



5 December

2024

(1) **SHEFFIELD CITY COUNCIL**

and

(2) **SPORTS AND LEISURE MANAGEMENT LIMITED**

LEISURE OPERATING CONTRACT
relating to various leisure facilities in Sheffield

PART 1 - PRELIMINARY	7
1. Definitions and interpretation	7
2. Commencement and duration	88
3. Ancillary documents and guarantees	88
4. General warranties	89
5. Authority warranties	91
6. Documents and commitments	92
PART 2 - LAND SITE MATTERS	93
7. Nature of land interests	93
8. The Sites	100
9. Defects and asbestos	104
10. Fossils and antiquities	106
PART 3 - THE SERVICES	107
11. Services	107
12. Consents	111
13. Use of the Facilities	112
14. Investment Facilities	113
15. Condition of the Facilities	120
16. Further requirements	126
17. Representatives	128
18. Emergencies	129
19. Authority step-in	130
PART 4 – PERFORMANCE, REPORTING AND RECORDS	132
20. Performance monitoring	132
21. Continuous improvement	133
22. Quality assurance	134
23. Operator's records	134
24. Reporting	136
25. Co-operation for investigation and security	138
26. Audit	138
PART 5 – SUPERVENING EVENTS	141
27. Change control procedure	141
28. Change in law	141
29. Compensation events	144
30. Relief events	145
31. Force majeure	147
PART 6 – LIABILITY AND RISK MANAGEMENT	148
32. Indemnities, guarantees and contractual claims	149
33. Operator insurances	151
34. Reinstatement and change of requirement after Insured Event	153
35. Risks that become uninsurable	156
PART 7 – PAYMENT AND SURPLUS SHARE	161
36. Payment	161
37. Financial adjustments	167
38. Utilities and Benchmarking	171

PART 8 – TERMINATION AND CONSEQUENCES OF TERMINATION	172
39. Voluntary termination by the Authority	172
40. Termination on Operator Default	172
41. Termination for persistent breach by the Operator	174
42. Termination on corrupt gifts and fraud	174
43. Termination on Authority Default	176
44. Compensation on termination for Authority Default/Voluntary Termination	176
45. Compensation on termination for operator default and corrupt gifts and fraud	177
46. Retendering process	178
47. Compensation on termination for force majeure	179
48. Assets	179
49. Miscellaneous compensation provisions	180
50. Method of payment	181
51. Exit management	182
52. Surveys on expiry and Retention Fund	186
53. Continuing obligations	188
PART 9 –INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY	188
54. Intellectual Property	188
55. Data protection	191
56. Confidentiality	201
57. Freedom of information	203
58. Publicity and branding	205
PART 10 – GENERAL	205
59. TUPE and employees	205
60. Employees - General	216
61. Pensions	219
62. Reconciliation	219
63. Assignment and subcontracting	221
64. Change in ownership	222
65. Waiver and cumulative remedies	223
66. Relationship of the parties	223
67. Deemed Knowledge	223
68. Severance	224
69. Further assurances	224
70. Entire agreement	224
71. Third party rights	224
72. Notices	224
73. Dispute resolution	226
74. Sole remedy	230
75. No double recovery	231
76. Counterparts	232
77. Capacity	232
78. Interest on late payment	232
79. Governing law and jurisdiction	232
SCHEDULE 1	233

Services Specification	233
SCHEDULE 2	235
Service Delivery Proposals	235
SCHEDULE 3	237
Facilities	237
Part 1 Existing Facilities	237
Part 2 Additional Facilities	238
SCHEDULE 4	239
Site Plans	239
SCHEDULE 5	241
Payment and Performance Monitoring System	241
SCHEDULE 6	254
Subsidy Control	254
SCHEDULE 7	207
Review Procedure	207
SCHEDULE 8	212
Prohibited Materials	212
SCHEDULE 9	213
Employee Data	213
Part 1 First Employee List	213
Part 2 Second Employee List	215
Part 3 Operator Warranted Data	217
Part 4 Proposed Workforce information	218
SCHEDULE 10	219
Project documents and ancillary documents	219
Part 1 Project documents	219
Part 2 Ancillary documents	220
SCHEDULE 11	221
Title Matters	221
Part 1 Title Warranties	221
Part 2 Disclosed Title Matters	222
Part 3 Replies to enquiries	223
Part 4 Disclosed Searches	224
SCHEDULE 12	225
Insurances	225
Part 1 Operator Insurances	225
Part 2 Endorsements	230
SCHEDULE 13	232
Data Processing and Information Security	232
Part 1 Data Processing and Contact Details	232
Part 2 Information Security	233
SCHEDULE 14	240

