of Contract as the Concessionaire.
- 1.8 "Concessionaire Equipment" means the equipment provided by the Contractor for the operation of the Concession.
- 1.9 "Conditions" means these Conditions and any modification thereof duly made in accordance with their provisions.
- 1.10 "Contract" means this contract concluded between the Council and the Concessionaire including the Conditions, the Schedules and all other documents that are incorporated or referred to herein.
- 1.11 "Contract Documents" means the Contract and any other documents forming part of this Contract.
- 1.12 "Contract Manager" means a person appointed by the Concessionaire in accordance with Condition 14.
- 1.13 "Contract Standard" means in relation to the performance of any part of the Services, a standard of performance
 - (a) in accordance with best industry practices and the highest workmanlike standards;
 - (b) in accordance with the provisions of the Conditions, the Specification and the Schedules including the Method Statement, including, as appropriate, the standards required by the governing bodies of the relevant sports.

Commented [CS2]: do we need to include the 'reduce cost' re-assignment under the Method?

Commented [CS3]: To be determined – refer to an agreement at 1.1 of Part 1 of the Concession contract

- (e) in co-operation with the Council and its other relevant contractors; and
- (f) to the reasonable satisfaction of the Council.
- 1.14 "Concession Period" means the period of twenty-five (25) years commencing on the Commencement Date and terminating on the Termination Date.
- 1.15 "Consents" means any approval, consent, notification, licence or permission, whether statutory or non-statutory, and including without limitation, change of use, alcohol licences, planning permission and highways consent.
- 1.16 "Council" means the Council of the London Borough of Wandsworth, any successor authority and any body to which all or part of the functions of the Council of the London Borough of Wandsworth may lawfully be transferred.
- 1.17 "Council Data" means:
- the information, data, text, diagrams, images or sounds (together with any database made up of any of these) or any other materials (in any medium) which are embodied in any electronic, magnetic, optical, tangible or portable media, and which are:
 - supplied or in respect of which access is granted to the Concessionaire by or on behalf of the Council; or
 - which the Concessionaire is required to generate, process, store or transmit pursuant to this Contract;
 - any Personal Data for which the Council is the Data Controller, as defined in the Data Protection Act 1998; and
 - any other data, information or materials (in any medium) which come into the possession of the Concessionaire in connection with or as a result of the provision of the Concession including without limitation any data, information or materials held or stored in the Concessionaire's computer systems.
- 1.18 "Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.
- 1.19 "Emergency" means an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Concession operating under normal circumstances and requiring the mobilisation and organisation of the emergency services.
- 1.20 "Enhancements" means any development or improvement of the facilities that might be proposed by either the Council or the Concessionaire (and agreed by both parties) to improve/increase use of the facilities.
- 1.21 "Expert" means an expert appointed pursuant to Condition 42.

Commented [CS4]: Links to Condition 16A "Enhancements"

- 1.22 "Employees" means all persons engaged by the Concessionaire in the operation of the Concession including personnel, staff and employees of the Concessionaire and shall include the Concessionaire's agents and authorised sub-contractors and "Employee" means any one of the Employees.
- 1.23 "Facilities" means [SPECIFIC TO THE SERVICES TO BE PROVIDED BY THE SUCCESSFUL TENDERER]
- 1.24 "HSWA" means the Health and Safety at Work, etc Act 1974 and shall include any Codes of Guidance issued by the Council and supplied to the Concessionaire either before or during this Contract and any Codes of Guidance prepared by the Concessionaire.
- 1.25 "Initial Contract" means the contract subject to the granting of the necessary planning and related consents authorised by the Council on 29th June 2015.
- 1.26 "Installation and Renovation Works" means works carried out by the Concessionaire during the first 18/24 months of the Contract Period at the Facilities for the purposes of the operation of the Concession.
- 1.27 "Index" means the Index of Retail Prices for "All Items (excluding mortgage interest)" (however such index might be termed) issued by the Department of Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such index such other Index as the Authorised Officer may reasonably specify.
- 1.28 "Management Information" means the information that the Concessionaire shall provide the Council as applicable with all or any of the following information from time to time during the Concession Period:
- Contract Date
 - VAT Rate
 - Concession Fee
- The above list is not exhaustive and the Council may from time to time change the items in the list provided that it has given the Concessionaire notice of such changes in accordance with Condition 61.
- 1.29 "Method Statement" means the statement annexed to this Contract at Schedule 3 detailing the Concessionaire's proposals for the operation of the Concession. In the event of any inconsistency between the Method Statement and the Conditions and other Schedules then the Conditions and other Schedules shall prevail save where the Method Statement sets out higher standards than the Conditions and other Schedules.
- 1.30 "Plant" applies to all fixed and movable items of plant, vehicles, equipment, machinery, tools and contents which the Concessionaire employs to deliver the Concession.
- 1.31 "Prohibited Act" means:
- offering going or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown, or
 - for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
 - entering into this Contract or any other contract with the Crown where a commission has been paid or has been agreed to be paid by the Concessionaire or on its behalf, or to its

Commented [CS5]: To define other "Award"

Commented [CS6]: Suggested wording regarding "Initial Works" and linked to 1.1 "Commencement Date"

- knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889 to 1916 or Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts, or
 - (iii) at common law in respect of fraudulent acts in relation to this agreement or any other contract with the Crown; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Crown.
- 1.32 "Revenue Share" means the percentage of the Concessionaire's wholesale revenue generated by the Concession which is set out in Schedule 2 (Part 2) and which is payable to the Council in accordance with Clause 11 and Schedule 2.
- 1.33 "Revenue Streams" means without limitation the Charges and the wholesale "resale" of infrastructure or equipment attributable to the Concession which will be taken into account in calculating the Revenue Share as set out in Schedule 2;
- 1.34 "Schedule" refers to the Schedules to this Contract and "Schedule" means any one or other of the Schedules.
- 1.35 "Schedule of Works" bears the meaning set out at Condition 21.2.
- 1.36 "Service Users" means the Concessionaire's customers for the Concession.
- 1.37 "Specification" means all the documents forming Schedule 1 and any appendices and modifications to those documents under Condition 10.
- 1.38 "Sub-Contractor" means the person, persons or organisation/s employed by the Concessionaire to design and construct the Installation and Renovation Works. Commented [CS7]: Is this sufficient context ?
- 1.39 "SVGA 2006" means the Safeguarding Vulnerable Groups Act 2006.
- 1.40 "Tender" means the Concessionaire's tender to perform the Concession accepted by the Council.
- 1.41 "Termination Date" means that to be determined. Commented [CS8]: Is this when it ends in 2040/1?
- 1.42 "Time" shall be construed during the period of summer time to be British Summer Time or otherwise to be Greenwich Mean Time or as may be required or stipulated by statute.
- 1.43 "VAT" means Value Added Tax.
- 1.44 "Working Day" means any day of the week from Monday to Sunday inclusive including all Public Holidays.
- 1.45 "Year" means a period of twelve consecutive calendar months commencing on the Commencement Date falling within the Concession Period.
- 1.46 Reference to personnel and Employees shall be deemed to include the Concessionaire's partners, directors and employees and also the Concessionaire's agents and sub-contractors and their personnel and employees, unless the context otherwise requires.

- 1.47 Reference to "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used.
- 2 SUFFICIENCY OF INFORMATION**
- 2.1 The Council shall exercise reasonable care and skill with respect to its preparation of information supplied to the Contractor. The Contractor shall take all reasonable steps necessary to satisfy itself by its own investigations at its own expense with regard to the accuracy of such information and shall be deemed to have done so. Notwithstanding the foregoing, neither the Council nor any of its employees makes any representations or warranties as to the accuracy of all information supplied by the Council and any information provided by a third party and no claim against the Council will be allowed, whether in contract or tort, under the Misrepresentation Act 1967, or otherwise on the grounds of any inaccuracy with respect to such information supplied to the Contractor.
- 2.2 The Contractor shall obtain for itself all information necessary to enable it to ascertain and assess all risks, contingencies and other circumstances that might reasonably influence or affect the Tender, and to have made full allowance for any changes that may occur between the date of the Tender and the Commencement Date.
- 2.3 Except as provided in Condition 10 no additional payment will be made to the Contractor by reason of any inaccuracy or change in the information provided whether occurring before or after the date of the Tender.
- 3 DOCUMENTS MUTUALLY EXPLANATORY**
- 3.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Authorised Officer who shall thereupon issue to the Concessionaire appropriate instructions in writing and the Concessionaire shall carry out and be bound by such instructions.
- 3.2 In the event of any inconsistency between the Conditions and any provision in any of the other Contract Documents, the Conditions shall prevail.
- 4 VARIATION OF CONDITIONS**
- 4.1 Without prejudice to the rights and powers of the Authorised Officer under this Contract and notwithstanding any other of these Conditions, no deletion from, addition to or variation of the Conditions shall be valid or of any effect unless agreed in writing and signed on behalf of the Council by the Authorised Officer (or by such other officer as the Authorised Officer may in writing appoint) and on behalf of the Concessionaire by a duly authorised representative of the Concessionaire.
- 5 COPYRIGHT**
- 5.1 Copyright in this Contract shall vest in the Council but the Concessionaire may obtain or make at its own expense any further copies required for use by the Concessionaire in the operation of the Concession.
- 5.2 Copyright in any documentation, articles or any written works produced by the Concessionaire in, or in connection with, the operation of the Concession shall vest in the Concessionaire.

5.3 Except as permitted under current legislation, no part of this work may be photocopied, stored in a retrieval system, published, performed in public, adapted, broadcast, transmitted, recorded or reproduced in any form or by any means, without the prior permission of the Council, save as permitted under Condition 5.1.

6 THE AUTHORISED OFFICER

6.1 Prior to the Commencement Date the Council shall give notice to the Concessionaire of the name and designation of the Authorised Officer and shall forthwith give notice to the Concessionaire of any replacement of the Authorised Officer from time to time during the Concession Period or if any person ceases to be the Authorised Officer.

6.2 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. Immediately any such appointment is made, the Authorised Officer shall give written notice thereof to the Concessionaire.

6.3 The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Authorised Officer. The Concessionaire shall in no circumstances question the existence or extent of the authority of any person notified to the Concessionaire (whether orally or in writing) to be a replacement Authorised Officer, a deputy, assistant, representative or agent of the Authorised Officer.

7 CONCESSION PERIOD

7.1 This Contract shall subsist for the Concession Period and subject to earlier termination in whole or in part in accordance with the terms of the Contract.

7.2 The Concessionaire shall execute the Contract promptly and shall not, save as expressly authorised in advance by the Council in writing, be granted access to the Facilities or carry out any Installation and Renovation Works until it has so executed the Contract.

8 OPERATION OF THE CONCESSION

8.1 The parties agree that, in consideration of the Concession Fee as set out in Schedule 2 payable by the Concessionaire to the Council, the Concessionaire shall have the exclusive right to operate the Concession in accordance with the terms of this Contract.

8.2 The Council shall:

8.2.1 grant access to the Facilities by way of lease as set out in Condition 19 of this Contract, in the form set out in Schedule 7;

8.2.2 permit the Concessionaire to carry out the Installation and Renovation Works in accordance with the terms of this Contract; and

8.2.3 provide the Concessionaire with relevant information as required and observe the agreed timescales for all communications, whether written, verbal or electronic as set out in this Contract.

8.3 The Concessionaire shall have a policy of continuous improvement in relation to the operation of the Concession and shall be able to show at any time during the Concession Period evidence of the practices designed to achieve such improvement.

8.4 Should the Concessionaire require any further instruction or information for, or in connection with, the operation of the Concession, the Concessionaire shall make a written application to the Authorised Officer in which the requirement is stated in adequate detail. Such application shall be made on a date which, having regard to the date upon which the Concessionaire reasonably needs the instruction or information for or in connection with the performance of the Concession, is neither too far away from, nor too close to, that date having regard to all the circumstances including the time likely to be required by the Authorised Officer to respond to the application.

8.5 The Concessionaire shall, as soon as reasonably practicable, provide the Authorised Officer with any information relating to the operation of the Concession which the Authorised Officer may reasonably request.

8.6 The Concessionaire shall throughout the Concession Period comply with all relevant workmanlike requirements including in particular statute and common law, statutory instruments, judicial decisions and European Community directives. The Concessionaire shall forthwith inform the Authorised Officer if these are likely to give rise to any substantial opportunities or benefit to the Council or any substantial difficulties.

8.7 The Concessionaire shall at all times observe and obey all statutes, orders, regulations, bye laws, and other legal provisions applicable to the Concession or of general application.

8.8 The Concessionaire shall throughout the Concession Period maintain a communications system acceptable to the Authorised Officer.

