

DATED

2016

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
WANDSWORTH**

-and-

[OPERATOR]

DRAFT OPERATIONS AGREEMENT

**relating to
Roehampton Playing Fields
Dover House Road
Wandsworth**



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THIS AGREEMENT is made the

day of

2016

BETWEEN

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH** of the Town Hall, Wandsworth High Street, London SW18 2PU (“**Council**”); and
2. **[OPERATOR]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the ‘**Operator**’).

BACKGROUND

- A The Council and the Operator shall enter into a Lease (defined below) in order to permit the Operator to develop, occupy and use the Property (defined below).
- B The Council and the Operator have agreed that with effect from the Commencement Date and for the Contract Period the Operator will make access available to the Property for community use in accordance with the terms of this Agreement.

IT IS AGREED AS FOLLOWS

1. INTERPRETATION

- 1.1 In this Agreement, save where the context otherwise requires, the following expressions shall have the following meanings assigned to them:

“**Authorised Officer**” means the Council's Director of Environment and Community Services or such other officer appointed hereafter by the Council to act in the name of the Council for the purposes of this Agreement.

“**Booking System**” means an electronic booking system to be developed and maintained by the Operator to record use separately of the Facilities by Community Users and as more particularly described at Schedule 1.

“**Charges**” means the Operator's charges from time to time for use of the Property or part thereof by the Users.

“**Commencement Date**” means the commencement date of the Lease.

“**Contract Period**” means a period of 30 years commencing on the Commencement Date, subject to earlier termination in accordance with the terms of this Agreement.

“**Contract Standard**” means in relation to the Operations, a standard of performance that is:

- (a) in accordance with good professional practice and in a manner free from dishonesty and corruption;
- (b) in accordance with this Agreement and the Lease; and
- (c) in compliance with all relevant Acts of Parliament, statutory regulations or orders and Codes of Practice in operation from time to time.

“Existing Community Users” means all of the persons that were using the Facilities or a part thereof immediately before the Commencement Date.

“Facilities” means the existing User facilities and the User facilities at any time during the Contract Period erected on the Property including the pavilion, temporary changing, toilet and showering facilities, the sports pitches and all other sports and fitness facilities on the Property.

“HSWA” means the Health and Safety at Work, etc Act 1974 (or any subordinate legislation, amendments or re-enactments thereof) and shall include all Codes of Guidance issued by the Council either before or during the Contract Period, and any Codes of Guidance prepared by the Operator.]

“Lease” means the lease of even date in respect of the Property granted by the Council to the Operator.

“Management Board” means the management board, which shall be an unincorporated association, set up by the parties to perform the functions set out at Schedule 2 and whose Terms of Reference are set out at Schedule 2.

“Nautical Dusk” means the time at which the sun is 12 degrees below the horizon in the evening, being the time in the evening that objects are no longer distinguishable, and the horizon is no longer visible to the naked eye.

“Operations” means the operations to be performed by the Operator and set out in Schedule 1 and in accordance with the term of this Agreement.

“Property” means the land and existing buildings and buildings to be constructed at Roehampton Playing Fields, Dover House Road, Wandsworth as the same are edged red on the plan marked Demise Plan that is annexed to the Lease the freehold interest in which is registered at the Land Registry with title number TGL34299 and as more particularly described in the Lease.

“SVGA” means the Safeguarding Vulnerable Groups Act 2006.]

“Terms of Reference” means the terms of reference that the Management Board will comply with as set out at Schedule 2.

“Total User Time” means the total time that the Facilities are available for use by Users which shall be from 7am until one hour after the later of (i) Nautical Dusk each evening of the year during the Contract Period or (ii) the approved planning consent times for the operation of the floodlights in accordance with paragraph 16.3 of Schedule 1.

“Operator Officer” means the Operator's officer or such other officer appointed hereafter by the Operator to act in the name of the Operator for the purposes of this Agreement.

“Users” means all users of the Facilities or part thereof.

“Working Day” means any day Monday to Friday excluding Bank and other Public Holidays in England.

1.2 Unless the context otherwise requires, in this Agreement:

- 1.2.1 reference to one gender includes all other genders;
- 1.2.2 reference to the singular includes the plural and vice versa;
- 1.2.3 reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time;
- 1.2.4 references to a 'person' shall be construed as a reference to any person, firm, company, corporation, government, state or agency of state or any association or partnership (whether or not having separate legal personality) of one or more of the foregoing;
- 1.2.5 reference to a clause, recital, schedule, party or appendix is a reference to a clause of or a schedule, party or appendix to this Agreement; and
- 1.2.6 references to this Agreement or any other agreement or document shall be construed references to this Agreement or the other agreement or document as from time to time amended, varied or supplemented.
- 1.3 The headings in this Agreement are for convenience only and do not affect its interpretation.
- 1.4 The schedules, appendices and recitals form part of this Agreement and shall have effect as if set out in it. Any reference to 'this Agreement' includes the schedules, appendices and recitals.
- 1.5 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.
- 1.6 Reference to personnel and employees shall be deemed to include the Operator's partners, directors, governors and employees and also the Operator's agents and sub-contractors and their personnel and employees, unless the context otherwise requires.

2. DURATION

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

3. AUTHORISED REPRESENTATIVES

- 3.1 Prior to the Commencement Date the parties shall each give notice to the other of the name and designation of the Authorised Officer and Operator Officer (as appropriate) and shall forthwith give notice to the other of any replacement from time to time.
- 3.2 From time to time the Authorised Officer or Operator Officer may appoint one or more representatives to act for them generally or for specified purposes or periods. Immediately any such appointment is made, the Authorised Officer or Operator Officer (as appropriate) shall give notice in writing to the Council or Operator (as appropriate).
- 3.3 The functions, rights and powers conferred by this Agreement upon the Council and Operator shall be exercised by the Authorised Officer and Operator Officer (respectively) or by a representative appointed in accordance with clause 3.2.

4. USE

4.1 The parties shall, before the Commencement Date, use their best endeavours to identify the Users and set out their use of the Facilities on a timetable, which shall be attached to this Operations Agreement as Schedule 4. For the avoidance of doubt, this timetable shall have indicative value only and shall not represent a commitment between the parties to only make the Facilities available to the Existing Community Users identified therein at the times identified therein and in the event of a conflict between the timetable and the Operator's obligations to make the Facilities available to Users in accordance with clause 4.2.2.1, clause 4.2.2.1 shall take precedence.

4.2 The Operator shall:

4.2.1 on or before the Commencement Date, establish and thereafter maintain during the Contract Period the Booking System. The form and functionality of the Booking System and any modifications to it shall be approved by the Council. As a minimum, the Booking System shall have the facilities set out in Schedule 1 including being readily accessible to Users;

4.2.2 with effect from the Commencement Date and for the Contract Period: -

4.2.2.1 make the Facilities available to Existing Community Users for community use for the same periods and on the same, or more favourable, terms as such Facilities were made available for community use immediately before the Commencement Date, but in any event make the Facilities available to Users for the duration of the Lease (until the Lease expires or is otherwise determined) or as otherwise agreed between the Operator and the Council both acting reasonably;

4.2.2.3 promote the use of the Property for community use at the times set out at clauses 4.2.2.1 or as otherwise agreed between the parties from time to time;

4.2.2.4 perform the Operations in accordance with the requirements set out in Schedule 1 and this Agreement; and

4.2.2.5 keep and maintain the Facilities in good repair and condition in accordance with the requirements set out in the Lease and at Schedule 1.