NNDR	240
SCHEDULE 15	246
Agreed form Property Documents	246
Part 1 Head Lease	247
Part 2 Under Lease	248
Part 3 Tenancy at Will	249
SCHEDULE 16	250
Benchmarking	250
SCHEDULE 17	258
Surplus Share	258
SCHEDULE 18	263
Equality Requirements	263
SCHEDULE 19	265
Confidential Information	265
Part 1 Commercially Sensitive Contractual Provisions	265
Part 2 Commercially Sensitive Material	267
SCHEDULE 20	270
Loss of Revenue	270
SCHEDULE 21	272
Change Protocol	272
Part 1 Authority Changes	272
Part 2 Operator Changes	278
Part 3 Partial Termination	280
SCHEDULE 22	281
LOBTA	281
SCHEDULE 23	282
Pensions	282
SCHEDULE 24	290
Social Value Performance Management Framework	290
SCHEDULE 25	304
NCSEM	304
SCHEDULE 26	307
Partnering Charter	307
SCHEDULE 27	309
Collateral Warranty	309
SCHEDULE 28	318
Essential Maintenance and Authority Works Schedule	318
Part 1 Part 1 - Essential Maintenance	318
Part 2 Part 2 - Authority Works	319
SCHEDULE 29	320
DEED OF SURRENDER	320

SCHEDULE 30	321
NCSEM Lease	321
SCHEDULE 31	322
Parent Company Guarantee	322
SIGNATURE PAGE	323

This AGREEMENT IS DATED

5 December

2024

BETWEEN

- (1) **SHEFFIELD CITY COUNCIL** of Town Hall, Pinstone Street, Sheffield S1 2HH (the "Authority");
- (2) **SPORTS AND LEISURE MANAGEMENT LIMITED**, (company number 02204085) whose registered office is at 2 Watling Drive, Sketchley Meadows, Hinckley, England, LE10 3EY (the "Operator").

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

BACKGROUND

- (A) On 28 June 2023, the Authority despatched the contract notice and sought proposals for the provision of leisure and associated services at the Facilities.
- (B) On the basis of the Operator's response to the advertisement and a subsequent tender process, the Authority selected the Operator as its preferred supplier. The parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (C) The Authority is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure the delivery of the Services are Best Value functions.

TERMS AGREED

PART 1 - PRELIMINARY

1. Definitions and interpretation

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

"1999 Act" the Local Government Act 1999;

"Active Communities Service" the services related to the active communities service as detailed in paragraphs 2.9.1, 2.9.4, and 2.9.6 of the Services Specification, involving community activities outside the Facilities, aiming to support local strategic outcomes, build trust with residents and enhance accessibility while respecting resident preferences for community engagement locations;

"Actual Completion Date" means such reasonable date as is agreed between the parties for the conduct and

	completion of the fit out of the relevant Investment Facility;
"Actual Consumption"	the actual consumption of Benchmarked Utilities at an Investment Facility during the Relevant Period;
"Actual Operating Cost"	the annual actual operating costs as such cost headings are identified in the LOBTA, to include the Base Head Office Costs and Base Profit and cost of goods sold, that are incurred by the Operator in providing the Services in relation to the Facilities (but excluding Excluded Costs);
"Actual Utility Cost"	the actual cost of the Benchmarked Utilities actually consumed or used at each Facility using the Target Consumption Level for the relevant Facility;
"Additional Facility"	each of the sports and leisure facilities indicated as such in part 2 of schedule 3 (<i>Facilities</i>);
"Additional Facilities Service Commencement Date"	1 September 2026, being the date that Services commence at the Additional Facilities;
"Additional Investment Facility Changes"	has the meaning given to it in clause 14.4.1;
"Additional Social Value Objectives"	means the additional objectives as detailed in Appendix 2 to schedule 24 (Social Value Performance Management Framework);
"Adjudicator"	has the meaning given to it in clause 73.4 (<i>Adjudication</i>);
"Adjusted Amount"	is an amount equal to one twelfth of the amount paid for the relevant Insurance Term in respect of the Contract Year preceding the Contract Year in which such Insurance Term is first unavailable (using a reasonable estimate of such amount where a precise figure is not available), (index linked from the first day of such preceding Contract Year) less any annual amount paid or payable by the Operator to maintain and/or procure the maintenance of any (whether full or partial) alternative or