8.9 Instructions from the Authorised Officer which are posted to the Concessionaire shall be sent by First Class Post or by means of the Document Exchange system and shall be deemed to have been received by the Concessionaire on the following Working Day. Unless otherwise instructed by the Authorised Officer the Concessionaire shall ensure the delivery of all correspondence and documents to the Authorised Officer either by hand, facsimile transmission, electronic mail, the Document Exchange system or by First Class Post.

8.10 In the event of the Concessionaire being unable to operate the Concession or any part thereof, the Concessionaire shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration.

8.11 The Concessionaire shall at all times during the operation of the Concession allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access upon reasonable notice (except where it is deemed reasonably appropriate by the Authorised Officer to gain immediate access):

(a) to all sites or locations of the Concessionaire for the purpose of inspecting records and documents in the possession, custody or control of the Concessionaire in connection with the operation of the Concession; and

(b) to any Employee of the Concessionaire for the purposes of interviewing such persons in connection with the operation of the Concession.

9 PERFORMANCE REVIEW AND BEST VALUE

9.1 The Concessionaire shall comply with the requirements of the Specification in respect of Contract monitoring.

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- 9.2 The Concessionaire shall institute at the Commencement Date and maintain and keep under review throughout the Concession Period systems designed to ensure the Concession is operated in accordance with this Contract.
- 9.2 The Concessionaire acknowledges that the Council shall prepare Business Continuity Plans at the Council's own expense and agrees that in so doing the Council may take into account and utilise any reports, information, files, data minutes, electronic or other forms of records compiled, supplied or obtained in connection with the operation of the Concession.
- 9.4 In the event of the Authorised Officer requesting information from the Concessionaire in connection with any Council report, including without limitation the Business Continuity Plans, the Authorised Officer shall notify the Concessionaire of the dates by which it is required. Provided such notice is reasonable the Concessionaire shall provide the information requested by the dates stipulated.
- 9.3 The Concessionaire acknowledges that (a) the Council is subject to the Best Value Duty; and (b) the relevant provisions of this Condition 9, Condition 19 (Premises) and 24 (Records) shall assist the Council in discharging its Best Value Duty in relation to the Concessionaire's operation of the Concession.
- 10A. ENHANCEMENTS**
- 10A.1 The Concessionaire shall continually monitor the Services throughout the Contract Period and shall from time to time review and propose any suitable developments or enhancements at the Facilities which it considers are required to meet the Contract Standard or improvements which will increase usage of the Facilities ("Enhancements"). The Concessionaire shall propose any Enhancements to the Council as part of the Annual Plan and any proposals shall then be dealt with in accordance with Condition 10 (Changes).
- 10A.2 The Council may from time to time make proposals to the Concessionaire for Enhancements which the Concessionaire shall consider in good faith.
- 10A.3 In the event the Council agrees to any Enhancement the Concessionaire shall implement the Enhancement at no extra cost to the Council unless the Council agrees to contribute to the Enhancement.
- 10A.4 The Concessionaire shall be responsible for and pay for the planned and routine, maintenance, servicing and commissioning, repairs and emergency maintenance of all of the Enhancements for the remainder of the Contract Period.
- 10A.5 Any additional income made as a result of the Enhancements shall be included for the purposes of calculating the Fee.
- 10A.6 The Council may, as a condition of its consent to an Enhancement, require adjustment to either the Fee Percentage or the Annual Sum.
- 10 CHANGES**
- 10.1 Where the Council or the Concessionaire sees a need to change this agreement, the Council may at any time request, and the Concessionaire may at any time recommend, such Change only in accordance with the Change Control Procedure set out in this Condition 10. For the avoidance of doubt, such changes may include Enhancements (but do not include routine maintenance of the Facilities which is set out in the Schedule of Works at Part B of Schedule 1).

- 15 -

Commented [CS9]: Should we include the successful applicants proposed improvement works at Part B to the specification?

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- 10.2 If either party wishes to propose a change, the parties shall meet to discuss the proposed change within ten days of a written request by either party or as otherwise agreed between the parties.
- 10.3 Discussion between the Council and the Concessionaire concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this agreement by the Council; or
 - (c) a recommendation to change this agreement by the Concessionaire.
- 10.4 Where a written request for an amendment is received from the Council, the Concessionaire shall, unless otherwise agreed, submit two copies of a Change Control Note in accordance with Condition 3.6 below signed by the Concessionaire to the Council within three weeks of the date of the request.
- 10.5 A recommendation to amend this agreement by the Concessionaire shall be submitted directly to the Council in the form of two copies of a Change Control Note in accordance with Condition 3.6 below signed by the Concessionaire at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 10.6 Each Change Control Note shall contain:
- (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the affect on the Annual Sum or Fee Percentage, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change.
- 10.7 For each Change Control Note submitted by the Concessionaire the Council shall, within five Working Days evaluate the Change Control Note and, as appropriate:
- (i) request further information;
 - (ii) notify the Concessionaire of its acceptance of the Change Control Note; or
 - (iii) notify the Concessionaire of the rejection of the Change Control Note.
- 10.8 If the Council accepts the Change Control Note, the parties shall as soon as practicable enter into any documents to amend this Contract which are necessary to give effect to the change. Until such time as a such documents are entered into, the Council and the Concessionaire shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.

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- 10.9 Any discussions which may take place between the Council and the Concessionaire in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 10.10 Any work undertaken by the Concessionaire or its Employees which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Condition 10, shall be undertaken entirely at the expense and liability of the Concessionaire.
- 11 PAYMENTS, CONCESSION FEE AND CHARGES**
The Concessionaire shall pay to the Council the Annual Concession Fee and the Revenue Share in accordance with Schedule 2.
- 11.1 Subject to the terms of this Contract, the Concessionaire shall be responsible for all costs in connection with the operation of the Concession. The Council shall not be liable for any cost, expense or other financial liability whatsoever arising out of the operation of the Concession or related to the Contract.
- 11.2 If any Annual Concession Fee, Revenue Share or any other money payable by the Concessionaire under this Contract has not been paid by the date it is due the Council shall be entitled to interest at a rate of 2% above the base lending rate published by the Barclays Bank PLC on that amount for the period from the due date to and including the date of payment.
- 11.3 The Annual Concession Fee and Revenue Share and all other money due under this Contract are to be paid by the Concessionaire without deduction, counterclaim or set-off.
- 11.4 The Concessionaire shall be responsible for any existing or future liability in respect of rateable values or business rates that may be applicable in respect of the Facilities.
- 11.5 For the second and all subsequent Years of the Concession Period the Annual Concession Fee and Revenue Share, for the purposes of this Condition 11 shall be adjusted by a proportion equivalent to the proportionate rise or fall between the Index prevailing for the month of December prior to the Commencement Date and the month of December prior to the first or subsequent relevant anniversary thereof as the case may be.
- 11.6 For the avoidance of doubt, unless otherwise explicitly set out in this Contract or agreed between the Parties from time to time no sums shall be payable by the Council to the Concessionaire in respect of its performance of the Concession.
- 12 VALUE ADDED TAX**
- 12.1 All sums payable by the Concessionaire are exclusive of any VAT that may be chargeable and the Concessionaire shall pay VAT in respect of all taxable supplies made to it in connection with the operation of this Concession. Every obligation on the Concessionaire under or in connection with this Contract to pay, refund or to indemnify the Council or any other person any money or against any liability includes an obligation to pay, refund or indemnify against any VAT, or an amount equal to any VAT, chargeable in respect of it.
- 13 ASSIGNMENT AND SUB-CONTRACTING**
- 13.1 Unless any Acts of Parliament, statutory regulations, orders or Codes of Practice state to the contrary, the Council shall not be entitled to assign the benefit of the Contract or any part thereof without the prior written consent of the Concessionaire which shall not be unreasonably refused withheld or delayed.

Commented [CS10]: Or other month relevant to the month of the Commencement Date?

- 13.2 The Concessionaire shall not:
- (a) assign, transfer or novate the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof; or
- (b) sub-contract the operation of the Concession or any part thereof to any person without the prior written consent of the Council, which consent shall be in the discretion of the Council and, if given, may be subject to conditions and shall not in any event relieve the Concessionaire of any liability or obligation under the Contract and the Concessionaire shall in any event be responsible for the acts, defaults or neglect of any sub-contractor or its employees, in all respects as if they were the acts, defaults or neglect of the Concessionaire and, without prejudice to the generality of the foregoing, provided that the Council shall be entitled to require as a condition of giving a consent to sub-contract, a direct deed of warranty and undertaking at the expense of the Concessionaire from the authorised sub-contractor to provide and carry out the part of the Concession comprised in the authorised sub-contract.
- 13.3 No authorised sub-contractor shall assign, transfer, novate or sub-contract the whole or any part of its sub-contract or the benefit or the advantage of the whole or any part of its sub-contract. The Concessionaire shall ensure that the terms of any authorised sub-contracting arrangement strictly prohibit any such activity by the sub-contractor.
- 14 CONTRACT MANAGER**
- 14.1 The Concessionaire shall at all times during the Concession Period ensure that a suitably senior and competent person is appointed as the Contract Manager and is thereby empowered to act on behalf of the Concessionaire for all purposes connected with this Contract. The Contract Manager shall initially be the person proposed by the Concessionaire at the time of submission of its Tender. The Concessionaire shall immediately give notice of any subsequent proposed appointments with details of such person's qualifications, experience and training. Any person proposed to be appointed as Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 14.2 The Concessionaire shall inform the Council of the identity of any person proposed to act for any period as deputy for the Contract Manager before the start of that period. Any person proposed to be authorised to act as deputy for the Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 15 PERSONNEL**
- 15.1 The Concessionaire shall ensure that every person employed in performance of this Contract is suitably skilled and exercises proper care and diligence in the execution of their duties and in any event is supervised, trained and instructed to a level sufficient to enable them to carry out their duties in performing the obligations set out in this Contract. Nothing in this Contract shall prevent the Concessionaire from having those of its employees involved in the performance of this Contract perform similar services for other customers or in any way restrict the Concessionaire's use of such employees.
- 15.2 The Concessionaire personnel engaged in the performance of the Contract shall at all times remain under the direction and control of the Concessionaire.
- 15.3 The Concessionaire shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the

- employment of any person employed by the Concessionaire and shall fully and promptly indemnify the Council against any liabilities in respect thereof.
- 15.4 The Council will not be liable in respect of any claim made in respect of redundancy or wrongful dismissal by any Concessionaire employee in respect of his or her service during the term of the Contract.
- 15.5 When working with or alongside children or vulnerable persons, the Concessionaire shall ensure all personnel (including volunteers) are subject to an Enhanced Disclosure check through the Disclosure and Barring Service (the "DBS") including a check against the adults' barred list of the children's barred list, as appropriate where such check is available. The Concessionaire shall renew these checks at least every three years and the Authorised Officer will verify the same on an annual basis. The Concessionaire must become a Registered Body with the DBS for the purpose of obtaining these checks or obtain these checks via a DBS umbrella body and the Provider will be responsible for all costs arising out of the process. No personnel will be supplied to carry out the Services prior to a satisfactory check being obtained. The Concessionaire shall obtain clearance from the Council to supply any person for whom they have received an "unclear" check.
- 15.6 The Concessionaire warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.7 The Concessionaire shall ensure that all personnel working with or alongside children or vulnerable people are exempt from the protection of the Rehabilitation of Offenders Act 1974 and the Concessionaire shall ensure that all personnel have signed a proper declaration disclosing all convictions which must be available to the Council on request. The Concessionaire shall require all personnel to notify it within two weeks of being convicted of any offence at any time. The Concessionaire shall be required to seek clearance from the Council to continue to use for the provision of the Concession a person who has reported a conviction during employment.
- 15.8 The Concessionaire shall ensure that all personnel working with or alongside children or vulnerable adults act in accordance with the Inter-Agency Guidelines for their protection referenced at Schedule 9.
- 15.9 The Concessionaire shall ensure that all personnel working with or alongside children have regard to the need to safeguard and promote the welfare of children.
- 15.10 The Concessionaire reserves the right to require personnel that are involved in providing the Concession to request satisfactory criminal record check, of a type or level which is appropriate and permitted by legislation, taking into account the nature of the duties of that member of staff.
- 15.11 The Concessionaire shall be entirely responsible for the engagement and conditions of its personnel and managers including, without limitation, the payment of remuneration.
- 15.12 With respect to the Concessionaire's performance of the Services
- 15.12.1 the Authorised Officer may, to the extent necessary to preserve the standards and reputation of the Council, serve a notice on the Concessionaire instructing the Concessionaire to take disciplinary action or other action in relation to or alternatively remove from the provision of the Services any person employed or engaged in or about the provision of the Services by the Concessionaire (which for the avoidance of doubt shall include the Contract Manager or his deputy);