4.5 The Council and the Operator will seek to establish a joint protocol and system for User bookings and confirmations.

5. CHARGES AND REVENUE

5.1 The Operator shall during the Contract Period (i) take into account any and all advice provided by the Management Board in connection with the Operator's proposed annual programme of community use and proposed annual Charges including, but not limited to, the Community Services OSC report Paper No. 16-242 appended to this agreement; and (ii) submit to the Authorised Officer in advance its annual programme and proposed annual Charges for approval (such approval not to be unreasonably withheld).

5.2 The Operator shall ensure that any proposed Charges are comparable with the charges for the hiring of similar Council owned or managed facilities in the London Borough of Wandsworth.

5.3 The Operator shall be entitled to all revenue generated from the use of the Facilities.

6. PRESS AND PUBLICITY

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 Operator shall at all times comply with the Council's Code of Practice for Publicity, as notified to the Operator from time to time, concerning any information, press or publicity concerning the Council and this Agreement. Neither party shall use or adapt the other party's corporate or other logo or image without the prior written approval of the other party. Such approval shall come from the Authorised Officer in the case of the Council and the Operator Officer in the case of the Operator.

7. PROBITY AND INDUCEMENTS

The Operator shall not offer, or give or agree to give, to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Agreement, or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person, in relation to this Agreement or any other contract with the Council. Nor shall any like act be done by any person employed by the Operator or acting on its behalf (whether with or without the knowledge of the Operator); nor in relation to this Agreement or any other contract with the Council shall the Operator or any other person employed by it or acting on its behalf commit any offence under the Bribery Act 2010 or give any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

8. PERFORMANCE OF OPERATIONS

8.1 The Operator shall undertake all necessary preparatory work and training prior to the Commencement Date in order to ensure commencement and continuity of the Operations.

8.2 During the Contract Period the Operator shall perform the Operations to the Contract Standard and in accordance with the requirements set out in Schedule 1.

8.3 The Operator shall at all times during the provision of the Operations 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) to:

8.3.1 all sites or locations for the purpose of inspecting the provision of the Operations for the Facilities;

8.3.2 all work places of the Operator for the purpose of inspecting and copying records and documents in the possession, custody or control of the Operator in connection with the provision of the Operations; and

8.3.3 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Operations.

- 8.4 For the purposes of providing the Operations, the Operators may make use of computer systems and equipment of its own choice at its own expense and operate these from locations of its own choice. The Operator shall ensure that adequate and secure back up routines, anti-virus software, re-start procedures, checks for accuracy and security etc. are provided, and that up-to-date back up copies of all data relating to this Agreement are maintained. The Operator shall ensure that all information produced in the course of the Operations and or relating to the arrangement is retained for disclosure and shall permit the Council to inspect such records as reasonably requested from time to time.
- 8.5 Each party shall throughout the Contract Period (i) comply with all relevant professional requirements, statute and common law, statutory instruments, judicial decisions and European Community directives with respect to the performance of its obligations under this Agreement and (ii) perform its obligations under this Agreement in reasonable co-operation with the other party and its other relevant contractors.
- 8.6 In the event of the Operator being unable to perform the Operations or any part thereof, the Operator shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration. Nothing in this clause 8.6 shall in any way alter, modify, relieve or in any other way vary the Operator's obligation to provide the Operations, or the Council's powers under this Agreement.
- 8.7 The Operator shall, as soon as reasonably practicable, provide the Authorised Officer with any information relating to the carrying out of the Operations which the Authorised Officer may request.

9. GOVERNANCE

- 9.1 The Management Board shall meet and act in accordance with the Terms of Reference.
- 9.2 In accordance with the terms of this Agreement, the Management Board shall be responsible for reviewing and monitoring the Works and Operations.
- 9.3 The Management Board shall report to the parties in accordance with the procedure set out at Schedule 2.

10. ASSIGNMENT AND SUB-CONTRACTING

- 10.1 Unless any Acts of Parliament, Statutory Regulations, Orders or Codes of Practice state to the contrary, the Council shall be entitled to assign the benefit of this Agreement or any part thereof to any successor authority or body to which the functions of the Council may be lawfully assigned and shall give written notice of any assignment to the Operator.
- 10.2 The Operator shall not assign, transfer or novate this Agreement or any part thereof or the benefit or advantage of this Agreement or any part thereof to any person without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

11. EQUIPMENT

The Operator shall provide at all times during the Contract Period and at its own expense all equipment, plant and materials as are reasonably necessary for the

provision of the Operations and the proper functioning of the Facilities. The Operator, at its own expense, shall maintain in a safe, serviceable, and clean condition and replace as reasonably necessary all equipment, plant and materials used by the employees in the provision of the Operations. The Operator shall be responsible for the security of all equipment, plant and materials used by the Operator in connection with the provision of the Operations and the Council shall be under no liability in respect thereof.

12. DATA PROTECTION AND FREEDOM OF INFORMATION ACTS

- 12.1 Both parties shall comply with all obligations under the Data Protection Act 1998 and all subsequent statute, order, or regulations insofar as performance of the Operations gives rise to obligations there under.
- 12.2 The Operator shall provide the Authorised Officer with such information as the Authorised Officer may need to satisfy him/herself that the Operator is complying with its obligations under the said Data Protection Act 1998 including (but not limited to) a copy of the Operator's registration under the Data Protection Act 1998.
- 12.3 [Each party acknowledges that the other party 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 these Acts or Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation and shall assist and co-operate with the other party (at its own expense) to enable the other party to comply with its obligations under such legislation.
- 12.4 Each party shall provide the other party with a copy of any requested information under clause 12.3 as soon as reasonably possible and shall provide all necessary assistance as reasonably requested by the other party to enable it to comply with its obligations under the FOIA, the EIR and the SVGA 2006.
- 12.5 The Operator 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 I of the Freedom of Information Act 2000, the EIR or the SVGA 2006, disclose information:
 - 12.5.1 without consulting with the Operator; or
 - 12.5.2 following consultation with the Operator and having taken its views into account.]
- 12.6 The Operator shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect and copy such records as requested from time to time.

13. AGENCY

Neither the Operator 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 this Agreement. Neither the Operator 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 in any other way to bind the Council to the performance, variation, release or discharge of any obligation. Neither the Operator nor its employees shall in any circumstances hold itself or

themselves out as having power to make, vary, discharge or waive any by-law or regulation of any kind.

[14. EMPLOYEES

- 14.1 The Operator shall at all times ensure that sufficient numbers of suitably qualified employees are available to provide the Operations in accordance with the requirements set out in Schedule 1 (including during employees' holidays or absence through sickness or otherwise).
- 14.2 The Operator shall engage in and about the provision of the Operations only such persons as are to the best of its knowledge, fit and proper for the purposes employed and are careful, honest, experienced, trained and skilled in the work that they are to perform.
- 14.3 The Operator shall be entirely responsible for the engagement and conditions of its employees and managers including, without limitation, the payment of remuneration.
- 14.4 The Operator shall report any fraud or abuse by a member of its staff that is engaged in whole or in part in the performance of the Operations to the Authorised Officer immediately upon discovery.
- 14.5 The Operator and its employees shall, at all times conduct themselves in an appropriate professional manner in accordance with best practice.
- 14.6 The Operator shall (as far as it is lawfully able to do so) require all personnel who are to be engaged in or about the provision of the Operations (and in whatever role) to disclose any previous convictions and it shall inform the Council (as far as it is lawfully able to do so) of the identity of any person who does so disclose any previous convictions and the Operator shall not engage any such person in the performance of the Operations without the consent of the Council.
- 14.7 The Operator shall ensure that personnel engaged by the Operator in the provision of the Operations as their roles require, are subject to a valid enhanced disclosure checks undertaken through the Disclosure and Barring Service (DBS) including without limitation a check against the adults' barred list or the children's barred list, as appropriate.
- 14.8 The Operator shall (as far as it is lawfully able to do so) immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of clauses 14.6 have been met or are correct.
- 14.9 The Operator shall not employ or use the services of any person in the Operations who is barred from, or whose previous conduct or records indicate that he would not be suitable to carry out the Regulated Activity.