	replacement insurance in respect of such term or condition pursuant to clause 35.5.3 (<i>Unavailability of Terms or Conditions</i>);
"Administering Authority"	South Yorkshire Pension Authority of Oakwell House, 2 Beever Court, Pontefract Road, Barnsley, S71 1HG acting in its capacity as the administering authority of the Fund for the purposes of the LGPS Regulations;
"Admission Body"	an admission body for the purposes of paragraph 1 of part 3 of Schedule 2 of the LGPS Regulations;
"Adverse Rights"	any interests, rights, covenants, restrictions, stipulations, easements, customary or public rights, local land charges, mining or mineral rights, franchise, manorial rights and any other rights or interests in or over land, in each case whether or not registered that would, if exercised, prevent or disrupt the provision of the Services;
"Affected Party"	has the meaning given to it in the definition of Force Majeure Event in this clause 1.1 (<i>Definitions and interpretation</i>);
"Affiliate"	in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006;
"Agreed Contribution Rate"	means: <ul style="list-style-type: none"> (a) in respect of the Authority SCT Existing Employees, [REDACTED] of the Eligible Employees' Pensionable Pay; (b) in respect of the Authority PFP Existing Employees, [REDACTED] of the Eligible Employees' Pensionable Pay;
"Agreed Form"	in relation to any document, the form of the document agreed between the parties and

	initialled by or on behalf of the parties for the purpose of identification;
"Agreement"	this agreement (including its schedules);
"Amended Reinstatement Outline"	has the meaning given to it in clause 34.3.3 (<i>Obligations</i>);
"Ancillary Documents"	the documents listed in part 2 of schedule 10;
"Annual Payment"	<p>either as the case may be:</p> <p>(a) the Deficit Annual Payment, as payable by the Authority to the Operator (excluding the Average Excess Surplus, which is payable by the Operator to the Authority in accordance with Schedule 17 (<i>Surplus Share</i>)) or</p> <p>(b) the Surplus Annual Payment, as payable by the Operator to the Authority (excluding the Average Excess Surplus, which is payable by the Operator to the Authority in accordance with Schedule 17 (<i>Surplus Share</i>));</p> <p>as specified in row 144 for the relevant Contract Year of the Overall Facility Summary tab of the LOBTA and adjusted in accordance with paragraph 3 of schedule 5 (<i>Payment and Performance Monitoring System</i>);</p>
"Annual Physical Activity Development Plan"	the plan that outlines the anticipated developments related to physical activity, which will be collaboratively developed by the Authority in partnership with the bidders;
"Annual Post Investment Consumption Period"	as defined in clause 14.8.1
"Annual Review"	has the meaning given to it in clause 24.7.1;
"Annual Service Plan Workshop"	the workshop which shall provide an opportunity for the Authority and the Operator to review the Annual Service Plan

	report, as detailed in paragraph 5.1.8 of the Services Specification;
"Annual Service Plan"	the annual service plan, as defined in paragraph 5.1 of the Services Specification, which provides a clear roadmap for service development and delivery for the upcoming year;
"Annual Service Report Date"	the date by which the Annual Service Report is required to be submitted pursuant to table 10 of paragraph 5.2 of the Services Specification;
"Annual Service Report"	the annual report which provides a summary of the results and recommendations set out in all the reports that the Operator is required to produce in relation to the Services, as more particularly defined in paragraphs 3.7.47, 3.9.6 and 5.2.13 of the Services Specification;
"Anticipated Daily Revenue"	has the meaning given to it in paragraph 1 of schedule 20 (<i>Loss of Revenue</i>);
"Applicable Period"	has the meaning given to it in clause 51.7;
"Applicable Subsidiary Company"	any company that is a subsidiary of SCT or PFP (subsidiary having the meaning under section 1159 of the Companies Act 2006);
"Application"	has the meaning given to it in clause 36.2;
"Approved Purposes"	has the meaning given to it in clause 54.1 (<i>Project Data</i>);
"Asbestos Surveys"	the asbestos surveys provided by the Authority to the Operator as part of the Disclosed Data;
"Asbestos"	has the meaning given to it in the Control of Asbestos Regulations 2012;
"As-built Drawings"	drawings, technical information, models, operation and maintenance manuals and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of each Facility in sufficient detail to allow a competent person to