- 15.12.2 if the Concessionaire has not objected in writing within five Working Days of the date of the notice referred to in Condition 15.12.1, the Concessionaire shall take such disciplinary action or other action or remove such person from the provision of the Services within any time limit agreed by the Authorised Officer;
- 15.12.3 in the event that the person is removed from the provision of the Services in accordance with Condition 15.12.2, unless the Authorised Officer deems otherwise, the Concessionaire shall provide a suitable replacement within the time limit agreed by the Authorised Officer;
- 15.12.4 if the Concessionaire objects to the Council's notice in accordance with Condition 15.12.2, the parties shall meet in a good faith effort to resolve the difference. Any failure in resolving the difference shall be determined by the Expert in accordance with Condition 40; and
- 15.12.5 the Council shall in no circumstances be liable either to the Concessionaire or to such personnel in respect of any cost, expense, claim, proceeding, liability, loss or damage occasioned by such removal.
- 15.13 The Concessionaire
- 15.13.1 in respect of any and all Employees, shall obtain evidence of the Employee's right to work in the United Kingdom by requesting sight of the original copies of such documentation and carrying out all relevant enquiries as required under section 15 of the Immigration, Asylum and Nationality Act 2006 and the Immigration (Restrictions on Employment) Order 2007;
- 15.13.2 shall retain a copy of all documents and other evidence it obtains in connection with any Employee further to Condition 15.0.1 for a minimum period of two (2) years ("the Retention Period") and shall seek the Employee's consent to provide the Council access to such documents on the written request of the Council to ensure compliance with Condition 15.9.1 in relation to the Services. At the end of the Retention Period, the Contractor shall retain a written record confirming that such documents were obtained and the date upon which they were obtained;
- 15.13.3 acknowledges that, for the purposes of Condition 15.4.2 it will be acting as Data Controller (as defined in the Data Protection Act 1998) where any information, in relation to any Employee, will be passed to the Council and that it will take all such measures and endeavour to obtain any consents from the Employee as may be required to ensure compliance with the Data Protection Act 1998; and
- 15.13.4 will procure that where a sub-contractor engaged by the Concessionaire to perform any part of the Services employs or engages an employee that such sub-contractor complies with the terms of Condition 15.9.1 to 15.9.3 as if the obligations of the Contractor were obligations of the said sub-contractor.
- 15.14 The Concessionaire shall provide and ensure that all and any of its Employees, who are at any premises of the Council or meeting other persons in the course of the provision of the Concession, shall wear such identification (including photographic identification) as may be specified by the Authorised Officer and shall disclose their identity and status as an Employee of the Concessionaire and shall not attempt to avoid so doing.
- 15.15 The Concessionaire and its personnel shall, if so required, sign in and out when visiting any of the Council's land or buildings.

15.16 All monies or other items of value found by the Concessionaire's Employees at any Council premises, shall be handed to the officer in charge of the premises, or the Authorised Officer, as soon as reasonably practicable; and a written receipt shall be provided by the Council.

16 NOT USED

17 HEALTH AND SAFETY AT WORK

17.1 The Concessionaire shall at all times comply with all relevant health and safety requirements and legislation as in force from time to time.

17.2 The Concessionaire shall have in place throughout the Concession Period adequate and appropriate organisation and arrangements in accordance with its written policy to safeguard the health, safety and welfare of its Employees and, to the extent applicable to its activity, that of Council's employees and any other person affected, including members of the public.

17.3 The Concessionaire shall provide the Council with satisfactory evidence of the policy and arrangements, copies of risk assessments relating to this or similar work stating the risk control measures employed and any other health and safety documentation or information deemed reasonably necessary by the Council prior to and/or during the Concession Period.

17.4 For the avoidance of doubt failure to comply with Conditions 17.1 to 17.3 to the Council's reasonable satisfaction will be considered to be a breach of the Contract and the Council reserves the right to take whatever action is appropriate in the circumstances.

17.5 The Concessionaire shall ensure that all persons who are at work (as defined in the HSWA) in connection with this Contract shall comply with the H&S Requirements. The Concessionaire shall, at regular intervals, carry out health and safety hazard inspections and risk assessments, which shall be properly recorded with details of remedial actions and timescales.

17.6 If at any time the Authorised Officer reasonably considers that the Concessionaire has failed to comply in any material respect with H&S Requirements are not being complied with he/she shall be entitled to do either or both of the following:

17.6.1 to instruct the Concessionaire to cease to carry out the Concession (or a specified part thereof) either immediately or within a specified period of time; and/or

17.6.2 to instruct the Concessionaire to take specified steps to secure compliance with the H&S Requirements, or to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof.

17.7 The Concessionaire shall inform the Authorised Officer forthwith upon complying with any such instruction given under Condition 17.6 and if the Authorised Officer subsequently confirms in writing that he/she is reasonably satisfied that the Concessionaire has so complied, the Concessionaire shall recommence to operate the Concession.

17.8 For the avoidance of doubt, all instructions given and works undertaken in order to secure compliance with this Condition 17 shall be deemed not to require or involve a modification under Condition 10, or under any other provision of this Contract. The Concessionaire shall not be entitled to any payment either for Concession not carried out whilst complying with such an instruction, or for any additional work or accumulation of tasks or variation of the programme arising out of, or in connection with, any such instruction.

17.9 The Concessionaire shall maintain a record (the "Accident Book") and investigate the circumstances of all accidents, injuries, fatalities and dangerous/potentially dangerous incidents to his employees and to the public as a result of his performance of the Concession as specifically required by HSWA under "The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995" and notify the Health and Safety Executive accordingly. In addition the Concessionaire shall report any defined accident to the Authorised Officer as soon as practicable, and in any case within two days of such accident. In the case of fatalities or incidence of life threatening accidents the Concessionaire will notify the Authorised Officer of the circumstances immediately.

17.10 The Concessionaire will indemnify the Council against any breach of the H&S Requirements

17.11 In the event that the Concessionaire fails or defaults in complying with this Condition 17, then the provisions of Condition 34A (Default in Performance), Condition 34 (Step-In) and Condition 35 (Termination) may be applied without prejudice to any other rights the Council may have against the Concessionaire. Any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable time spent by the Council's officers as a result of the default or failure, may be deducted from any sums due (or to become due) to the Concessionaire under this Contract, or shall be recoverable from the Concessionaire by the Council as a debt.

18 NOT USED

19 PREMISES

19.1 The Concessionaire shall be required to provide the Concession at all times during the Concession Period from the Facilities. Accordingly the Concessionaire shall be required to enter into and comply with a lease in relation to the Facilities, such lease to be in substantially the terms as set out in the draft lease attached at Schedule 7.

19.2 The Council shall grant and the Concessionaire shall take a lease ("the Lease") of the premises described in Schedule 7 and in the form of lease set out in that Schedule for a term commencing on the Commencement Date upon the terms and subject to the covenants in the said form of lease and the grant of the Lease shall be subject to the following provisions:

(a) The Concessionaire will take up on the Commencement Date the Lease in the exact form of the lease set out in Schedule 7 in respect of which no omissions or alternative will be accepted.

(b) So far as they are not varied or inconsistent with the conditions of this sub Condition, the National Conditions of Sale (20th Edition) shall be deemed to be incorporated herein save that Conditions 16 (2), 16 (3), 22 (2) and 22 (3) of the said National Conditions shall not apply.

(c) The grant of the lease shall be completed at the offices of the Council's Solicitor and on completion vacant possession shall be given to the Concessionaire and the Concessionaire shall execute and exchange a counterpart lease which shall be in the form of the Lease.

(d) The agreement contained in this Condition shall not and shall not be deemed to operate as a demise of the premises or any part thereof and until the Lease is granted any occupation of the premises by the Concessionaire shall be deemed to be that of a bare licensee only.

(e) The Council hereby grants to the Concessionaire a licence to occupy the premises pending the grant of the Lease and subject to the Concessionaire paying to the Council a licence fee equivalent to the rent that would have been payable had the said Lease been granted on the day and in the manner provided for by the said Lease until such time as the Lease is completed

or this agreement is discharged. In addition the Concessionaire shall be responsible for all other payments outgoings and obligations provided for under the said Lease as if the same had been granted.

- (f) The Concessionaire confirms that before the date of this Contract:
- (1) The Council served a notice in duplicate dated _____ ("the Notice") on the Concessionaire in accordance with Section 38A(3)(a) of the Landlord and Tenant Act 1954 ("the 1954 Act")
- (2) The Concessionaire (or a person duly authorised by the Concessionaire) made a statutory declaration dated _____ ("the Declaration") confirming receipt of the Notice in accordance with Schedule 3 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the 2003 Order").
- (3) The Concessionaire further confirms that where the Declaration was made by a person other than the Tenant that person was duly authorised by the Concessionaire to make the Declaration on behalf of the Concessionaire.
- (g) The parties agree that sections 24 to 28 (inclusive) of the 1954 Act will not apply to the tenancy created by the Lease.
- (h) The Concessionaire hereby confirms and warrants to the Council that it has no interest in the premises or any part thereof except and to the extent to which such interest arises under this Contract.
- 19.3 The Concessionaire shall not use any part of any premises or the Facilities in respect of which a lease has been granted by the Council to the Concessionaire for any purpose other than that of the Concessionaire's operation of the Concession, save with the prior written consent of the Authorised Officer.
- 19.4 The Concessionaire shall at all times permit the Authorised Officer, the Council's internal and external auditors, and the Audit Commission for Local Authorities and the National Health Service in England, access to all premises occupied for the purposes of this Contract (whether or not the subject of a lease or licence from the Council) and shall ensure that adequate accommodation and facilities are available, as and when required, to facilitate such visits. The Authorised Officer will give reasonable notice of such access requirements except where it is deemed appropriate by the Authorised Officer to gain immediate access, but this will be subject to normal protocol being observed.
- 19.5 The Concessionaire shall at its own expense put and keep all premises occupied for the purposes of this Contract (whether the subject of a lease or licence from the Council or not) in good and serviceable repair and in such condition as is commensurate with the proper performance by the Concessionaire of its obligations under this Contract, specifically but not limited to in accordance with the Specification.
- 19.6 The Authorised Officer shall be entitled to serve upon the Concessionaire a notice in writing requiring the Concessionaire, within a stated period, such period to be reasonable in the circumstances, to put any such premises into such condition as is reasonably required by Condition 19.5 above and the Concessionaire shall immediately upon receipt of such notice cause all necessary services to be carried out to comply with such notice. In the event of the Concessionaire failing to carry out such services, the Council, having given notice to the Concessionaire shall be at liberty to have such services carried out by such persons as it may choose and the Concessionaire shall pay to the Council such sum as the Authorised Officer shall certify to have been the cost of executing such services.

- 19.7 The Concessionaire shall ensure that at all times the Facilities are open, operable, well maintained, clean, accessible and available in accordance with the Specification.
- 19.8 The Concessionaire shall arrange for any deliveries from outside the Common to be made not later than 10am on any day of the week and the Concessionaire shall be responsible for the actions and behaviours of any suppliers or sub-contractors entering onto the Premises at the Concessionaire's request.
- 19.9 The Concessionaire shall be aware that there are no dedicated parking spaces attached to this Concession. The Concessionaire and his staff must make their own arrangements for parking vehicles used in association with the Concession. The Concessionaire must make arrangements with the Authorised Officer for vehicle access to the facilities for deliveries, maintenance and the removal of waste etc. The Concessionaire shall note that vehicle access to the facilities is limited and restricted.
- 20 EQUIPMENT, VEHICLES AND MACHINERY**
- 20.1 The Concessionaire shall provide and maintain, at all times during the Concession Period and at its own expense, all such other Concessionaire equipment as are necessary for the operation of the Concession.
- 20.2 All Concessionaire Equipment that is used or intended to be used by the Concessionaire in the performance of the Contract and stored or kept on or near the Facilities (either in secure accommodation or otherwise) shall be deemed to be the property of the Concessionaire and shall be stored or kept on or near the Facilities at the sole risk of the Concessionaire.
- 20.3 Except where the Council has been held negligent the Council shall not at any time be liable for the loss of or damage to any of the Concessionaire Equipment and/or to any other equipment, goods or materials belonging to the Concessionaire.
- 20.4 The Concessionaire shall provide throughout the Concession Period, at its own expense, telephone lines and equipment dedicated to staff employed for the operation of the Concession and shall provide and operate facsimile facilities capable of communicating with the Council's and Council's contractors' offices for the transmission and receipt of documents copies.