15. EQUAL OPPORTUNITIES

Neither party shall discriminate directly or indirectly, or by way of victimisation 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 Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005, the Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008, Equality Act 2006, 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 performance of their obligations under this Agreement.

16. HEALTH AND SAFETY AT WORK

The Operator shall at all times comply with the following health and safety requirements, and all subsequent amendments thereof, and all such new requirements as may come into force or being, the Health and Safety at Work etc Act 1974, the Food and Environment Protection Act 1985, the Electricity at Work Regulations 1989, the Management of Health and Safety at Work Regulations 1999, Control of Substances Hazardous to Health Regulations 2002, the Construction (Design and Management) Regulations 1994, all other Acts, Regulations, Orders or rules of law pertaining to health and safety, approved Codes of Practice and Guidance notes issued by the Health And Safety Executive and the Council's own Health and Safety policy in performing its obligations under this Agreement.】

17. LIABILITY OF THE OPERATOR

17.1 Subject to clause 17.2, the Operator shall fully and promptly indemnify the Council against all liabilities, costs, expenses, damages and losses (Loss) (including any direct losses and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

- (a) the Operator's breach or negligent performance or non-performance of this Agreement;
- (b) any damage caused to any land buildings or chattels of the Council or any third party by any employee or agent of the Operator (whether such damage be caused by negligence or in any other way whatsoever); or
- (c) any death or personal injury caused to any employee of the Council or to any third party by the negligence, or wilful or unlawful acts or omissions of any employee or agent of the Operator.

17.3 Nothing in this Agreement excludes or limits the liability of the Operator for death or personal injury caused by the Operator's negligence or fraudulent misrepresentation.

18. INSURANCE

18.1 The Operator shall at all times maintain in force such policies of insurance in respect of its performance of the Operations with reputable insurers or underwriters as shall fully insure and indemnify the Operator against liability:

18.1.1 to the Council and to any employee of the Council;

【18.1.2 to the employees of the Operator (Employers Liability Compulsory Insurance Act 1969);】 and

18.1.3 to Users and any other person (Public Liability Insurance).

18.2 In respect of clause 18.1 such insurance cover shall not be less than £10,000,000 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.

- 18.3 All insurance policies referred to in this clause 18 shall have an indemnity to principal clause whereby the Operator shall extend all of its insurance policies referred to at clause 18.1 to ensure that the Council is indemnified under such insurance in the place of the Operator when a claim that arises out of or in connection with the Operator's act or omission is asserted against the Council and the Operator shall duly pay all premiums thereon and produce to the Council on request receipts thereof and shall not do or suffer or permit anything to be done which might prejudice the policy.
- 18.4 The Operator 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 and shall if so requested furnish the Authorised Officer with copies of any such documents.
- 18.5 The Authorised Officer shall be entitled to notify the Operator in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with this clause 18 and to require the Operator to effect such insurance as will so comply. Upon receipt of such notice, the Operator shall immediately procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may him/herself cause such insurance to be effected whereupon the Operator shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance.

19. LIABILITY OF THE COUNCIL

- 19.1 Nothing in this Agreement excludes or limits the liability of the Council for death or personal injury caused by the Council's negligence or fraudulent misrepresentation.
- 19.2 Subject to clause 19.1, the Council shall not be liable to the Operator for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement.

20. TERMINATION

- 20.1 Without prejudice to any other rights and remedies it may possess, the Council may by notice in writing immediately terminate this Agreement:
- 20.1.1 if the Operator shall be in breach of any of the terms of this Agreement, which, in the case of a breach capable of remedy, shall not have been remedied by the Operator within 3 months of receipt by the Operator of a notice from the Council specifying the breach and requiring its remedy; or
- 20.1.2 if the Operator shall be grossly incompetent, guilty of gross misconduct and/or any serious or persistent negligence in the provision of the Operations after receipt by the Operator of a written warning that the Council may invoke this clause in respect of said breach; or
- 20.1.3 if the Operator fails or refuses to provide the Operations reasonably and properly required of it hereunder within 1 month of receipt by the Operator of a written warning that the Council may invoke this clause in respect of said breach; or
- 20.1.4 if the Operator shall, subject to clause 27.7, be prevented for whatever reason from providing a substantial part of the Operations for a period of 1 month; or

- 20.1.5 if the Operator shall suffer any process of execution being levied on its goods or assets; or
 - 20.1.6 if the Operator shall enter into 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); or
 - 20.1.7 if the Operator shall have a winding-up order made or (except for the purpose of amalgamations or reconstruction) a resolution passed for voluntary winding-up, or have an application made for the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver have been appointed, over the whole or any part of his business and/or assets; or
 - 20.1.8 if the Operator shall have a provisional liquidator, receiver or manager of the whole or any part of his business appointed; or
 - 20.1.9 if the Operator shall have 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; or
 - 20.1.10 in the event that the Lease is terminated (for whatever reason).
- 20.2 Upon termination of this Agreement pursuant to clause 20.1 and in addition to such consequences as are set out in the other provisions of this Agreement:
- 20.2.1 the Operator shall be deemed to be in breach of this Agreement;
 - 20.2.2 the Operator shall, unless requested otherwise by the Authorised Officer, immediately cease to perform any of the Operations;
 - 20.2.3 the Lease shall immediately terminate;
 - 20.2.4 the Operator shall be liable to compensate the Council for any loss or damage the Council has sustained in consequence of any antecedent breaches of this Agreement by the Operator.
 - 20.2.5 the Operator 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 clause shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Operations as would have been performed by the Operator during the remainder of the Contract Period to the extent that such cost exceeds sums as would have been lawfully payable to the Operator for performing such Operations (such costs to include but not be limited to all costs of closing out this Agreement and entering into new contracts with replacement contractors). The Council shall be at liberty to have such Operations performed by any persons (whether or not servants of the Council) as the Council in its entire discretion thinks fit and shall be under no obligation to employ the least expensive method of having such Operations performed;
 - 20.2.6 the Council shall be under no obligation to make any further payment arising under this Agreement to the Operator and shall be entitled to retain any payment which may have fallen due to the Operator before termination; and

20.2.7 it is hereby agreed that clauses 6, 7, 12, 13, 17, 18, 19, 20, 21, 22, 23 and 26 of this Agreement shall continue in full force and effect and be enforceable by the parties.

- 20.3 The rights of the Council under this clause 20 are in addition to and without prejudice to any other rights the Council may have whether against the Operator directly or pursuant to any guarantee, indemnity, bond or otherwise.

21. LEGAL AND OMBUDSMAN PROCEEDINGS

- 21.1 If requested to do so by the Authorised Officer, the Operator 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 Operations or the Operator's presence on the Property and the Operator shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.
- 21.2 The Operator 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 enquiries 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 Operations under this Agreement.
- 21.3 If, as a result of such enquiry 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 Operator then (without prejudice to any other rights or remedies available to the Council under this Agreement or any other contract with the Operator) the Council shall be entitled to recover from the Operator (whether by deduction from any monies due to the Operator 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 Operator.
- 21.4 If, as a result of any such enquiry or investigation, the Ombudsman makes a finding against the Operator and the finding is found to be attributable wholly or in part to the actions or omissions of the Council, then (without prejudice to any other rights or remedies available to the Operator under this Agreement or any other contract with the Council) the Operator shall be entitled to recover from the Council (whether by deduction from any monies due to the Council or otherwise) such proportion of any award made against the Operator to a complainant and related costs as are attributable to those actions or omissions of the Council.
- 21.5 Any information provided or assistance rendered by the Operator pursuant to the obligations in this clause 21, in whatever form, shall be provided at no cost to the Council.