understand all material elements of the construction of each Facility and to maintain, dismantle, reassemble, adjust and operate all plant, equipment, fixtures, structures and construction elements thereof;

"Assets"

all assets and rights to enable the Authority or a successor operator to own, operate and maintain each Facility in accordance with this Agreement including:

- (a) any land or buildings;
- (b) any equipment (excluding any Authority Equipment, any items belonging to tenants and any NCSEM Items);
- (c) any books and records (including operating and maintenance manuals, maintenance records, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and
- (f) any Intellectual Property Rights subject to and in accordance with clause 54 (*Intellectual Property*);

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

"Assigned Employees"

has the meaning given to it in clause 59.10.1.1;

"Authorised"

means the Operator's employees, contractors, agents, auditors or Sub-Contractors who:

	<p>(a) have a need to know or otherwise access Personal Data to enable the Operator to perform its obligations under this Agreement;</p> <p>(b) are bound in writing by confidentiality and other obligations sufficient to protect Personal Data in accordance with the terms and conditions of this Agreement; and</p> <p>are granted access privileges only through a clear and auditable chain of authority;</p>
"Authority Change"	a Change requested by the Authority;
"Authority Change Notice"	has the meaning given to it in paragraph 1.1part 1 of schedule 21;
"Authority's Community Youth Services Team"	the specific team within the Authority responsible for managing and overseeing all youth services;
"Authority's Corporate Delivery Plan"	the services that the Operator shall provide which contribute to wider local strategic outcomes, as defined in paragraph 2.3.1 of the Specification;
"Authority Default"	<p>one of the following events:</p> <p>(a) a failure by the Authority to make payment(s) of an amount of money exceeding (in aggregate) [REDACTED] plus VAT that is due and payable by the Authority under this Agreement within 20 Business Days of service of a formal written demand by the Operator, where the amount fell due and payable one (or more) months prior to the date of service of the written demand;</p> <p>(b) a breach by the Authority of its obligations under this Agreement which substantially frustrates or renders it impossible for the Operator to perform its obligations</p>

	under this Agreement for a continuous period of two months;
	(c) a breach by the Authority of clause 63.1 (<i>Restrictions on Authority</i>);
"Authority Equipment"	the equipment listed in appendix 7 (<i>Equipment Inventory</i>) of the Services Specification;
"Authority Necessary Consents"	only those permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the permitted use of each of the Facilities, whether required in order to comply with Legislation or as a result of the rights of any third party, which the Operator is unable to obtain but the Authority is able of obtain;
"Authority PFP Existing Employee"	in relation to the services (or any of them) which are provided to the Authority immediately prior to the Additional Facilities Service Commencement Date by PFP and/or by any sub-contractor of PFP, all those persons employed or engaged by PFP under a contract of employment or engagement (excluding to avoid doubt (without limitation) any person engaged by PFP as an independent contractor or persons employed or engaged by any sub-contractor (of any tier) of PFP) and who are wholly or mainly engaged in the provision of that service as at the PFP Service Transfer Date;
"Authority Policies"	the policies of the Authority provided by the Authority to the Operator as part of the Disclosed Data;
"Authority Pricing Requirements"	the Authority's pricing requirements, as set out in paragraph 3.6 and appendix 4 of the Services Specification;
"Authority Related Party"	(a) an officer, agent, contractor, employee, worker or sub-contractor (of any tier) of the