20A. INSTALLATION & RENOVATION WORKS

- 20A.1 The Concessionaire shall at its own cost carry out the works as approved in writing by the Council (the "Installation and Renovation Works") in accordance with all Statutory Regulations, British/European Standards and C.I.B.S.E. recommendations and with the agreed implementation plan set out as part of the Concessionaire's Method Statement.
- 20A.2 The Concessionaire shall at its own cost commission and carry out any upgrades of incoming utility services that might be/s required to facilitate the Installation and Renovation Works.
- 20A.3 The Concessionaire shall ensure that all Installation and Renovation Works are carried out strictly in accordance with the terms of this Contract and without limitation
- 20A.2.1 in compliance with the Specification;
- 20A.2.2 in avoidance with the Method Statement;
- 20A.2.3 subject to all necessary Consents;

- 20A.2.4 using good quality materials, techniques and standards in accordance with the good industry practice;
 - 20A.2.5 subject to the Council's acceptance in accordance with the acceptance procedure in Clause 20A.9 below;
 - 20A.2.6 so that the Installation and Renovation Works are completed and accepted within 18 months of the Commencement Date
 - 20A.2.7 by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Council to expect in all the circumstances
 - 20A.2.8 in proper liaison with any third parties including any other contractors in the Park and statutory undertakers;
 - 20A.2.9 in proper liaison with any sub-contractors and employees including agency or temporary staff (including the provision of working practices manuals where appropriate);
 - 20A.2.10 in accordance with the Construction (Design and Management) Regulations 2007; and
 - 20A.2.11 shall ensure that all relevant insurances for carrying out the works are obtained and maintained during the period that the Concessionaire carries out the Installation and Renovation Works.
- 20A.3 Subject to Clause 20A.4 below, the Concessionaire shall be responsible for obtaining all Consents which may be required for the Installation and Renovation Works and/or for the use of the Concessionaire Equipment. The Concessionaire shall ensure that any such Consents are obtained before the Installation and Renovation Work is carried out and are available for inspection by the Council, upon 5 Working Days' notice.
- 20A.4 If, as a matter of law, certain Consents can only be obtained by the Council, the Council shall be responsible for obtaining such Consents and the Concessionaire shall reimburse the Council it's costs in so doing, if the Council requires the assistance of the Concessionaire in applying for any such Consents, then the Concessionaire shall provide such assistance as may reasonably be required.
- 20A.5 The Concessionaire shall be responsible for, and meet the costs of all the Installation and Renovation Works and shall provide all labour and plant necessary to carry out the Installation and Renovation Works, including any lifting, erecting or other apparatus. The Concessionaire shall take all reasonable measures to maintain the standard of cleanliness of the Facilities and shall be responsible for the removal and disposal of all packaging and casing used for articles or materials supplied by the Concessionaire. In any event after carrying out Installation and Renovation Works at the Facilities, the Concessionaire shall reinstate the Facilities and leave the Facilities in no worse a condition to that it was in before the Installation and Renovation Work commenced and in any event in a safe clean and tidy condition to the reasonable satisfaction of the Council.
- 20A.6 The Concessionaire warrants that all waste materials created as a result of installation activity shall be disposed of in an environmentally responsible manner.
- 20A.7 The Concessionaire shall give notice to the Authorised Officer of any equipment, substance, materials and/or goods having a toxic or other hazard to safety or health or personal property and shall provide full details to the Authorised Officer of any precautions to be taken on the transfer to the Council of such equipment, substance, materials and/or goods and their subsequent storage or

handling. All such equipment, substance, materials and goods shall be suitably packed, identified and labelled at the time of delivery.

20A.9 Acceptance Procedure

- 20A.9.1 The Concessionaire shall give the Council 5 Working Days' written notice of the date when it considers that Installation and Renovation Work at the Facilities will be complete in accordance with this Contract.
- 20A.9.2 The Council shall inspect the Facilities within 10 Working Days of receipt of such notice or on such alternative date as the Council may reasonably propose.
- 20A.9.3 Following inspection of the Installation and Renovation Works the Council shall either:
- 20A.9.3.1 provide to the Contract Manager within 5 Working Days of the inspection written confirmation of acceptance of the Installation and Renovation Works, or
 - 20A.9.3.2 ensure that a schedule is prepared within 10 Working Days of the inspection setting out details of such additional work as the Council considers is required to enable acceptance of the Installation and Renovation Works within a reasonable timeframe acceptable to both Parties.
- 20A.9.4 In the event that the Council (without giving written notice to the Concessionaire of reasons why):
- 20A.9.4.1 does not inspect the Facility within 5 Working Days of the timescales set out in Clause 20A.9.2; or
 - 20A.9.4.2 does not provide confirmation of acceptance or a schedule within a further 10 Working Days of the deadlines set out in Clause 20A.9.3,
- then the Council shall be deemed to have accepted the Installation and Renovation Works.
- 20A.9.5 The Concessionaire shall ensure that all reasonable works set out in the schedule provided pursuant to Clause 20A.9.3.2 are carried out within 30 days, failing which the Council shall have the right to undertake such works itself and recover the reasonable costs of so doing from the Concessionaire.
- 20A.10 Subcontracting the Installation and Renovation Works**
- 20A.10.1 For the avoidance of doubt, any subcontracting of the Installation and Renovation Works shall be subject to the provisions of Condition 13.2 and without prejudice to the generality of that provision, the Council may require the Concessionaire to procure a sub-contractor warranty in the form set out in Schedule 11 (Form of Sub-Contractor Warranty) and in such cases the Concessionaire shall ensure that the sub-contract contains provision obliging the sub-contractor to enter into the sub-contractor warranty. The Council may, acting reasonably, request a copy of any sub-contract which the Concessionaire shall provide to the Council on request.

21 MAINTENANCE

- 21.1 The Concessionaire shall ensure on a continuing basis that at all times its maintenance and operating procedures are and remain sufficient to ensure that:
- 21.1.1 it complies with its maintenance obligations as set out in the Specification;
- 21.1.2 the Facilities are available for use as required by this Contract and the Specification;
- 21.1.3 the Facilities are kept in good repair in accordance with this Contract including the Specification;
- 21.1.4 the Concessionaire can continuously operate the Concession in accordance with and at all times as required by this Contract and the Specification.
- 21.2 The Concessionaire shall maintain a thorough and adequate programme of planned and preventative maintenance and repair for the Facilities in accordance with the Specification. Such programme shall be known as the Schedule of Works. The Concessionaire's Schedule of Works for the first Year of the Contract is set out in **Schedule 3** and the Concessionaire shall submit a revised Schedule of Works to the Council every Contract Year as part of the Annual Plan for discussion and approval.
- 21.3 The Concessionaire shall carry out planned maintenance at the Facilities in accordance with its Schedule of Works. The Schedule of Works shall contain details, including details of the proposed start and end dates and the proposed hours of work, of how the Concessionaire intends to carry out all its maintenance obligations, including but not limited to:
- Arrangements for the operation and maintenance of the Facilities and related resources including fixtures, fittings and sports equipment; in accordance with all the requirements of **paragraph 15** of the Specification;
 - Arrangements to maintain horticulture that is within the marked boundaries; and
 - Arrangements for the internal and external cleaning of the Facilities.
- 21.4 The Concessionaire shall not carry out or permit any Planned Maintenance save in accordance with the Schedule of Works approved by the Council.
- 21.5 If the need arises for Maintenance Works which are not scheduled to be carried out as part of the Schedule of Works ("Unplanned Maintenance Works"), the Concessionaire may carry out or have carried out such Unplanned Maintenance Works provided that the Concessionaire shall notify the Authorised Officer as soon as reasonably possible (and in any event, within two (2) Working Days of the occurrence) of the extent of the necessary Unplanned Maintenance Works and the reasons for them. The Concessionaire shall take all reasonable steps to minimise the duration of Unplanned Maintenance Works carried out by the Concessionaire.
- 22 INSTRUCTIONS AND COMMUNICATION**
- 22.1 All instructions from the Authorised Officer with regard to this Contract shall be issued to the Concessionaire in writing or, if given verbally, shall be confirmed in writing within ten Working Days.

- 22.2 Instructions from the Authorised Officer will normally be sent by first class post, facsimile, electronic mail or by hand. Unless other means are agreed with the Authorised Officer, the Concessionaire shall use similar means for his written communication with the Authorised Officer.
- 22.3 All communications whether oral or written between the Concessionaire and the Authorised Officer, or between the Concessionaire and any third party on behalf of the Authorised Officer, shall be conducted in the English language.

23 DATA PROTECTION & FREEDOM OF INFORMATION ACTS

- 23.1 The Concessionaire shall comply in all respects with the provisions of the Data Protection Act 1998 and subject to the limitation of liability Clause in this Contract, will indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Council for breach of statutory duty under the Data Protection Act 1998 which arise from the use, disclosure or transfer of personal data by the Concessionaire and its employees, servants and agents.
- 23.2 The Concessionaire acknowledges that the Council is subject to obligations under the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR"), the SVGA 2006 and any subordinate legislation made under those Acts or Regulations from time to time, and the Concessionaire acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, the FOIA, the EIR or the SVGA 2006, disclose information:
- without consulting with the Concessionaire; or
 - following consultation with the Concessionaire and having taken its views into account.
- 23.3 The Concessionaire shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect and copy such records as requested from time to time.
- 23.4 The Concessionaire acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Condition 23.2.

24 RECORDS

- 24.1 The Council shall retain title to all Council Data supplied to or compiled or obtained by the Concessionaire. The Concessionaire shall carefully safeguard all Council Data in relation to their security, authenticity, confidentiality and accuracy throughout the Concession Period and either pass all Council Data to the Council or, if so directed by the Authorised Officer, ensure their confidential destruction at the end of the Concession Period or earlier if the Authorised Officer reasonably considers that their lodging with the Concessionaire is no longer necessary for the fulfilment of the Contract. The return or destruction of such records shall be at the Concessionaire's expense.

- 24.2 The Concessionaire shall maintain adequate records, in accordance with best professional practice, of all work carried out in respect of the Concession. These records shall be kept in a secure and confidential manner and shall be made available for inspection on demand during normal business hours by the Authorised Officer and/or the Council's internal and/or external auditors as and when they shall require.
- 24.3 The Concessionaire shall maintain adequate procedures to reconstruct Council Data that is in computer readable forms swiftly in the event of site disaster or systems failure. The Concessionaire shall co-operate with the Council and its consultants in any enquiries they may make to be satisfied that such arrangements are adequate and shall comply with any reasonable requirements by the Council in connection with this.
- 24.4 The Concessionaire shall provide the Authorised Officer, the Council's internal and/or external auditors and the Local Government Ombudsman with full access on demand during normal business hours to examine and copy all correspondence, records, documentation and files created in the provision of the Concession, whether stored on paper, microfiche, computer software or other medium.
- 24.5 The Concessionaire shall comply with all requests for assistance from the Council in respect of audits and other inspections relating to the Best Value Duty and the performance of the Concession.
- 24.6 The Concessionaire shall provide whatever assistance the Authorised Officer may reasonably require in exercising any right under this Condition 24 including, but not limited to, giving the Authorised Officer access to the Concessionaire's premises.
- 25 NOT USED
- 26 ROYALTIES, PATENT RIGHTS AND INTELLECTUAL PROPERTY RIGHTS
- 26.1 The Concessionaire shall not in connection with the Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent or patent rights or any other intellectual property rights and the Concessionaire shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Council may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to patent rights or any other intellectual property rights in respect of any process, article, matter, or thing used, manufactured, supplied or delivered by the Concessionaire in connection with the Contract.
- 26.2 All intellectual property rights (this expression used in this Condition 26 includes any patent, patent application, know-how, trademark or name, service mark, design right, registered design, copyright or other similar industrial or commercial right) in all documents and drawings prepared and provided by the Council to the Concessionaire in connection with the operation of the Concession shall remain vested in the Council.