22. DISPUTE RESOLUTION

- 22.1 In the event of any dispute or difference arising between the parties in connection with this Agreement (excluding clause 20) 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.

- 22.2 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").
- 22.3 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 of 70 Fleet Street, London, EC4Y 1EU ("CEDR") to appoint a Mediator.
- 22.4 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.
- 22.5 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.
- 22.6 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.
- 22.7 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. The Mediator 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 Agreement without the prior written consent of both parties.
- 22.8 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 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.

23. RECORDS

The Council shall retain title to all data, files, documents, electronic or other form of records supplied to the Operator. The Operator shall maintain adequate records, in accordance with best professional practice, of all aspects of the Operations. These records shall be kept in a secure and confidential manner. The Operator 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 all correspondence, records, documentation and files created in the performance of the Operations, whether stored on paper, microfiche, computer

software or other medium. The Council's internal auditors and external auditors shall also be entitled to full co-operation and assistance in connection with any enquiries and investigations relating to such records.

24. COUNCIL POLICIES AND CUSTOMER CARE

The Council has a number of policies that are relevant to this Agreement, including (without limitation) [the Council's Employers Forum on Disability "Agenda on Customers" and the Council's Delivering Excellence Quality Improvement Initiative.] These policies are available at www.wandsworth.gov.uk or upon request. The Council reserves the right to issue from time to time during the Contract Period details of its policies and initiatives in relation to Users and the Operations. The Operator and employees shall act consistently with such policies and initiatives at all times during the Contract Period.

25. OPERATIONS COMPLAINTS AND COMMENTS

At the Commencement Date the Operator shall set up a clearly defined complaints/comments procedure (subject to approval by the Authorised Officer) with agreed performance measures and recording systems, including a complaints/comments register, to enable the number and types of complaints/comments to be checked and monitored. For each complaint the records should identify the complainant/commentator, the nature and category of the complaint, the action taken in response to the complaint/comment, preventative action taken to stop similar occurrences and the relevant dates. The Operator shall deal with all complaints/comments received from whatever source in a prompt, courteous and efficient manner. The Operator shall notify the Authorised Officer as soon as reasonably practicable in writing of all complaints/comments received and shall provide a copy of each written complaint/comment (or Register entry for verbal complaints) and the response thereto.

[26. ACQUIRED RIGHTS DIRECTIVE AND TUPE

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

- (a) **"Employee Liability Information"** means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of the TUPE Regulations.
- (b) **"Effective Date"** means the date(s) on which the Operations (or any part thereof), transfer from the Council or any Third Party Employer to the Operator or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Operator or Sub-Contractor.
- (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 Agreement.
- (e) **"Future Transferring Employees"** means those employees of the Operator or Sub-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 Agreement pursuant to the TUPE Regulations or the Acquired Rights Directive 2001/23/EC or otherwise to any Successful Organisation.

- (f) **“Liabilities”** means all losses, damages, costs, actions, awards, penalties, fines, proceedings, claims, liabilities and expenses.
- (g) **“Relevant Employees”** means those employees whose contracts of employment transfer with effect from the Effective Date to the Operator or a Sub-Contractor by virtue of the application of TUPE.
- (h) **“Relevant Legislation”** means any statute or regulations or the EC Treaty (or any directives or regulations made there under).
- (i) **“Required Information”** means the information set out in clauses 26.3.1, 26.3.3, 26.3.4 and 26.3.6.
- (j) **“Staff Tender Information”** means the staff information set out at part I of Schedule 3.
- (k) **“Staff Transfer”** means the transfer of staff pursuant to the TUPE Regulations under this Agreement.
- (l) **“Staff Transfer Information”** means the staff transfer information set out at part II of Schedule 3.
- (m) **“Sub-Contractor”** means the contractors or service providers engaged by the Operator to provide goods, services or works to, for or on behalf of the Operator for the purposes of performing the Operations.
- (n) **“Successful Organisation”** means the person nominated by the Council to undertake the services substantially the same as the whole or part of the Operations at any time during or after the termination of this Agreement.
- (o) **“Third Party Employer”** means a service provider engaged by the Council in the performance of the Operations or part of the Operations before the Effective Date and whose employees will transfer to the Operator or a Sub-Contractor on the Effective Date.
- (p) **“Third Party Employees”** means employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Operator or a Sub-Contractor by virtue of the application of TUPE.
- (q) **“TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced.

26.2 Transfer of Relevant Employees to the Operator on the Effective Date

26.2.1 The Council warrants that it provided and has procured the provision of complete and accurate information in all material respects as required by regulation 11 (2) of TUPE in respect of all employees of the Council and Third Party Employers whose employment shall have the right to transfer to the Operator or its Sub-Contractors by virtue of TUPE as a result of the entry into or performance of this Agreement and subject to clause 26.2.4 the Council shall indemnify and keep the Operator

indemnified from and against any person (other than a Relevant Employee) claiming, as a result of the entry into this Agreement or its performance, that he/she has transferred his/her employment to the Operator or its Sub-Contractors under or pursuant to the provisions of TUPE.

26.2.2 The Council hereby agrees and shall procure that any Third Party Employer agrees not to make any material changes to terms and conditions of employment of the Relevant Employees after the date of this Agreement and prior to the Effective Date without the prior written agreement of the Operator to any such change such agreement not to be unreasonably withheld or delayed and subject to clause 26.2.4 the Council shall indemnify and keep the Operator indemnified from and against any and all claims, losses, expenses, damages and costs suffered or incurred by the Operator as a result of any such material change in terms and conditions to which the Operator has not agreed in writing.

26.2.3 Subject to clause 26.2.4 the Council shall indemnify and keep the Operator indemnified against all liabilities arising in relation to any of the Relevant Employees relating to the periods of employment prior to the date of their transfer to the employment of the Operator arising from the acts or omissions of the Council or Third Party Employer (including any failure of the Council to comply with its obligations under Regulations 11 or Regulation 13(2) of TUPE) which Liabilities may transfer to the Operator as a result of the transaction contemplated by this Agreement (save in relation to Liabilities arising from failure by the Operator to comply with regulation 13(4) of TUPE unless such failure by the Operator is due to the failure of the Council to procure the provision of complete and accurate employee information in accordance with the provisions of clause 26.2.1).

26.2.4 The Operator acknowledges that

- (i) the Council entered into a contract with Quadron Services Limited dated 14th March 2013 to provide services for the horticultural maintenance of parks, commons, open spaces, cemeteries and other sites and for grave digging, litter picking and the management and booking of sports facilities ("the Quadron Contract"), and that the services being performed by Quadron Services Limited involve the performance of part of the Operations such that any Relevant Employees performing services under the Quadron Contract may transfer; and
- (ii) pursuant to condition 44.12 of the Quadron Contract, the organisation to which any Relevant Employee may transfer has third party rights under the Quadron Contract to enforce the benefits conferred upon it under condition 44 (Acquired Rights Directive, TUPE and Pensions) of the Quadron Contract.

The Operator warrants that with respect to any and all Liabilities that it or a Sub-Contractor may suffer or incur as a result of or in connection with any employee performing services under the Quadron Contract, as a condition precedent to enforcing clauses 26.2.1, 26.2.2 and/or 26.2.3, the Operator shall and it shall procure that its Sub-Contractor shall first enforce and exhaust all rights it or its Sub-Contractor has under the Quadron Contract..

26.3 Employment Exit Provisions

26.3.1 During the period of 12 months preceding the expiry of this Agreement or at any time after notice has been given to terminate this Agreement in accordance with clause 20, the Operator shall disclose to the Council and shall permit the Council to disclose

to any prospective supplier for services which are substantially the same as the whole or part of the Operations, the Staff Tender Information.