	Authority acting in the course of his office or employment; and
	(b) any person visiting a Facility at the invitation (express or implied) of the Authority,
	but excluding in each case the Users, the Operator and any Operator Related Parties;
"Authority's Representative"	the representative appointed by the Authority pursuant to clause 17.1 (<i>Representatives of the Authority</i>);
"Authority SCT Existing Employee"	in relation to the services (or any of them) which are provided to the Authority immediately prior to the Service Commencement Date by SCT and/or by any sub-contractor of SCT all those persons employed or engaged by SCT under a contract of employment or engagement (excluding to avoid doubt (without limitation) any person engaged by SCT as an independent contractor or persons employed or engaged by any sub-contractor (of any tier) of SCT), and who are wholly or mainly engaged in the provision of that service as at the SCT Service Transfer Date;
"Authority Works"	means the Outstanding Maintenance and any Proposed Works to be carried out by the Authority prior to the Commencement Date;
"Average Excess Surplus" or "AES"	means the average excess profit to be shared between the Operator and the Authority, calculated in accordance with paragraphs 5, 6 and 7 of Schedule 17 (<i>Surplus Share</i>);
"Barred List"	the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012;
"Base Date"	has the meaning given to it in clause 1.4 (<i>Indexation</i>);

"Base Head Office Costs"	means in relation to the Facilities an amount (Indexed) shown in row 81 of the 'summary (Existing 15 yr)' tab of the LOBTA;
"Base Modelled Costs"	the annual operating costs (index-linked) that are projected to be incurred in relation to the Facilities by the Operator in providing the Services as the same are identified in the LOBTA (to include the Base Head Office Costs and Base Profit and cost of goods sold but excluding Excluded Costs projected in the LOBTA), as adjusted in accordance with this Agreement;
"Base Profit"	means in relation to the Facilities an amount (Indexed) shown in row 80 of the 'summary (Existing 15 yr)' tab of the LOBTA;
"Base Utility Cost"	the cost of the Benchmarked Utilities projected to be consumed or used at each Facility and included within the table at appendix 1 to part 2 of schedule 16 (<i>Benchmarking</i>), as may be amended at each Cost Benchmarking Date pursuant to paragraph 3.2 of schedule 16 (<i>Benchmarking</i>);
"Beckmann Rights"	any liability that passes to the Operator, any Future Operator or any Sub-Contractor under TUPE and which relates to any liability or a claim or demand in respect of any Relevant Employees or any Returning Employee (or any other current or former employee or worker of the Operator or any Sub-Contractor) based directly or indirectly on the decision of the European Court of Justice in the cases of <i>Beckmann v Dynamco</i> <i>Whichloe MacFarlane Limited</i> [2002] IRLR 578 or <i>Martin & Others v South Bank University</i> [2004] IRLR 74 in respect of any right under or in connection with an occupational pension scheme and which relates to any matter, right or claim otherwise than in relation to old age, invalidity or survivor's benefits under such a scheme;

"Benchmark Consultant"

an expert appointed by agreement between the parties who:

- (a) possesses at least five years' experience of operating in, or as a consultant to, the leisure and sports facilities management industries;
- (b) possesses at least five years' experience of valuing services provided in the aforementioned industries; and
- (c) is engaged or employed by a reputable independent leisure organisation which is independent of the parties and of any other operator,

or in the absence of any such agreement:

- (i) a person appointed by such other mutually agreed professional body; or where the parties cannot agree on such person;
- (ii) such other competent person who is appointed by an Adjudicator;

provided that the person appointed is independent of the parties and satisfies the criteria set out in paragraphs (a) to (c) of this definition;

"Benchmark Consultant"

an expert appointed by agreement between the parties who:

"Benchmarked Utilities"

the provision of gas and electricity (including district heat networks and biomass) at the Facilities and Benchmark Utility shall be construed accordingly

"Best Value Direction"

the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (and any successor or replacement legislation, policy or guidance);

"Billing Authority"	has the meaning given to the term "billing authority" in the Local Government Finance Act 1992;
"BI Proceeds"	Business Interruption Insurance proceeds;
"Building"	any building or other erection at any of the Sites;
"Building Contract"	means the relevant contract for the undertaking of certain Investment Facility Works at the relevant Investment Facility between the Authority and the Building Contractor;
"Building Contractor"	means either the relevant building contractor appointed by the Authority for the purposes of carrying out the Investment Facility Works or any relevant building contractor appointed by the Authority for the purposes of carrying out work in respect of any or all of the Facilities other than the Investment Facility Works (as the case may be);
"Buildings Surveys"	the building surveys conducted by Rider Levett Bucknall Limited (a company registered in England with company number 05594095 and whose registered address is at One Eleven, Edmund Street, Birmingham, West Midlands, B3 2HJ) and provided by the Authority to the Operator as part of the Disclosed Data;
"Business Continuity Plan"	a plan to be provided by the Operator to the Authority to ensure that the Services continue to be provided during an emergency or unexpected circumstance;
"Business Contracts"	<ul style="list-style-type: none"> (a) any and all applicable contracts entered into between SCT and a third party supplier; (b) any and all applicable contracts entered into between PFP and a third party supplier; and (c) all customer contracts in respect of the SCT Services and the PFP Services in force at the SCT