- 26.3 All intellectual property rights in all documents and drawings prepared by the Concessionaire in the operation of the Contract shall vest in the Concessionaire.
- 27 CONFIDENTIALITY
- 27.1 The Concessionaire shall not without the prior written consent of the Authorised Officer during the Concession Period or at any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law), this Contract or any information contained therein or in any Council Data that the Council provides or the Concessionaire generates pursuant to or in connection with this Contract, all of which information shall be deemed to be confidential.
- 27.2 The Concessionaire shall not and shall ensure that its Employees do not divulge to any third party any information, including but not limited to Council Data, which comes into its or their possession in the course of providing the Concession without the prior express written consent of the Authorised Officer.
- 27.3 If the Concessionaire shall appoint a sub-contractor with the consent of the Authorised Officer, the Concessionaire may disclose relevant confidential information or Council Data to the sub-contractor provided that the sub-contractor gives the Council an undertaking to comply with the confidentiality requirements of the Contract.
- 27.4 The Concessionaire's obligations as to confidentiality shall survive any termination of this Contract.
- 27.5 The Concessionaire shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Concessionaire of this Condition 27.
- 28 CONFLICT OF INTEREST
- 28.1 The Concessionaire shall not, unless otherwise authorised in writing by the Authorised Officer, accept instructions from any person on any matter in relation to which, or in relation to any aspect of which, the Concessionaire knew, or ought reasonably to have known, that the Council is likely to exercise, or is considering exercising, any of its powers or duties.
- 28.2 The Concessionaire shall notify the Authorised Officer immediately of any actual or potential conflict of interest between the Council and any other Service User, customer or client (or prospective Service User, customer or client) of the Concessionaire which may arise in connection with the Concession. The Authorised Officer will as soon as possible either agree with the Concessionaire either that no conflict exists or an acceptable method of averting it.
- 29 PROBITY AND INDUCEMENTS
- 29.1 The Concessionaire warrants that in entering this Contract it has not committed any Prohibited Act

- 29.2 If the Concessionaire or any sub-contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with Conditions 29.2.1 to 29.2.6 below:
- 29.2.1 If a Prohibited Act is committed by the Concessionaire or by an Employee not acting independently of the Concessionaire, then the Council may terminate this Contract by giving notice to the Concessionaire.
- 29.2.2 If the Prohibited Act is committed by an employee of the Concessionaire acting independently of the Concessionaire, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate, unless within 30 days of receipt of such notice the Concessionaire terminates the Employee's employment and (if necessary) procures the performance of such part of the Concession by another person.
- 29.2.3 If the Prohibited Act is committed by a sub-Concessionaire or by an employee of that sub-Concessionaire not acting independently of that sub-Concessionaire, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate, unless within 30 days of receipt of such notice the Concessionaire terminates the relevant sub-Contract and procures the performance of such part of the Concession by another person.
- 29.2.4 If the Prohibited Act is committed by an employee of a sub-Concessionaire acting independently of that sub-Concessionaire, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate, unless within 30 days of receipt of such notice the sub-Concessionaire terminates the employee's employment and (if necessary) procures the performance of such part of the Concession by another person.
- 29.2.5 If the Prohibited Act is committed by any other person not specified in Condition 29.2.1 to Condition 29.2.4 above, then the Council may give notice to the Concessionaire of the termination of this Contract and this Contract will terminate unless within 30 days of receipt of such notice, the Concessionaire procures the termination of such person's employment and of the appointment of their employer (where not employed by the Concessionaire or the sub-Contractors) and (if necessary) procures the performance of such part of the Concession by another person.
- 29.2.6 Any notice of termination under this Condition 29 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (iii) the date on which this Contract will terminate, in accordance with the applicable provision of this Condition 29.
- 29.3 Any termination under Condition 29.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Council.
- 29.4 The Concessionaire shall not, whether itself or by any partner or director engaged in the provision of the Concession, or by any person employed by it, to provide the Concession, solicit or accept any gratuity, tip or any other form of money, taking or reward, collection, or charge for any part of the

- Concession other than charges properly approved by the Council's Head of Audit in accordance with the provision of this Contract.
- 29.5 The Concessionaire shall immediately report to the Council's Head of Audit any attempt at bribery, corruption or improper conduct which comes to the Concessionaire's attention in connection with the Concession. Such report shall be made verbally or by facsimile transmission in the first instance followed by written confirmation. The Concessionaire shall co-operate with, and provide statements or other evidence required by, the Council, its internal auditors and external auditors, the police or any other competent authority responsible for investigating any possible irregularities connected with this Contract.
- 29.6 If the Concessionaire shall become aware of, or suspect (or ought reasonably to have become aware of, or suspected) any irregularity with regard to any transaction involving the Council, the Concessionaire shall immediately notify details of that irregularity to the Council's Head of Audit whether or not the Concessionaire is currently instructed in the matter concerned.
- 29.7 The Concessionaire shall maintain a policy and procedure for "whistle blowing" in accordance with its Method Statement and shall take all reasonable steps to ensure that all of its personnel engaged in the provision of the Concession are aware of and encouraged to apply and follow in relevant circumstances such policy and procedure.
- 30 LIMITATION OF LIABILITY**
- 30.1 Each Party shall be liable for and shall fully and promptly indemnify the other Party, its employees, agents and other contractors, against all losses whatsoever and howsoever arising, whether directly, indirectly or in relation to any third party liabilities, out of or in connection with:
- 30.1.1 any breach by either Party of any of the provisions of the Contract including without
 - 30.1.2 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by either Party; and/or
 - 30.1.3 any infringements of Intellectual Property Rights caused by the Concessionaire's installation of the Concessionaire Equipment in accordance with the Contract.
- 30.2 For the purposes of Clause 30.1.1 above, references to a Party shall include any employee, agent or sub-contractor of that Party and for the purposes of Clause 30.1 "third party liabilities" shall mean any demands made by third parties against the indemnified Party and all liabilities of the indemnified Party to third parties.
- 30.3 Any requirement in this Clause 30 or elsewhere in these Clauses for one Party to indemnify the other shall not apply to the extent that the claim in question arises from the negligence or breach of contract of the indemnified Party or relates to economic or consequential loss.
- 30.4 Without prejudice to the generality of this Clause the Parties' liability to the other in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse all costs and expenses reasonably incurred by the other in the reinstatement or replacement of any such property, whether or not such reinstatement or replacement results in an improvement of or to the property as lost or damaged.

- 30.5 Each Party's liability to the other pursuant to Clause 30.1 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Contract.
- 30.6 In any event or notwithstanding anything contained in this Contract, the Parties' liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to ten million pounds (£10,000,000).
- 30.7 Neither party shall be liable to the other party for any loss of income, loss of actual or anticipated profits, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, or damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss was foreseeable or in the contemplation of the parties any whether arising or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 30.8 Neither party excludes or restricts its liability under this Contract for death or personal injury caused by its own negligence or negligence of its employees or agents acting in the course of their employment or agency or to any extent not permitted by law.
- 30.9 Any Party seeking to rely on the indemnity contained in Clause 30.1 shall:
- 30.9.1 promptly notify the other of any claims and proceedings in relation to which it considers the indemnity applies;
- 30.9.2 take all reasonable steps to mitigate any losses and expenses; and
- 30.9.3 not compromise or settle any such claim without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) and shall permit the party giving the indemnity (at the cost in all respects of the party giving the indemnity) to take over the control and conduct of any such claim, action or proceeding in the name of the other.
- 30.10 This Clause 30 shall continue in force after the termination or expiry of this Contract.

31 INSURANCE

- 31.1 The Concessionaire shall at all times maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure and indemnify the Concessionaire against liability:
- (a) to the Council and to any employee of the Council;
 - (b) to the Employees of the Concessionaire (Employers Liability Compulsory Insurance Act 1959); and
 - (c) to any other person (Public Liability Insurance).

In respect of Conditions 31.1 (a) and 31.1 (c) the insurance cover shall not be less than £5,000,000 (five million pounds) in respect of any one incident or such greater sum as the Authorised Officer may from time to time reasonably specify or as may be required by law. In respect of Condition 31.1 (b) the insurance cover shall not be less than £10,000,000 (ten million pounds) or such greater sum as may be required by law.

- 31.2 The Concessionaire shall be responsible for obtaining and maintaining insurance in relation to the Facilities in the full reinstatement value thereof.
- 31.3 Such insurance shall have the interest of the Council endorsed (or an indemnity to Principal clause) on the policy and the Concessionaire shall duly pay all premiums therefor and produce to the Council on request receipts therefor and shall not do or suffer or permit anything to be done which might prejudice the policy.
- 31.4 All monies which may at any time be received or receivable under any such insurance shall be applied in replacing or repairing the item of Plant lost or other items, damaged or destroyed or in such other manner as the Council may direct.
- 31.5 The Concessionaire shall upon request by the Authorised Officer disclose to the Authorised Officer all such policies of insurance, cover notes, premium receipts or other documents as the Authorised Officer may require from time to time and shall, if so requested furnish the Authorised Officer with copies of any such documents.
- 31.6 The Authorised Officer shall be entitled to notify the Concessionaire in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Concessionaire to effect such insurance as will so comply. Upon receipt of such notice, the Concessionaire shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may himself cause such insurance to be effected whereupon the Concessionaire shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance.
- 31.7 The Concessionaire shall at the request of the Authorised Officer, in the places and in a form approved by the Authorised Officer, arrange for notices to be permanently displayed giving information as to how insurance claims in respect thereof may be made.
- 31.8 The Concessionaire shall deal with any complaints and/or claims received from whatever source in a prompt, courteous and efficient manner. The Concessionaire shall acknowledge receipt of any claim within seven days of receipt and shall pass full details of any claim to its insurers within 21 days of receipt or within such shorter time as may be required under the terms of the relevant insurance. The Concessionaire shall keep a written record of all claims received and of the action taken in relation to such claims. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Concessionaire shall notify the Authorised Officer in writing within seven days of all claims received and of all steps taken in response thereto.
- 31.9 The provisions of Conditions 31.7 and 31.8 are without prejudice to any provisions concerning claims set out in these Conditions or the Schedules.
- 31.10 The Concessionaire shall ensure that any sub-contractors of the Concessionaire maintain like insurance cover to that required to be maintained by the Concessionaire under this Contract and such other insurance cover as may from time to time be reasonably required by the Council.
- 32 NOT USED
- 33 NOT USED
- 34A. DEFAULT III PERFORMANCE

34.1A If, at any time in the opinion of the Authorised Officer, the Concessionaire on any occasion shall have committed a breach of this Contract or omitted or failed to perform any part of the Services in the manner and to the standard required by this Contract, the Authorised Officer shall be entitled to serve on the Concessionaire a notice setting out the breach or the omission or deficiency in the Services ("the Default Notice") and requiring the Concessionaire to take steps (which may be specified) to remedy the breach or the omission or deficiency and to take steps (which may be specified) to prevent any recurrence of the breach or the omission or deficiency, or similar breaches, omissions or deficiencies. The Concessionaire shall take all such steps forthwith.

34 STEP IN

34.1 If the Council reasonably believes that it needs to take action in connection with the Concession:

34.1.1 because the Concessionaire has failed to provide all or any part of the Concession for seven continuous days or seven days within any four week period without consent from the Council;

34.1.2 because the Facilities are not being maintained in accordance with the Specification;

34.1.3 because it has reasonable cause to believe that the Concessionaire will be unable to operate the Concession;

34.1.4 because a serious risk exists to the health or safety of persons or property or to the environment;

34.1.5 to discharge a statutory duty; and/or

34.1.6 because an Emergency has arisen;

then the Council shall be entitled to take action in accordance with Clauses 34.2 to 34.5.

34.2 If Clause 34.1 applies and the Council wishes to take action, the Council shall notify the Concessionaire in writing of the following:

34.2.1 the action it wishes to take;

34.2.2 the reason for such action;

34.2.3 the date it wishes to commence such action;

34.2.4 the time period which it believes will be necessary for such action; and

34.2.5 to the extent practicable, the effect on the Concessionaire and its obligation to carry out the Concession during the period such action is being taken.

34.3 Following service of such notice, the Council shall take such action as notified under Clause 34.2 and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Concessionaire shall give all reasonable assistance to the Council while it is taking the Required Action. The Council shall provide the Concessionaire with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

34.4 If the Concessionaire is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Concessionaire from providing any part of the Concession:

34.4.1 the Concessionaire shall be relieved from its obligations to carry out the provide such part of the Concession;

34.4.2 no sums shall be payable by either party to the other pursuant to Condition 11 in respect of that part of the Concession;

34.4.3 the Council shall be entitled to retain all income in respect of such part of the Concession;

34.5 If the Required Action is taken as a result of a breach of the obligations of the Concessionaire under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Concessionaire from providing any part of the Concession:

34.6 the Concessionaire shall be relieved of its obligations to carry out such part of the Concession;

34.6.1 no sums shall be payable by the Council;

34.6.2 the Council shall be entitled to retain all income in respect of such part of the Concession;

34.6.3 the Council shall be entitled to deduct from any amounts due or to become due to the Concessionaire or recover from the Concessionaire as a debt all its costs of operation in taking the Required Action, less any income retained pursuant to 34.6.3.