26.3.2 The Operator shall make reasonable endeavours to assist the Successful Organisation to communicate with, meet and inform and consult with the Employees whom the Operator 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.

26.3.3 Assuming the Successful Organisation or the Council is of the view that the TUPE Regulations shall apply to the re-letting of this Agreement, the Operator shall not less than 14 days immediately prior to the Future Transfer Date provide to the Council or the Successful Organisation all Employee Liability Information and the Staff Transfer Information set out in Part II of Schedule 3 to this Agreement for all employees whom it reasonably believes will be Future Transferring Employees.

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

26.3.5 The Operator warrants that it shall supply complete and accurate information pursuant to clauses 26.3.1, 26.3.2, 26.3.3 and 26.3.4 in all material respects and the Operator 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 Agreement, 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 clauses 26.3.1, 26.3.3, and 26.3.4, and/or the provision of assistance and/or failure to provide assistance under clause 26.3.2 of this Agreement.

For the purposes of this clause 26.3.5, 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 Organisation.

26.3.6 The Operator shall not and shall procure that any authorised Sub-Contractor 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 Agreement or at any time between notice of termination given by the Council and termination:

- (a) vary, purport or promise to vary the terms and conditions (as amended from time to time) of employment of any employee whom the Operator reasonably believes will be a Future Transferring Employee (including a promise to make any additional payment or provide any additional benefit);
- (b) give notice to terminate or terminate the employment of any employee whom the Operator reasonably believes will be a Future Transferring Employee;
- (c) remove (permanently or temporarily), vary or reduce the involvement of any employee whom the Operator reasonably believes will be a Future Transferring Employee in the provision of the Operations; or
- (d) recruit or engage any employee to be employed in the performance of the Operator's obligations under the Agreement.

- 26.3.7 The Operator 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 Organisation against all liabilities, obligations, claims, costs and demands suffered or incurred by the Council and/or any Successful Organisation as a result of any claim or demand made or brought against the Council and/or any Successful Organisation 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 Operator to the Council and/or any Successful Organisation during the continuance of the Agreement or as a result of the termination or expiry of the Agreement pursuant to the TUPE Regulations or otherwise.
- 26.3.8 For the purposes of clause 26.3.7, in the event that the Council or the Successful Organisation 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 Operator 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 Organisation and included within the indemnity provided by the Operator.
- 26.3.9 The Council and the Successful Organisation shall be entitled to recover from the Operator in full any legal, accountancy and other costs actually and reasonably incurred by the Council and the Successful Organisation in connection with the costs and liabilities indemnified by the Operator and this clause 26.3 shall continue in effect for six months following the expiry or termination of this Agreement.
- 26.3.10 Where the Operator supplies the Required Information to the Council and/or the Successful Organisation, then:
- (a) the Operator shall at the same time notify (as applicable) the Council and/or the Successful Organisation 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
 - (b) thereafter, the Operator shall notify (as applicable) the Council and/or the Successful Organisation if there are any changes to the information supplied other than expected changes of which (as applicable) the Council and/or the Successful Organisation was notified pursuant to clause 26.3.10(a).
- 26.3.11 Notwithstanding any other provision of the Agreement, in accordance with the Contracts (Rights of Third Parties) Act 1999, any Successful Organisation shall be entitled to enforce the benefits conferred on it under this clause 26.3. The consent of the Successful Organisation shall not be required for the variation of this clause, even if that variation affects the benefits conferred on any Successful Organisation.]

27. GENERAL

- 27.1 Reference to time shall be construed, during the period of summer time, to be British Summer Time and otherwise to be Greenwich Mean Time or as may be required or stipulated by statute.
- 27.2 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 Operator in writing. Any notice to be served upon the Operator shall be valid and effective if it is sent by pre-paid recorded delivery post or delivered by hand to the Operator Officer or the Principal at the Operator's registered office or such an address as the Operator may notify in writing to the Authorised Officer.

- 27.3 Amendments to this Agreement must be made in writing and signed by both of the parties.
- 27.4 This Agreement supersedes all prior representations and agreements between the parties (whether written or oral) relating to the subject matter of the Agreement and this Agreement and the Lease sets forth the entire agreement and understanding between the parties.
- 27.5 Where either party fails to pay any monies to the other before the time stated by Authorised Officer or the Operator Officer (as appropriate) the non-paying party shall be liable to pay to the other interest at the rate of 4% above Barclays Bank Plc base rate for the time being per annum pro rata for each day or part thereof until the monies are paid. If the said base rate is abolished or should otherwise cease to exist then it shall be replaced in this Agreement by the nearest comparable rate which, in the event of a dispute, shall be determined in accordance with clause 22.
- 27.6 Failure by either party at any time to enforce the provisions of this Agreement or to require performance by the other party of any of the provisions of this Agreement 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 this Agreement or any part thereof or the right of either party to enforce any provision in accordance with its terms.
- 27.7 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from force majeure. For the purposes this Agreement, force majeure means any event beyond the reasonable control of a party that the party could not foresee or overcome, including, but not limited to war, terrorism, strike, flooding or other disasters of any nature and governmental decisions but excluding any strikes, lock-outs or labour disputes of a party. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six (6) months, the party not affected may terminate this Agreement by giving two (2) months written notice to the affected party.
- 27.8 If any provision of this Agreement 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 provisions all of which shall remain in full force and effect.
- 27.9 The Agreement 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).
- 27.10 The parties do not intend any provision of this Agreement to be enforceable by a third party by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

27.11 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

SCHEDULE 1

[Operations]

The Service

- 1.1 This Schedule 1 specifies to the management of the Property and ancillary Facilities. The Facilities are multipurpose being used by the Users.
- 1.2 The Operator shall manage the Facilities in accordance with this Schedule 1.
- 1.3 The Operator shall have responsibility for the operational functions necessary to provide a complete service and shall ensure that the Facilities are available for use during the periods detailed at clause 4.2.2 of this Agreement and in accordance with paragraph 8.0 of this Schedule 1.
- 1.4 The Operator shall provide opportunities for all sections of the community to use the Facilities and shall promote and market the same to increase awareness in the community of the sporting, recreational and leisure opportunities that the Facilities provide.
- 1.5 The Operator shall recruit, organise and manage staff to ensure that the Facilities are fully functional and that Users are received in a welcoming manner and environment.
- 1.6 The Operator shall hold and provide expertise in the recreational and sporting activities that are undertaken at the Facilities and organise the usage of the Facilities to provide a varied range of recreational and sporting opportunities.

2.0 Facilities – Standard Operating Procedures

- 2.1 The Operator shall prepare a written Standard Operating Procedure (SOP) for all of the Facilities including the sports pitches located on the Property (“the Sports Pitches”) in accordance with guidance provided by the Health and Safety Commission and appropriate industry guidance. The SOP shall include without limitation information on and /or procedures for dealing with:
 - a) details of the Sports Pitches and ancillary Facilities;
 - b) potential risk factors;
 - c) dealing with the public;
 - d) sports attendants duties and responsibilities;
 - e) systems of work;
 - f) operational systems;
 - g) detailed work instructions;
 - h) first aid supplies and training;
 - i) details of alarm systems and any emergency equipment, maintenance arrangements; and
 - j) conditions of hire to outside organisations.

3.0 Facilities – Emergency Action Plan

- 3.1 The Operator shall prepare a written Emergency Action Plan (EAP) for the Facilities in accordance with guidance from the Health and Safety commissions and industry guidance. The EAP shall include without limitation procedures dealing with:

- a) overcrowding;
- b) disorderly behaviour;
- c) outbreak of fire;
- d) bomb threat;
- e) lighting failure;
- f) structural failure;
- g) serious injury to Users; and
- h) any other type of emergency.