	Transfer Date and the PFP Transfer Date respectively;
"Business Day"	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
"Business Interruption Insurance"	the business interruption insurance set out in paragraph 21 of part 1 of schedule 12;
"Capital Costs"	<p>the sum the Operator has invested in capital works or investments at the Facilities for purpose of delivery of the Services, at written down value, as shown in the Operator's accounts to the extent such capital costs:</p> <p>(a) were agreed by the Authority in accordance with clause 6.3 (<i>Operator commitments</i>) or expressly accepted by the Authority for the purposes of clause(s) 44 (<i>Compensation on termination for Authority Default/Voluntary Termination</i>), 45 (<i>Compensation on termination for operator default and corrupt gifts and fraud</i>) and/or 47 (<i>Compensation on termination for force majeure</i>) pursuant to a Change; and</p> <p>(b) have not been paid or accounted for:</p> <p>(i) in the Base Case/LOBTA when calculating the Annual Payment up to the Termination Date; or</p> <p>(ii) via another payment pursuant to this Agreement,</p>
"Capital Expenditure"	any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time, International Financial Reporting Standards

	from time to time, or proper accounting practices for local authorities as defined by section 21(2) of the Local Government Act 2003 and Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003;
"CDM Regulations"	the Construction (Design and Management) Regulations 2015;
"Certificate of Practical Completion"	means the certificate of practical completion to be issued under any Building Contract;
"Cessation Date"	has the meaning given to it in paragraph 1.2.1 of schedule 23 (Pensions);
"Change"	a change to the Services or additional works and/or Services that may be made under schedule 21 or a partial termination pursuant to part 3 of schedule 21;
"Change in Costs"	<p>in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses (excluding Loss of Revenue) or liabilities of the Operator and/or any Sub-Contractors (without double counting), including, as relevant, the following:</p> <ul style="list-style-type: none"> (a) the reasonable costs of complying with the requirements of clauses 29 (<i>Compensation events</i>), 28 (<i>Change in law</i>), 19.4 (<i>Step-In without Operator Breach</i>), 37 (<i>Financial adjustments</i>) and the Change Protocol, including the reasonable costs of preparation of design and estimates; (b) the costs of continued employment of, or making redundant, staff who are no longer required; (c) the costs of employing additional staff; (d) reasonable professional fees;

- (e) the costs to the Operator of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Operator's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Annual Payment;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Operator (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, lifecycle costs, maintenance costs or replacement costs;
- (h) Capital Expenditure;
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis;

"Change in Law"

the coming into effect after the Commencement Date of:

- (a) Legislation, other than any Legislation which on the

	Commencement Date has been published:
	<ul style="list-style-type: none"> (i) in a draft Bill as part of a Government Departmental Consultation Paper; (ii) in a Bill; (iii) in a draft statutory instrument; or (iv) as a proposal in the Official Journal of the European Communities;
	(b) any Guidance; or
	(c) any applicable judgment of a relevant court of law which changes a binding precedent;
"Change in Ownership"	<ul style="list-style-type: none"> (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Operator and/or the Operator's Holding Company (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or (b) any other arrangements that have or may have or which result in the same effect as paragraph (a);
"Change in Revenue"	in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Operator and/or any Sub-Contractor save that any Loss of Revenue shall be calculated in accordance with schedule 20 (<i>Loss of Revenue</i>);
"Change Protocol"	the procedure set out in schedule 21;
"Claiming Party"	has the meaning given to it in clause 36.5.1 (<i>Disputed Amounts</i>);