35 TERMINATION

35.1 Without prejudice to any other rights and remedies it may possess including its rights of under Condition 34 above, the Council shall be entitled to give notice to terminate the Contract upon the occurrence of any of the following events or at any time within 28 days of the date when the Council first became aware of such an occurrence. Such notice may take effect immediately, or at such date (not later than 25 days after receipt of the notice) as the notice may specify:

(a) The Concessionaire having failed to execute the Contract as a Deed within 14 days of the Commencement Date;

(b) The Concessionaire being in material breach, which is not remedied within a reasonable time as determined by the Council in its reasonable discretion resulting in the Service Users being deprived of substantially the whole benefit of substantially any aspect of the Facilities;

(c) The Concessionaire failing to complete the Initial Works in accordance with Condition 20A (within 18 months of the Commencement Date);

(d) The Concessionaire having failed to perform a substantial part of the Concession for a period of seven consecutive days;

(e) The Concessionaire, or where applicable any director or partner thereof: (i) suffering any distress or process of execution to be levied on its goods; (ii) committing any act of bankruptcy or having a bankruptcy order made against him/her; (iii) entering into (whether an individual or body corporate) any arrangement, agreement of composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986); (iv) having a winding up order made or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding-up or having an application made from the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed over the whole or any part of his business and/or assets; (v) having a provisional liquidator, receiver or manager of the whole or any part of his business appointed; or (vi) having possession taken of any of its

property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.

- (f) The discovery of a material misrepresentation by the Concessionaire during the tendering process.
- (g) If there shall be any change in control (as defined by Section 1124 of the Corporation Tax Act 2010) of the Concessionaire or (where the Concessionaire is a subsidiary company) in its ultimate holding company.
- (h) Any other breach by the Concessionaire of any of its obligations under this Contract which, in the reasonable opinion of the Council: (1) constitutes a fundamental breach of contract by the Concessionaire; or (2) is a serious breach that has been repeated or persisted in by the Concessionaire after receipt by the Concessionaire of a written warning that the Council may invoke this Condition in respect of the said breach, and after the Concessionaire has had a reasonable opportunity to prevent such repetition or persistence.
- 35.2 Upon such termination or upon termination in accordance with Condition 34 in addition to such consequences as are set out in the other provisions of this Contract:
- (a) The Concessionaire shall be deemed to be in breach of this Contract (apart from termination under Conditions 35.1(d) and 35.1(f)).
- (b) The Concessionaire shall, unless requested otherwise by the Authorised Officer, immediately cease to perform any of the Concession.
- (c) The Concessionaire shall be liable immediately to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of this Contract by the Concessionaire.
- (d) The Concessionaire shall fully and promptly indemnify and compensate the Council against all loss and damage suffered by the Council by reason of such termination and without prejudice to the generality of this Condition shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Concession as would have been performed by the Concessionaire during the remainder of the Concession Period to the extent that such cost exceeds sums as would have been lawfully payable to the Concessionaire for performing such Concession (such costs to include but not be limited to all costs of closing out this Contract and entering into new contracts with replacement contractors). The Council shall be at liberty to have such Concession performed by any persons (whether or not servants of the Council) as the Council shall in its entire discretion think fit and shall act reasonably but shall be under no obligation to employ the least expensive method of having such Concession performed.
- (e) The Concessionaire shall forthwith vacate any Council premises and release and hand over to the Council any and all Council property, including but not limited to equipment, vehicles, supplies, records, machinery, tools, containers and work-in-progress.
- (f) It is hereby agreed that Conditions 25 (Payments to the Council/Interest on Late Monies/Charges); 27 (Confidentiality); 30 (Limitation of Liability); 31 (Insurance); 35 (Termination); 36 (Arrangements for Handover on Termination); 40 (Dispute Resolution); and 51 (Information on Re-Tendering) of this Contract shall continue in full force and effect and be enforceable by the Council.

- 35.3 The rights of the Council under this Condition 35 are in addition to and without prejudice to any other rights the Council may have whether against the Concessionaire directly or pursuant to any guarantee, indemnity, bond or otherwise.

36 ARRANGEMENTS FOR HANDOVER ON TERMINATION

- 35.1 If the Concessionaire does not secure a further contract for the operation of the Concession or similar successor concession, following termination of the Contract for any reason:
- (a) the transition to a successor(s) shall be arranged between the Authorised Officer and the Concessionaire and the Concessionaire shall not receive within its organisation any person involved in the provision of the Concession without the consent of the Authorised Officer; and the Council shall have the right in accordance with Condition 35.14 to offer employment to any person employed by the Concessionaire in the provision of the Concession;
- (b) the Concessionaire shall co-operate fully with the Authorised Officer during the transition (such co-operation to include provision of full access to all Council Data, documents, manuals, working instructions, reports, and any information whether held in electronic or written form which the Authorised Officer considers necessary to achieve effective transition and subsequent provision of the Concession or similar services);
- (c) the Concessionaire at its own expense shall deliver all records relating to the Concession to the Council or to the successor(s) or ensure their confidential destruction in accordance with the Authorised Officer's written instructions;
- (d) the Council shall have the following options:
- (i) to purchase from the Concessionaire at a fair market price to be agreed between the parties any equipment and/or Plant and other tangible property which is owned by the Concessionaire and is used exclusively, or for the greater part, in connection with the provision of the Concession being provided under this Contract;
- (ii) subject to the term of any such third party agreement, to require the Concessionaire at no charge (save for the payment by the Council of third party charges with respect to such assignments) to assign to the Council any equipment leases, maintenance or support agreements or other arrangements including licences for the use of third party software between the Concessionaire and third parties which relate to equipment or software used exclusively in connection with the provisions of the Concession being provided under this Contract; and
- (iii) to the extent that the Concession being supplied by the Concessionaire to the Council include any Concessionaire owned proprietary software then such software shall be and remain the property of the Concessionaire but the Council may require the Concessionaire to provide to the Council a perpetual, non-exclusive, non-transferable licence for the Council to utilise (or for its chosen alternative service supplier to utilise on its behalf) without charge the Concessionaire's software in connection with the Council's continuing performance of the Concession contemplated hereunder, subject to the prior execution of a written licence agreement containing fair and reasonable terms and conditions including but not limited to, provisions for the protection of the Concessionaire's proprietary rights therein.

- (e) the Concessionaire may request the Authorised Officer to reimburse any additional costs, other than incurred under Condition 35.1 (c), necessarily and properly incurred by the Concessionaire in providing assistance and co-operation during the transition. Any such request shall be accompanied by such evidence of expenditure and the reasons for it as the Authorised Officer may require. No such requests shall be unreasonably refused.

37 NOTICES

- 37.1 No notice to be served upon the Council shall be valid or effective unless it is sent by pre-paid Recorded Delivery post or delivered by hand to the Authorised Officer at the Town Hall, Wandsworth High Street, London SW18 2PU or to such other address as the Authorised Officer may notify the Concessionaire in writing.
- 37.2 Any notice to be served upon the Concessionaire shall be valid and effective if it is sent by pre-paid post or delivered by hand or by electronic data transmission or faxed to the registered office, principal place of business, or last known address of the Concessionaire or an address occupied by the Concessionaire for the purposes of this Contract and notified in writing to the Authorised Officer, or is delivered by hand to a director, partner, proprietor or other responsible representative of the Concessionaire.

38 WAIVER

- 38.1 Failure by the Council at any time to enforce the provisions of this Contract or to require performance by the Concessionaire of any of the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

39 SEVERANCE

- 39.1 If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall not in any way impair or affect any other provision all of which shall remain in full force and effect.

40 DISPUTE RESOLUTION

40.1 Expert Determination

- 40.1.1 Any matter or dispute to be determined by the Expert under this Contract shall be referred for determination to a person suitably qualified to determine such matter or dispute and who shall be nominated jointly by the Council and the Concessionaire or, failing agreement as to such nomination within seven days, to such person as may be appointed, on the application of either the Council or the Concessionaire, by the President for the time being of the Law Society.
- 40.1.2 The Council and the Concessionaire shall, on request, promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Concessionaire shall use all reasonable endeavours to procure the prompt determination of such reference.

- 40.1.3 The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be conclusive and binding upon the parties.

- 40.1.4 The costs of the Expert appointed hereunder shall be borne by the Concessionaire and/or the Council in such proportions as shall be directed by the Expert.

40.2 Mediation

- 40.2.1 In the event of any dispute or difference arising between the parties in connection with this Contract except anything falling for determination by the Expert, senior representative(s) of the parties shall, within 10 days of a written request from either party to the other meet in a good faith effort to resolve the dispute without recourse to legal proceedings.
- 40.2.2 If the dispute or difference is not resolved as a result of such meeting, either party may (at such meeting or within 14 days from its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a mediator or neutral advisor ("Mediator").
- 40.2.3 If the parties are unable to agree on a Mediator or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he or she is unable or unwilling to act apply to the Centre for Effective Dispute Resolution, 70 Fleet Street, London, EC4Y 1EU ("CEDR") to appoint a Mediator.
- 40.2.4 The parties shall within 14 days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 40.2.5 Unless concluded with a written legally binding agreement all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 40.2.6 If the parties accept the Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the parties. Unless otherwise agreed between the parties, such agreement shall be implemented in full within 30 days of signature failing which it shall be rendered null and void (and may not be referred to in any subsequent legal proceedings) unless legal proceedings have been initiated to enforce it within a further 30 days.
- 40.2.7 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing, who need only comply with their request if he/she considers it would be helpful. Any such opinion shall not be an attempt to anticipate what a court might order but rather the Mediator's suggestions as to the settlement terms which are considered appropriate in all the circumstances. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings arising in connection with this Contract without the prior written consent of both parties.
- 40.2.8 If the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed then any dispute or difference between them may be referred to the English Courts unless within a further period of 30 days the parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

41 AGENCY

41.1 Neither the Concessionaire nor its Employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Contract.

41.7 Neither the Concessionaire nor its Employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or any other way to bind the Council to the performance, variation, release or discharge of any obligation.

41.3 Neither the Concessionaire nor its Employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

42 NOT USED

43 NOT USED

44. ACQUIRED RIGHTS DIRECTIVE, TUPE AND PENSIONS

44.1 For the purposes of this Condition, save where the context otherwise requires the following words shall have the meanings set out below:-

- (a) "Employee Liability Information" means the information as defined in Regulation 11(2) of the TUPE Regulations.
- (c) "Final Pay Details" means in respect of each Future Transferring Employee, their final month's copy pay slip data, cumulative pay for tax and pension purposes, cumulative tax paid and tax code.
- (d) "Future Transfer Date" means the date of termination or expiry of this Contract.
- (e) "Future Transferring Employees" means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to the TUPE Regulations or the Acquired Rights Directive 2001/23/EC or otherwise to any Successful Tenderer.
- (f) "Relevant Legislation" means any statute or regulations or the EC Treaty (or any directives or regulations made thereunder).
- (g) "Required Information" means the information set out in Conditions 44.2, 44.4, 44.5 and 44.7.
- (h) "Staff Tender Information" means the staff tender information set out at part I of Schedule B.
- (i) "Staff Transfer" means the transfer of staff pursuant to the TUPE Regulations under this Contract.

(j) "Staff Transfer Information" means the staff transfer information set out at part II of Schedule B.

(k) "Successful Tenderer" means the person nominated by the Council to undertake the services substantially the same as the whole or part of the Services at any time during or after the termination of this Contract.

(l) "TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2005/246) as amended or replaced.

44.2 During the period of 12 months preceding the expiry of this Contract or at any time after notice has been given to terminate this Contract in accordance with Condition 35, the Contractor shall disclose to the Council and shall permit the Council to disclose to any prospective tenderer for services which are substantially the same as the whole or part of the Services, the Staff Tender Information.

44.3 The Contractor shall make reasonable endeavours to assist the Successful Tenderer to communicate with, meet and inform and consult with the Employees whom the Contractor reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with the TUPE Regulations.

44.4 Assuming the Successful Tenderer or the Council is of the view that the TUPE Regulations shall apply to the re-letting of this Contract, the Contractor shall not less than 14 days immediately prior to the Future Transfer Date provide to the Council or the Successful Tenderer all Employee Liability Information and the Staff Transfer Information set out in Part II of Schedule B to this Contract for all employees whom it reasonably believes will be Future Transferring Employees.

44.5 Within a period of 21 days following the Future Transfer Date, the Contractor shall provide to the Successful Tenderer in writing Final Pay Details of the Future Transferring Employees.

44.6 The Contractor warrants that it shall supply complete and accurate information pursuant to Conditions 44.2, 44.3, 44.4 and 44.5 in all material respects and the Contractor shall indemnify and keep the Council indemnified fully now and in the future in respect of all or any losses, costs, awards, liabilities and expenses whether arising in contract, tort (including negligence) or otherwise or under any Relevant Legislation suffered or incurred by the Council by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under Conditions 44.2, 44.4, and 44.5, and/or the provision of assistance and/or failure to provide assistance under Condition 44.3 of this Contract.