4.0 Sports Pitches, Facilities and Activities

- 4.1 The Operator shall ensure that each activity area is equipped and set out to meet User requirements and booking commitments and where changes in activities occur such changes shall be carried out in such a way as to minimise inconvenience to Users.
- 4.2 The Operator shall ensure that all activity areas are regularly checked to ensure that equipment is safe and used in accordance with manufacturer's recommendations and/or safety procedures and regulations.
- 4.3 The Operator shall ensure that all facilities and equipment are operated and maintained in accordance with regulations, guidance notes and codes of practices issued by or in accordance with governing bodies and manufacturers. All equipment must have detailed assembly and dismantling instructions. Equipment must be transported safely. The Operator shall ensure that only Operator employees, and authorised subcontractors and agents are allowed to move, assemble and dismantle equipment.

5.0 Attending and Cleaning

- 5.1 The Operator shall ensure that the changing room Facilities are open, clean, stocked and in full working order (including hand basins and showers) in time for each period of use by Users. The Operator shall further ensure that the designated attendant is on duty and readily available at all times throughout booked periods of use by such Users, that changing room Facilities are securely locked whilst games are in progress and that no unauthorised access is permitted. The Operator shall have appropriate arrangements in place for the recovery and return of any lost property and for recording damage caused by all Users to the changing rooms and all other Facilities.
- 5.2 The Operator shall provide an attendant for each period of use by Users with suitable and appropriate skills and knowledge for each period of use of the Facilities (including without limitation football, rugby and lacrosse). The attendant shall ensure that the changing room Facilities are vacated by the appointed time and the Operator shall provide the Authorised Officer with details of any occasion when Users do not vacate the changing room Facilities by the appointed time.
- 5.3 The Operator shall ensure that the attendant shall supervise the proper use of the changing room Facilities by Users, provide assistance as necessary to them, deal with any minor cleaning requirements that might arise, in particular mopping up or otherwise clearing spillages which might lead to slipping or other accidents and generally ensure the safe, secure and efficient running of the Facilities.
- 5.4 In the event of an accident or other emergency during the period of use by any User, the attendant shall summon the appropriate emergency service/services.

The Operator shall ensure that the attendant shall assist and shall inform the Operator officer of the incident as soon as is practicably possible. The Operator shall ensure that its officer shall in turn inform the Authorised Officer as soon as is practicably possible. In the case of an incident causing death or serious injury to any person, apart from summoning the appropriate emergency services, the Operator shall ensure that the attendant shall immediately inform the Operator officer, who shall without delay inform the Health and Safety Executive and the Authorised Officer.

- 5.5 The Operator shall ensure that the attendant shall, as far as is possible, ensure that Users behave, both at the changing room Facilities and on the Sports Pitches, in a reasonable way causing no undue disturbance nor giving any offence to other Users and near neighbours.
- 5.6 The Operator shall ensure that the routine cleansing of the changing room Facilities, including without limitation toilets, shower areas and other ancillary rooms/spaces is carried out to the very highest standards at all times to ensure the continuing maintenance of the required standards of cleanliness and hygiene.
- 5.7 The Operator shall supply, at its expense, all of the cleaning materials and consumables, for example and without limitation, toilet rolls, soap, paper towels and similar requirements to ensure that the Facilities are fit for purpose at all times.
- 5.8 The Operator shall maintain a staff attendance record in a form to be agreed with and approved by the Authorised Officer. This record shall be kept at the Facilities, in a safe place and at all times easily accessible to the Authorised Officer, for his inspection. In the case of the toilet and shower areas, the Operator shall display the record in such a way as to be clearly visible to Users of the Facilities at all times when the Facilities are open. At each cleaning visit, the Operator's employee, including its authorised subcontractor or agent, shall clearly and legibly record the following information:
 - a) the name of the operative;
 - b) the day and date and time of the cleaning visit; and
 - c) details of any damage, defect, or loss found.
- 5.9 The Operator shall provide, at its own expense, appropriate notices bearing the words 'Cleaning in progress', (or similar), for display in areas where Users are present during cleaning operations.
- 5.10 The Operator shall ensure that the Facilities are cleaned as frequently as is necessary to ensure that they are fit for use by Users, and that all cleaning operations are completed before the time stated as the due time for a booking to commence.
- 5.11 The Operator shall ensure that it has arrangements in place to keep the Sports Pitches and all associated external areas clean, tidy and free of litter, fallen leaves, leaf blossom and detritus at all times during the stated hours of operation.
- 5.12 The Operator shall ensure that it has (i) arrangements in place to keep all fixtures and fittings, furniture, sign boards, waste receptacles etc (internal and external) clean and in good and serviceable condition at all times; and (ii) arrangements in place to repair or replace any such item that does not meet the required standard without delay.

6.0 Plant Maintenance

- 6.1 The Operator shall ensure that arrangements are in place for the day to day operation and routine maintenance of plant, which description includes without limitation heating and hot water systems, and internal and external lighting. The Operator shall immediately inform the Authorised Officer of any plant failure, breakdown or other fault that makes the Facilities unavailable for use (pre-booked or otherwise) and of the Facilities return to use once the problem is resolved.

7.0 Premises Maintenance

- 7.1 The Operator shall be responsible for the day to day preparation, maintenance and repair and future replacement of the Facilities at the Property to include without limitation the Sports Pitches, the changing rooms, internal and external lighting (including without limitation any floodlights in accordance with paragraph 16.3 of this Schedule 1) the perimeter fencing, grounds, trees and all other fixtures and fittings and shall immediately inform the Authorised Officer of any fault or failure that makes the Facilities unavailable for use (pre-booked or otherwise) and of their subsequent return to use once the problem is resolved.
- 7.2 The Operator shall institute a system of inspections of the Facilities for health and safety, vandalism, graffiti and damage and shall inform the Authorised Officer of anything which renders the Facilities unavailable for use (pre-booked or otherwise) and of their subsequent return to use.
- 7.3 The Operator shall institute a system of inspections of all grounds, trees, furniture, fittings, notices, signs and fences as frequently as it deems necessary to ascertain their condition and that they are fit for use, in terms of both safety and general condition. Any item found to be unsafe or inoperable shall be dismantled and removed or “made safe” and cordoned-off and the Operator shall prominently display notices stating “EQUIPMENT OUT OF ORDER, NOT TO BE USED” (or similar wording).

8.0 Summer and winter sports seasons and Opening/Closing procedures

- 8.1 The Operator shall ensure that changing room Facilities are available upon request and that the changing rooms Facilities service the Sports Pitches.
- 8.2 The Operator shall ensure that disabled access to the Facilities is provided and maintained.
- 8.3 The Operator shall ensure that (i) the Facilities are opened by a member of the Operator's premises staff or a duly authorised subcontractor or agent, who will carry out routine H&S checks; (ii) its cleaning staff/premises staff lock and alarm the Facilities; and (iii) access for Users will always be to a staffed and supervised Facilities.
- 8.4 The Operator shall ensure that changing room(s) Facilities are allocated on arrival, opened by staff and locked on request when the team(s) leave(s) to use the Sports Pitches.
- 8.5 Notwithstanding clause 4.2.2 of the Agreement, the parties agree that the start and finish dates of the summer and winter sports seasons shall be:

- a) Summer Season:
 - Starts - the first Saturday after Easter
 - Ends - the Sunday immediately prior to the end of the schools summer holiday
- b) Winter Season:
 - Starts - the first Saturday after the end of the schools summer holiday
 - Ends - the last Sunday before Easter

Variations to the above seasons shall only be allowed with the prior written consent of the Authorised Officer.

9.0 Programme – General

- 9.1 The Operator shall assist the Council in the provision of a balanced programme of activities in all Facilities and shall actively support and promote without limitation the Council's "Active Wandsworth" Strategy 2011-2017, Wandsworth Play Tennis Development Plan 2010 - 2015 and Wandsworth Football Development Plan 2011-16 and any similar subsequent plans.
- 9.2 The Operator shall accommodate and support initiatives and projects initiated by the Council's Sports Development Team promoting multi-sport activities for school aged children during school holidays.
- 9.3 In line with the Council's Active Wandsworth Strategy the Council requires elements of the programme to promote use by those priority groups eligible for concessionary pricing aimed at increasing use by traditionally low participation groups including without limitation 14 – 25 year olds, disable people, girls and women, older people, unemployed.

10.0 Booking Procedures

- 10.1 The Operator shall operate a Booking System and payment system appropriate for the use by Users to the Facilities which shall including without limitation the use of: -
 - a) telephone booking and payment systems; and
 - b) an electronic booking and payment system, accessible from the Council's web site; and
 - c) on site attendants.
- 10.2 When allocating use of the Sports Pitches and the changing room Facilities the Operator shall ensure that defined periods are kept free of bookings to allow for the appropriate maintenance tasks that are required to ensure that the playing surfaces and the changing room Facilities are maintained to the required standards.

11.0 Performance Data

- 11.1 No later than 7 days after the end of each quarter during the Contract Period, the Operator shall supply the Authorised Officer with a report, in a form to be agreed with the Authorised Officer detailing without limitation: -

- a) The number and nature of bookings at the Facilities for the previous quarter.
- b) The number (and team/organisation names) of the actual Users that used the Facilities during the previous quarter, which for the avoidance of doubt shall not include any cancellations.
- c) The number and nature of programmes arranged and run to target the priority groups and meet a balanced programme of activities as detailed in section 9.0 of this Schedule 1.
- d) Records of spare capacity of the Facilities and the reasons for any cancellations in the previous quarter.
- e) List of all complaints received during the previous quarter. The list shall detail the nature of the complaint, details of the complainant (if supplied) and how each complaint was dealt with and the outcome.
- f) Records of all accidents or injuries sustained by staff or Users during the previous quarter.
- g) Any other information reasonably specified by the Authorised Officer from time to time.

12.0 Complaints

- 12.1 The Operator shall resolve all complaints, including without limitation those made by Users concerning the Facilities in accordance with clause 25 of the Agreement. The Operator shall record all complaints, whether written or verbal, in a complaints book. In every case the Operator shall request that the complainant provide personal details in the form of name, address and telephone number. If the complainant is dissatisfied with the Operator's response to the complaint, the Operator shall immediately provide the Authorised Officer with details of the complaint, of the complainant and of the response/s that it has provided.
- 12.2 The Council places paramount importance on customer satisfaction and the significance of complaint data will be discussed with the Operator together with measures to improve or modify site procedures in order to resolve individual complaints and reduce complaint trends.

14.0 Sports accidents

- 14.1 The Operator shall maintain a record and investigate the circumstances of all accidents, injuries, fatalities or potentially dangerous incidents at the Facilities, and report such incidents to the Authorised Officer and, if required under RIDDOR, to the Health and Safety Executive.
- 14.2 In the case of fatalities or life threatening incidents the Operator shall immediately notify the Health and Safety Executive and the Authorised Officer and co-operate fully with both parties in any subsequent investigation and/or other actions.

15.0 Parking

- 15.1 The Operator shall use reasonable endeavours to ensure that no Users park in

any disabled spaces at any time unless they display a blue badge.

16.0 Equipment

- 16.1 The Operator shall ensure that all sports equipment on the Sports Pitches is erected or otherwise set out in accordance with rules and guidance provided by each sports governing body. In the case of goal sets, the Operator shall ensure that all posts, cross bars etc are in good and safe condition prior to erecting the goal sets, and that they are erected in good time for booked use.
- 16.2 The Operator shall ensure that all goal sets, nets and other sports equipment on the Sports Pitches are renovated from time to time (repair, re-paint and replace parts), as appropriate, and that all equipment is maintained in a clean and presentable condition.
- 16.3 The Operator shall ensure that any floodlights that are erected within the Facilities are operated by Operator staff from a central control. Floodlights will be switched on manually and will turn off automatically in line with any planning conditions set. Two safety lights, shining on to the relevant sports pitch, will remain on for five minutes to allow players to gather belongings and exit safely.

17.0 Personal Lockers

- 17.1 The Operator accepts no responsibility for loss of personal belongings. The Operator shall ensure that signs to this effect are clearly displayed at the Facilities. The Operator has padlocks and keys, for personal lockers in the corridors of the changing room Facilities that can be purchased or hired by Users. The Operator shall ensure that the lockers are available for use by teams whilst using the Facilities.

18.0 Corporate image

- 18.1 The Operator shall ensure that its staff employed at the Facilities shall carry a form of identity approved by the Authorised Officer bearing a recently taken full face photograph of the bearer and make such form of identity available for inspection on request by an officer of the Council who similarly discloses his identity or if requested by a member of the public.
- 18.2 When requested to do so or when communicating with other persons as a representative of the Operator the Operator shall ensure that all persons employed by the Operator (including authorised agents and subcontractors) at the Facilities shall disclose their identity and shall not attempt to avoid so doing.

19.0 Safeguarding

19.1 Council's Inter-Agency Guidelines

Safeguarding Children

The Operator shall provide the Operations in accordance with the protocols and procedures of the Wandsworth Safeguarding Children Board (WSCB). In particular, the Operator shall be familiar with the London Child Protection Procedures. These protocols and procedures are available on request or can be found on the Council's website at the following page:

<http://www.wandsworth.gov.uk/Home/Safeguarding/Procedures/default.htm>

Safeguarding Vulnerable Adults

The Operator shall provide the operations in accordance with the Council's Interagency Guidelines for Protecting Adults, which are available on request or can be found on the Council's website at the following page:

http://www.wandsworth.gov.uk/downloads/file/4635/protecting_adults_at_risk_london_policy_and_procedures

20.0 Utilities

- 20.1 The Operator shall be responsible for all costs associated with the provision of gas, water, electricity and telecommunications and any and all other utilities associated with the Facilities.]

SCHEDULE 2

[Terms of Reference]

1. Purpose

- 1.1. The Management Board has been established to oversee the arrangement between the Council and the Operator for the effective commissioning, delivery and monitoring of the Works and the Operations.

2. Responsibilities

The primary responsibilities of the Management Board during the Contract Period shall include the following: -

- 2.1 consideration of the scheme of the Works prior to submission of the same to the Council for approval in accordance with the terms of the Lease;
- 2.2 ensuring compliance with the requirements for the performance of the Works in accordance with the terms of the Lease;
- 2.3 ensuring compliance with all standards of maintenance of the buildings, boundaries and the grounds at the Property including the sporting facilities and equipment;
- 2.4 ensuring the sufficiency of the budgetary provision for the Works and for future periodic maintenance and renewals;
- 2.5 ensuring compliance with all community use requirements, including the availability requirements at clause 4, the operation of the Booking System and the provision of annual advice on the Operator's proposed annual programme for community use and the appropriate Charges for community use;
- 2.6 dealing with complaints received that relate to the community use of the Facilities or complaints from nearby residents;
- 2.7 promoting the use of the Facility as a community resource;
- 2.8 sharing information between the parties;
- 2.9 making recommendations for any major changes in policy or resourcing contributions;
- 2.10 receiving quarterly reports from the Operator Officer on the performance of Works and the Operations;
- 2.11 overseeing all aspects of the Works and the Operations as deemed appropriate by the parties from time to time; and
- 2.12 providing recommendations to the Operator for the re-siting of the Property in the event that it is destroyed and can not be reinstated in its original location.