For the purposes of this Condition 44.6, losses, costs, awards, liabilities and expenses incurred by the Council shall include those incurred by reason of any contract term between the Council and any Successful Tenderer.

44.7 The Contractor shall not and shall procure that any authorised sub-contractors shall not, without the prior written consent of the Council (which shall not be unreasonably withheld) during the 6 months prior to the termination or expiration of the Contract or at any time between notice of termination given by the Council and termination:

44.7.1 vary, purport or promise to vary the terms and conditions (as amended from time to time) of employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee (including a promise to make any additional payment or provide any additional benefit);

- 44.7.2 give notice to terminate or terminate the employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee;
- 44.7.3 remove (permanently or temporarily), vary or reduce the involvement of any employee whom the Contractor reasonably believes will be a Future Transferring Employee in the provision of the Services; or
- 44.7.4 recruit or engage any employee to be employed in the performance of the Contractor's obligations under the Contract.
- 44.8 The Contractor warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep indemnified the Council and/or any Successful Tenderer against all liabilities, obligations, claims, costs and demands suffered or incurred by the Council and/or any Successful Tenderer as a result of any claim or demand made or brought against the Council and/or any Successful Tenderer by any member or former member of Staff or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that his employment and/or any liabilities in connection with such employment or the termination thereof have transferred or should have transferred from the Contractor to the Council and/or any Successful Tenderer during the continuance of the Contract or as a result of the termination or expiry of the Contract pursuant to the TUPE Regulations or otherwise.
- 44.9 For the purposes of Condition 44.8, in the event that the Council or the Successful Tenderer incurs costs, liabilities or expenditure in respect of Future Transferring Employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the Council or Successful Tenderer and included within the indemnity provided by the Contractor.
- 44.10 The Council and the Successful Tenderer shall be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the Council and the Successful Tenderer in connection with the costs and liabilities indemnified by the Contractor and this Condition 44 shall continue in effect for six months following the expiry or termination of this Contract.
- 44.11 Where the Contractor supplies the Required Information to the Council and/or the Successful Tenderer, then:
- 44.11.1 the Contractor shall at the same time notify (as applicable) the Council and/or the Successful Tenderer of any respects in which the facts and matters set out in the information supplied are expected to change between the date on which the information is supplied and the Future Transfer Date; and
- 44.11.2 thereafter, the Contractor shall notify (as applicable) the Council and/or the Successful Tenderer if there are any changes to the information supplied other than expected changes of which (as applicable) the Council and/or the Successful Tenderer was notified pursuant to Condition 44.11.1.
- 44.11.3 Notwithstanding any other provision of the Contract, in accordance with the Contracts (Rights of Third Parties) Act 1999, any Successful Tenderer shall be entitled to enforce the benefits conferred on it under this Condition 44. The consent of the Successful Tenderer

shall not be required for the variation of this Condition, even if that variation affects the benefits conferred on any Successful Tenderer.

45 PRESS AND PUBLICITY

- 45.1 The Council's aim is for the highest standard of presentation of the image of its activities to the public, and to ensure a fair and favourable reputation for its services via effective communication to the media and the public. The Concessionaire shall at all times comply with the Council's Code of Practice for Publicity as notified to the Concessionaire from time to time. Without limitation the main provisions of the aforementioned Code are as set out in this Condition 45.
- 45.2 The Concessionaire shall not use or adapt the Council's corporate logo or image without prior written approval of the Authorised Officer.
- 45.3 The Concessionaire shall not permit the placing or fixing of any advertising material whatsoever on or in the Council's premises without the prior approval of the Council.
- 45.4 The Concessionaire shall take all reasonable steps to ensure the observance of the provisions of this Condition 45 by its Employees and sub-contractors.

46 ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS

- 46.1 If requested to do so by the Authorised Officer, the Concessionaire shall provide to the Authorised Officer all relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Concession or the Concessionaire's presence on any Council premises and the Concessionaire shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.
- 46.2 Where the Concessionaire or any of its Employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Concession or in any way connected with the Concession, then the Concessionaire shall notify the Authorised Officer thereof immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to fully investigate the matter.
- 46.3 The Concessionaire shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England ("the Ombudsman") in any inquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Concession under the Contract.
- 46.4 If, as a result of such inquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to the actions or omissions of the Concessionaire then (without prejudice to any other rights or remedies available to the Council under the Contract or any other contract with the Concessionaire) the Council shall be entitled to recover from the Concessionaire (whether by deduction from any monies due to the Concessionaire or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions of the Concessionaire.
- 46.5 In the event of a dispute as to the proportion of the award and costs payable by the Council and the Concessionaire pursuant to any finding of the Ombudsman as aforesaid then the parties shall seek to resolve such dispute pursuant to the provisions of Condition 40.

46.6 Any information provided or assistance rendered by the Concessionaire pursuant to the obligations in this Condition 46, in whatever form, shall be provided at no cost to the Council.

47 RECOVERY OF SUMS DUE TO THE COUNCIL

47.1 Without prejudice to any other Condition herein, whenever under the Contract any sum of money shall be recoverable from or payable by the Concessionaire to the Council the same may be deducted from any sum then due or which at any time hereafter may become due to the Concessionaire under this or any other contract with the Council and notwithstanding anything herein contained where the Concessionaire is obliged to carry out any work, act or thing or to pay money for obtaining any thing, document or advantage (for example, but not exclusively, insurance or a bond) then in the event of the Concessionaire not carrying out any such work, act or thing or obtaining such thing, document or advantage the Council shall be entitled to carry out such work, act thing and/or obtain such thing, document or advantage by itself or others and shall be entitled to obtain reasonable reimbursement of the actual expenses thereof by deduction from the next or subsequent payments due to the Concessionaire or shall be entitled to recover such reasonable expense (with interest payable from 28 days next after a demand has been made therefor by the Council at four per cent over the rate current for Barclays Bank plc base rate and such interest shall run from day to day and shall accrue before and after any judgment and shall be compounded monthly on the amount overdue until payment of the original expense) by action against the Concessionaire as a debt and in reasonably carrying out any such work, act or thing or obtaining such thing document or advantage the Council shall be under no obligation to employ the least expensive method of carrying out such work, act thing or obtaining such thing, document or advantage.

47.2 "Expense(s)", "cost(s)" or any similar word or expression where recoverable by the Council shall include the Council's reasonable establishment charges (including the making up of the account and the recovery of the expense(s), cost(s) or the like).

48 EQUAL OPPORTUNITIES, EMPLOYMENT AND HUMAN RIGHTS

48.1 The Concessionaire shall not discriminate directly or indirectly, or by way of victimization or harassment, against any person on grounds of sex, disability, colour, race, nationality, marital status, gender reassignment, religion, belief, sexual orientation, age or ethnic or national origins contrary to the Equality Act 2010 or Public Interest Disclosure Act 1998 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services.

48.2 The Concessionaire shall in performing the Contract comply with the Human Rights Act 1998 as if the Concessionaire was a public authority within the meaning of section 6(3) of the Human Rights Act 1998.

48.3 In the event that the Concessionaire enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this Condition 48.

49 COUNCIL POLICIES AND CUSTOMER CARE

49.1 The Council has a number of policies which are relevant to this Contract, some of which are embodied in the Conditions or Schedules. The Council reserves the right to issue details of its policies or initiatives from time to time during the Concession Period. The Concessionaire (and its

personnel) shall act consistently with such policies or initiatives at all times during the Concession Period. Some of the most prominent Council policies and initiatives with which the Concessionaire shall comply are summarised below.

49.2 The Council's commitment to provide customers with high quality value for money services is set out in its own quality initiatives. The Concessionaire's main responsibilities are to:

- (a) familiarise itself with the contents of any customer care standards of which it is notified by the Authorised Officer and act accordingly;
- (b) ensure that it satisfies the aims and standards of the initiatives;
- (c) demonstrate highest standards of customer care including being polite, helpful and courteous at all times;
- (d) express all written communications clearly and concisely, keeping technical jargon to a minimum;
- (e) identify the names of its key staff contacts;
- (f) adopt a professional telephone manner – calls should be answered promptly and courteously, messages should be clear and responded to;
- (g) be aware of the different needs of the client and others affected by the Contract and take account of particular requirements for reasons of age, gender, race or disability; and
- (h) set up and operate a complete complaints procedure in accordance with this Condition 49.

50 COMPLAINTS IN RESPECT OF THE CONCESSION

50.1 The Authorised Officer and Contract Manager shall notify the other of all material complaints received by that Party concerning this Contract, or in any way relating thereto, including complaints relating to any employee of either party engaged in the performance of this Contract within two Working Days of receipt of the complaint by the concessionaire or Council department, giving details of the complaint.

50.2 The Authorised Officer and Contract Manager shall provide the other with a written report on each and every reasonable and unduplicated material complaint (from whatever source) within 10 Working Days of the receipt or notification of the complaint, giving details of the complaint and on any action taken in respect thereof.

51 INFORMATION ON RE-TENDERING

If requested to do so by the Authorised Officer, the Concessionaire shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Concession. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended. Such information provided pursuant to this Condition 51 shall be at no cost to the Council.

52 NOT USED

53 ENVIRONMENTAL REQUIREMENTS

53.1 The Council is committed to minimising its impact on the environment and continually improving its environmental performance. As part of this commitment the Council has adopted an Environmental Policy, which can be downloaded from and comments etc Principles of Action to the Concessionaire in connection with its provision of the Concession. These Principles of Action include without limitation the following:-

- (a) pursuing value for money by considering whole life costs;
- (b) resource efficiency by minimising use of natural resources; avoiding waste; re-use, recycling and composting;
- (c) reducing carbon emissions and adopting low carbon technologies to mitigate the effects of climate change;
- (d) limiting habitat destruction, for example by giving preference to accredited products from sustainable sources; and
- (e) minimising all forms of pollution and associated environmental risks.

53.2 The Concessionaire shall keep the Authorised Officer fully informed of all of its activities that enable the Council to improve its implementation of its Environmental Policy.

54 RIGHTS OF THIRD PARTIES

The parties do not intend any provision of this Contract to be enforceable by a third party by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

55 LAW

The Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English Law. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

56 ACTS OF PARLIAMENT ETC

Reference to any Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like shall be deemed to include a reference to any amendment or re-enactment of the same and shall include all Codes of Guidance and any other supplemental circulars or guidance made or issued pursuant thereto.

57 INTERPRETATION ACT

Section 6 of the Interpretation Act 1978 shall apply to the Contract and words importing individuals shall be treated as importing Corporations and vice versa. Masculine includes the feminine and the singular includes the plural and vice versa.

58 HEADINGS

Headings in the Contract Documents are for ease of reference only and shall not affect the construction of the Contract

59 RESTRICTION ON TRADE

Upon the expiry or sooner termination of this Contract for whatever reason the Contractor, and any associated company or person, shall not:

- (a) for a period of one year solicit the services of any employee of the Council or any employee to be transferred upon termination of this Contract;
- (b) use or disclose any information of a confidential or commercial nature acquired by it during the performance of the Services under this Contract; or
- (c) adopt any livery, style or name likely to cause any person to confuse the Services of the Contractor with the services of the Council or any of its contractors.

60 COUNCIL'S POWERS

Nothing contained in this Contract shall fetter or otherwise interfere with the exercise by the Council of any of its powers under any Act or otherwise.

61 MANAGEMENT INFORMATION

61.1 The Concessionaire shall comply with the monitoring arrangements set out in the Contract including, but not limited to, providing such data and information as the Concessionaire may be required to produce under this Contract.

61.2 Where requested by the Council, the Concessionaire shall supply the Management Information to the Council monthly during the Concession Period.

61.3 Upon receipt of the Management Information supplied by the Concessionaire, the Concessionaire hereby consents to the Council:

- 61.3.1 To publish on their website or in any alternative media the Management Information;
- 61.3.2 To store and analyse the Management Information and produce statistics; and
- 61.3.3 To share the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.

61.4 The Council may make changes to the Management Information when the Concessionaire is required to supply and shall give the Concessionaire at least one (1) month's written notice of any changes.

62 ENTIRE AGREEMENT

62.1 This Contract constitutes the entire agreement and understanding between the parties in relation to the Contract and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the Concession.