3. Membership

- 3.1. Unless otherwise determined by agreement between the Parties, the number of representatives on the Management Board shall be six.

- 3.1.1 the Management Board shall consist of:
- 2 representatives of the Council;
 - 2 representatives of the Operator;
 - 1 representative of the [Putney Primary School Sports Association]
 - 1 representative of an organisation (hereinafter the “Licensee”) to whom the Operator has granted a licence of the Property under clause 16.2 of the Lease.
- 3.1.2 the Council shall appoint a new representative to the Management Board to replace a representative that the Council had appointed who has resigned, died or been removed from or for any other reason vacated his office;
- 3.1.3 the Operator shall appoint a new representative to the Management Board to replace a representative that the Operator had appointed who has resigned, died or been removed from or for any other reason vacates his office;
- 3.1.4 [Putney Primary School Sports Association] shall appoint a new representative to the Management Board to replace a representative that such Association had appointed who has resigned, died or been removed from or for any other reason vacates his office;
- 3.1.5 the Operator shall appoint a new representative to the Management Board to replace a Licensee representative that it had appointed who has resigned, died or been removed from or for any other reason vacates his office;
- 3.1.6 any notice, information or communication given or made by or to the members of the Management Board shall be deemed to have been given or made by or to the body that such member represents;
- 3.1.7 the Management Board shall have the power to co-opt advisors with particular expertise on to the Management Board or task or working group as appropriate in a non-voting capacity.
- 3.2. Membership of the Management Board shall be reviewed at least every three years. In the event that an organisation is unrepresented at three successive meetings the Chairman of the Board will ask the organisation concerned to review its arrangements for representation.
- 3.3. A representative may be removed from the Management Board any time by the party by whom he/she was nominated giving him/her a written notice.
- 3.4. Any representative may resign from the Management Board not giving less than one month’s notice.
- 3.5. A representative shall cease automatically to be a representative in any of the following circumstances:
- 3.5.1 if he/she or any person acting on his/her behalf with or without his/her knowledge has offered or given or agreed to give any director, officer, employee, or secondee of another party to the Agreement a gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from having done, any act in relation to this or any other agreement or for showing favour or disfavour to

any person in relation to such an agreement;

3.5.2 if any member or person acting on his/her behalf with or without his/her knowledge, has committed an offence under the Bribery Act 2010 or any amendment thereto; or

3.5.3 if any member or any person acting on his/her behalf or without his/her knowledge, has given any fee or reward the receipt of which would be an offence under Section 117(2) of the Local Government Act 1972 or any amendment thereto.

3.6 Upon the date that a representative ceases to be a representative of the Management Board for any reason whatsoever, such departing representative shall not be liable for any acts or omission of other representatives in the execution of their duties occurring after such departure date.

3.7 Attendance at meetings should not normally be delegated, although this may be necessary on some occasions.

4. Chairing

4.1. The chairman of the Management Board shall be appointed by the Operator.

4.2. Where the chairman is not in attendance at a meeting, those representatives present shall elect one of their number to preside as chairman at that meeting and such person shall be entitled to exercise any of the powers of the chairman when the chairman is absent

5. Secretary

5.1. The secretary to the Management Board shall be appointed by the Management Board and shall be responsible for despatching agendas and papers to all member organisations and all of their representatives on the Board and such other persons or categories of persons and organisations as shall be agreed upon by the Board, and for agreeing those items that are urgent and/or confidential.

5.2. The secretary shall be responsible for taking the minutes of each meeting and maintaining a copy of each agenda, supporting papers and the minutes of each and every meeting of the Board.

6. Meetings

6.1. The Management Board shall normally meet at least twice per year at such venues as may be agreed by the Council's and the Operator's board member.

6.2. Meeting dates will be fixed in advance by the Council's and the Operator's board member and notified to all members.

6.3. Special meetings may be called by the Council's or the Operator's members of the Board.

6.4. Agendas must be despatched to all members of the Management Board, either electronically or by post, not less than three clear Working Days before the date of the meeting.

6.5. There must be at least four representatives, including at least one representative of both the Council and the Operator, for the meeting to be quorate. Where a member has declared an interest on any agenda item they will not count towards the quorum for the discussion on that item.

- 6.6. All matters arising for formal decision shall be decided by a majority of votes. Each member shall have one vote. In the event of an equality of votes, the chairman of the meeting shall be entitled to a second and casting vote.
- 6.7. Minutes shall be kept for all meetings and these shall be approved by the Management Board as a true record.
- 6.8. All formal reports produced by the Management Board including the minutes of meetings should be approved and signed by representatives of the Council and the Operator.
- 6.9. In view of the nature of the business to be considered, Management Board meetings will be held in private, with attendance restricted to Management Board members, although the Management Board may agree to invite guests, observers or advisers to attend all or part of any of its meetings. Papers considered by the Management Board will be made available to the public in accordance with the terms of the Freedom of Information Act.

7. Task and working groups

- 7.1. The Management Board has the power to establish task and working groups to carry forward particular aspects of its work, but such groups will have advisory powers only and the terms of reference of such groups are subject to ratification by the Management Board.]

SCHEDULE 3

[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

Name;
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;
 Notice Periods (for employer and employee);
 Annual salary and rates of pay band/grade including pending salary increases (to include information relating to the intervals of payment (i.e. weekly/monthly); Shifts, unsociable hours or other premium rates of pay;
 Overtime entitlement and details of last twelve (12) months overtime;
 Allowance and bonus details over the last twelve (12) months including date, type, amount and pending allowances/bonuses;
 Provisional details about standing loan/advances on salary or debts;
 Existing and future training or sponsorship commitments;
 Leave entitlement and accrued leave entitlement including any leave outstanding or expected to be outstanding at the Future Transfer Date (to include details on the employee's entitlement to public holidays and terms in relation to payment for holidays);
 Annual leave reckonable service date;
 Additional employment benefits;
 Other payments;
 Copies of pay slip data for immediately preceding five (5) months;
 Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;
 Tax Code;
 Voluntary deductions from pay;
 National insurance (NI) Number,
 NI Contributions rate;
 NI benefit start date;
 Terms and conditions relating to pensions.

3. Records of Employment Service

Last two appraisal report markings and/or performance assessment details and dates thereof;
 Sickness and absence records for two (2) years immediately preceding (including maternity leave);
 Details of any current warnings for breach of discipline or poor performances including warning reason, warning date, warning status and start and end date or penalty period.
 Details of any other outstanding disputes or grievances including all proceedings before any Employment Tribunal (Full details on any grievances brought by the employee(s), disciplinaries invoked against the employee(s) and tribunal claims brought by the employee(s) over the last two years. Information on tribunal claims to include any claims that the transferor has reasonable grounds to believe that the employee(s) may bring).
 .

4. Method of payment

Instrument of payment;
 Bank/building society account details for payroll purposes.

5. General Practices and Policies

Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);
 Special leave and career breaks;
 Sick leave and pay;
 Disciplinary/grievance policy and procedures;
 Equal Opportunities policy;
 All documents relevant to terms and conditions of employment, including manuals, codes,

handbooks, procedure guides, publications and agreements (including collective agreements);

Any other letters or documents or collective agreements affecting terms and conditions of employment;

6. Redundancy

Full details of any practice, policy or procedure in relation to redundancy and copies of relevant documents.

Full details relating to any employees that have resigned because of the transfer and any employees that have been dismissed because of the transfer or in connection with it.】

SCHEDULE 4
Indicative Timetable

IN WITNESS whereof the parties have executed this Agreement 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:

EXECUTED AS A DEED by)
)
[OPERATOR])
acting by: -)

Director

Director/Company Secretary