Commented [CS11]: See also comment CS11 in Clause 41

**SCHEDULE 1
Specification**

PROVISION OF SPORTS AND PHYSICAL ACTIVITIES AT TOOTING TRIANGLE (THE "SERVICES")

**SCHEDULE 2
CONCESSION FEE**

Part 1 – Payment Mechanism

1. GENERAL

- 1.1 The Concessionaire shall make payment by electronic payment mechanism (BACS) to the following bank account:

Payee Name: Wandsworth Borough Council

Bank Account Number: 65612544

Sort Code: 60-22-28

Branch Address: 98 Wandsworth High Street, London, SW18 4JZ

2. ANNUAL CONCESSION FEE

- 2.1 The Concessionaire shall make payment of the Annual Concession Fee half yearly in advance. The Council shall issue an invoice to the Concessionaire for each half year, setting out the proportion of the Annual Concession Fee to be paid by the Concessionaire.
- 2.2 Within 28 days of receipt of each invoice referred to in Clause 2.1 above, the Concessionaire shall pay the amount set out in the invoice to the Council.

3. REVENUE SHARE

- 3.1 The Revenue Share shall be payable annually in arrears.
- 3.2 Within 10 Working Days of each anniversary of the Commencement Date the Concessionaire shall submit to the Council a duly completed statement in a form approved by the Council detailing the total income received ("Revenue Income") in respect of the previous year which statement shall be signed by a director of the Concessionaire.
- 3.3 The statement delivered by the Concessionaire under paragraph 3.2 above will be subject to approval by the Council's Director of Finance who shall either certify the Revenue Income for the purposes of calculation of the Revenue Share or certify some alternative figure within 10 Working Days of such statement being delivered to the Council.

- 3.4 Within six months of end of each of the Concessionaires Financial Years, the Concessionaire shall deliver to the Council a detailed completed statement in respect of its previous Financial Year showing all Revenue Income for that period, which statement shall be audited by the external auditors of the Concessionaire and shall be signed by such accountant as representing a true, complete and accurate statement of Revenue Income in respect of that 12-month period.
- 3.5 in the event that the parties are unable to agree the relevant figure of Revenue Income within 10 Working Days of the Council's alternative certification under paragraph 3.4 above, the matter shall be referred to the dispute resolution procedure for determination by the Expert.
- 3.6 Within 5 Working Days of agreement or determination of the Revenue Income figure, the Concessionaire shall pay the Council.
 - 3.6.1 the Revenue Share; and
 - 3.6.2 interest (at 2% below the rate set out in Clause 11) which is payable on the outstanding Revenue Share from the date of referral to the dispute resolution procedure.

Part 2 – Annual Concession Fee (per year of 25 years)

| Year No. | Annual Concession Fee for the Concession of Sport and Physical Activity at Tooting Triangle (£): |
|----------|-----------------------------------------------------------------------------------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Commented [CS12]: Dates are unknown as of Concession Contract

Draft 5 - 21/01/15

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| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |

Draft 5 - 21/01/15

Part 3 - Revenue Share

| Year | % Revenue Share to the Council |
|------|--------------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |

Commented [CS13]: Should we have a table of "Revenue Share to Council"?

| | |
|-------|--|
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| Total | |

SCHEDULE 3
METHOD STATEMENT

The Contents of Schedule 3 includes the following:

1. Method Statements
2. Implementation Plan for the Installation and Renovation Works
3. Schedule of Works for the Installation and Renovation Works
4. Service User Charges

Draft 5 - 21/01/15

SCHEDULE 4
NOT USED

- 57 -

Draft 5 - 21/01/15

SCHEDULE 5
NOT USED

- 58 -

**SCHEDULE 6
CUSTOMER SERVICE**

Wandsworth Council recognises the importance of customer care in public services and has for many years followed a comprehensive approach to quality service delivery initiatives. A strong focus on customer service should be a routine part of our service delivery and management.

In order to maintain high standards of customer service the Council seeks to

- (i) set clear standards for service performance – and monitor these standards;
- (ii) put the customer first;
- (iii) make sure communication and information is presented in Plain English;
- (iv) encourage complaints and dealing with them in a speedy and efficient way;
- (v) carry out customer research and act on the views of users and others;
- (vi) seek external accreditation where applicable to test ourselves against the best;
- (vii) make sure that services deliver value for money and
- (viii) review and report quality improvements every year through the annual quality and performance review.

To promote customer awareness and help improve the way we deal with our customers, staff should be aware of and adopt effective telephone behaviour, good customer care, how to deal with difficult situations and customer complaints, and use plain English. The first impression customers receive is important and sets the tone for the rest of the contact with them and there are many ways to make sure this is a favorable one. Try to understand what the customer wants and provide clear and accurate information in a friendly and helpful way.

The continuing success of Wandsworth in providing quality services shows the commitment and involvement of staff in this process. This includes staff within contracted or agency services.

July 2011

**SCHEDULE 7
Lease**

Draft Template Lease together with Heads of Terms in relation to the Facility.

**SCHEDULE 8
Staff Information**

I. Staff Tender Information

"Staff Tender Information" shall mean –

1. Number of staff to be transferred;
2. Gender;
3. Date of Birth;
4. Whether disabled for the purposes of the Disability Discrimination Act 1995;
5. Job description;
6. Work location;
7. Conditioned hours of work per week;
8. Date of commencement of continuous employment and (if different) the commencement date;
9. Relevant Personnel Documentation;
10. Annual salary and rates of pay band/grade including pending increases;
11. Shifts, unsociable hours or other premium rates of pay;
12. Allowance and bonus details over the last twelve (12) months including date, type, amount and pending allowances/bonuses;
13. Leave entitlement;
14. Any factors affecting redundancy entitlement (including contracted redundancy policies);
15. Whether currently on maternity leave or other long term leave of absence;
16. Details of all dismissals or terminations of employment within the preceding six (6) months of anyone previously employed to or engaged in connection with the provision of the Services;
17. Details of all agreements or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or with any employee representatives;
18. Details of all trade disputes and industrial action occurring at any time during the preceding twelve (12) months to which any member of staff was a party;
19. Details of any trade union or organisation or body representing employees;
20. Any other information which is reasonably necessary in order to consider whether a particular individual should be a Future Transferring Employee

II. Staff Transfer Information

"Staff Transfer Information" shall mean –

1. Personal Details

Gender;
Date of Birth;
Whether known to be disabled for the purposes of the Disability Discrimination Act 1995, and details of any reasonable accommodation in respect thereof;

2. Employment Details

Job Title;
Staff Number;
Job Description;
Work Location;
Conditioned hours of work per week;
Date of commencement of continuous employment and (if different) commencement date;

SCHEDULE 10
NOT USED

SCHEDULE 11
FORM OF SUB-CONTRACTOR WARRANTY

THIS DEED IS MADE ON THE _____ DAY OF _____ [2013]

BETWEEN

1 THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH of Town Hall, Wandsworth High Street, London, SW18 2PU (the "Council")

2 [_____] whose registered office is at [_____] (the "Concessionaire"); and

3 [_____] whose registered office is at [_____] (the "Sub-Contractor")

Whereas:-

- (1) By a Contract dated [_____] ("the Contract"), the Council has engaged the Concessionaire to provide Sports and Physical Activities at Tooting Triangle ("the Concession").
- (2) The Contract requires the Concessionaire to carry out certain works known under the Contract as the "Installation and Renovation Works".
- (3) The Sub-Contractor has been appointed by the Concessionaire under a [contract/letter/deed] to carry out works (the "Sub-Contract Works") as part of the Installation and Renovation Works (the "Appointment").
- (4) The Sub-Contractor is obliged under the Appointment to give a warranty in this form in favour of the Council.
- (5) The Concessionaire and the Sub-Contractor have agreed to execute this Deed in favour of the Council.

Commented [CS14]: Not defined in the Definitions
Commented [CS15]: Not defined in the Definitions

Now it is agreed as follows:-

3. SUB-CONTRACTOR'S OBLIGATIONS

- 1.1 In consideration of the sum of ten pounds (receipt of which is hereby acknowledged), the Sub-Contractor warrants that:
 - 1.1.1 it has complied, and shall continue to comply, with its obligations under the Sub-Contract, including its obligations to:
 - 1.1.2 It has appointed a CDM Co-ordinator to carry out the duties in accordance with Construction (Design Management) Regulations 2007
 - 1.1.3 carry out and complete the Sub-Contract Works properly, and

Commented [CS16]: From Mike Mack - is this as the right place to do as replace 1.1.4 below?

- 1.1.4 use workmanship and materials of the quality and standard specified in the Sub-Contract;
 - 1.1.5 without affecting clause 1.1.1, and to the extent that it takes responsibility for the same under the Sub-Contract, it
 - 1.1.6 has designed, or will design, the Sub-Contract Works; and
 - 1.1.7 has selected, or will select, goods, materials, plant and equipment for incorporation in the Sub-Contract Works;
 - 1.1.8 with all the reasonable skill, care and diligence to be expected of a qualified and experienced Construction and Design Manager undertaking the design of works similar in scope and character to the Sub-Contract Works; and
 - 1.1.9 it has not and will not specify or use any products or materials in the Sub-Contract Works, which, at the time of specification or use, are considered to be deleterious in the UK building industry at the time of use or specification or which contravene the recommendations contained in the publication "Good Practice in Selection of Construction Materials" (1997; Ove Arup & Partners)."
- 1.2 In proceedings for breach of this clause 1, the Sub-Contractor may:
- 1.2.1 rely on any limit of liability or other term of the Sub-Contract; and
 - 1.2.2 raise equivalent rights of defence as it would have had, if the Council had been named as a joint employer, with the Concessionaire, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual contractor under the Sub-Contract)
- 1.3 The Sub-Contractor's duties or liabilities under this agreement shall not be negated or diminished by:
- 1.3.1 any approval or inspection of:
 - 1.3.1.1 the artificial grass sports pitch area and the indoor facility at which the Installation and Renovation Works are carried out; or
 - 1.3.1.2 the Installation and Renovation Works; or
 - 1.3.1.3 the Sub-Contract Works; or
 - 1.3.2 any designs or specifications for the Works; or
 - 1.3.3 any testing of any work, goods, materials, plant or equipment; or
 - 1.3.4 any omission to approve, inspect or test;
 - 1.3.5 by or on behalf of the Council or the Concessionaire.
- 1.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Council by the Sub-Contractor.

2. (STEP IN RIGHTS)

- 2.1 The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate, or treat as terminated, the Appointment or its engagement under it without first giving to the Council not less than 21 days' prior written notice specifying the Sub-Contractor's ground for terminating or treating as terminated the Appointment or its engagement under it, and stating the amount (if any) of monies outstanding under the Appointment.
 - 2.2 Within such period of notice, the Council may give written notice to the Sub-Contractor that the Council will thereforth become the employer under the Appointment to the exclusion of the Concessionaire and thereupon the Sub-Contractor will admit that the Council is its employer under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds.
 - 2.3 The Council may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause (2), subject to the Council remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
 - 2.4 If the Council has given notice under clause (2.2) or clause (2.3), the Council will, from the service of such notice, become responsible for all sums properly payable to the Sub-Contractor under the Appointment after the service of such notice.
 - 2.5 The Council will not be under any obligation to the Sub-Contractor, nor will the Sub-Contractor have any claim or cause of action against the Council, unless and until the Council has given written notice to the Sub-Contractor pursuant to clause 4.2 or clause 4.3.
- 3. ASSIGNMENT**
- 3.1 The Council may assign all or any of its rights under this Deed to any party without the consent of the Sub-Contractor.
 - 3.2 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of the Appointment or this Deed by reason that such person is an assignee and not the named Council hereunder.
- 4. GENERAL**
- 4.1 This Deed is subject to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.
 - 4.2 For the avoidance of doubt, no act or omission by the Council shall mitigate, affect, diminish or reduce the responsibilities or liabilities of the Sub-Contractor under the Appointment or this Deed.
 - 4.3 No action or proceedings for any breach of this Deed shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of completion of the Installation and Redevelopment Works under the Contract.
 - 4.4 Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery. In the case of a corporation, such notice must be served at its registered office for the time being. In any other case, the notice may be served at the registered office for the time being.

Commented [CS17]: Same as the wording at 1.3.1.2 above

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of the person to be served. Service shall take effect, if given by hand, on the first day thereafter, or, if given by post, 2 days after posting.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS DEED ON THE DATE BEFORE WRITTEN.

THE COMMON SEAL of)
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH)
OF WANDSWORTH)
was affixed to this DEED)
BY ORDER)

Authorised Officer:

Seal Register No:

Executed as a deed by)
[CONCESSIONAIRE])
acting by:)

.....
Director

.....
Director/Company Secretary

Executed as a deed by)
[SUB-CONTRACTOR])
acting by:)

.....
Director

.....
Director/Company Secretary