"Closure Date Assumption"	means the underlying assumption, concerning the date that an Investment Facility was planned to be closed in order to carry out the Investment Facility Works, upon which the relevant tab of LOBTA is based;
"Collateral Warranty"	a collateral warranty executed as a deed between the Authority and the Leisure Operator in the relevant form as set out in schedule 27 (<i>Collateral Warranty</i>);
"Commencement Date"	the date of this Agreement;
"Commercially Sensitive Information"	the subset of Confidential Information listed in column 1 of part 1 and column 1 of part 2) of schedule 19 (Confidential Information) in each case for the period specified in the respective columns 2 of parts 1 and 2 of schedule 19 (Confidential Information);
"Community Engagement Plan"	the Operator's annual plan for engaging priority audiences detailed in paragraphs 3.12.3, 3.12.4, and 3.12.5 of the Services Specification;
"Comparable Market"	the market for sports facilities of similar content to the Facilities operated by Reputable Operators provided that at least three such facilities are considered and at least one of the three facilities is operated by a different Reputable Operator to the other two);
"Compensation Event"	<p>(a) the occurrence of a breach by the Authority of the following provisions:</p> <ul style="list-style-type: none"> (i) clauses 7.1 (<i>Grant of Head Lease</i>) and/or 7.11 (<i>Compliance with Head Lease</i>) (ii) clause 8.2.5.3(b) (<i>Site Matters</i>); (iii) clause 10.6 (<i>Fossils and antiquities</i>);

- (iv) clauses 12.2 (*Authority Necessary Consents*) and 12.2.2 (*Authority Necessary Consents*);
- (v) clause 15.2.3 (*Surveys*);
- (vi) clause 33.1 (*Requirement to Maintain*);
- (vii) clause 52.2 (*Minimisation of Disruption*);
- (viii) schedule 7 (*Review Procedure*); and

- (b) the occurrence or recurrence of a pandemic;
- (c) an Investment Facility Event; and
- (d) any other event or circumstance identified as a Compensation Event in this Agreement;

"Concord NCSEM Lease"

the NCSEM Lease in respect of Concord Leisure Centre;

"Confidential Information"

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and includes information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all Personal Data (including special categories of personal data and personal data relating to actual or potential criminal offences and convictions) within the meaning of the Data Protection Legislation; and
- (b) Commercially Sensitive Information;

"Contamination"	all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
"Continuation Notice"	has the meaning given to it in clause 31.5 (<i>Notice to Continue</i>);
"Continuous Improvement Duty"	the duty imposed on the Authority to secure continuous improvement in the exercise of the Authority's functions, having regard to a combination of economy, efficiency and effectiveness in relation to, inter alia, the Services, pursuant to the 1999 Act;
"Contract Management System"	the contract management system established and maintained by the Operator for the provision of the Services in accordance with this Agreement, and references to "CMS" shall be construed accordingly;
"Contract Month"	any month in a Contract Year provided that: <ul style="list-style-type: none"> (a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and (b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day;
"Contract Period"	the period from and including the Commencement Date, in the case of the Existing Facilities and the Additional Facilities Service Commencement Date in the case of the Additional Facilities, to the Expiry Date, or if earlier, the Termination Date;
"Contract Quarter"	each period of three consecutive Contract Months (or part thereof) in the period from (and including) the Contract Month in which the Service Commencement Date occurs to

	(and including) the Contract Month in which the earlier to occur of the Expiry Date and the Termination Date falls;
"Contract Year"	<p>a period of 12 months commencing on 1 April, provided that:</p> <p>(a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the immediately following 31 March; and</p> <p>(b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;</p>
"Controller"	has the meaning given in, and shall be interpreted in accordance with, the Data Protection Legislation;
"Conviction"	other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);
"COSHH"	the Control of Substances Hazardous to Health Regulations 2002;
"Cost Benchmarking Date"	subject to clause 14.8 of schedule 16 (<i>Benchmarking</i>), the date which is fifteen (15) months after the Service Commencement Date and thereafter on each anniversary of the last Cost Benchmarking Date or, if earlier, the Termination Date or the Expiry Date;
"Cost Benchmarking Period"	the period between successive Cost Benchmarking Dates;

"Cost Benchmarking Procedure"	the procedure to establish the Cost Figure as set out and described in part 2 of schedule 16 (<i>Benchmarking</i>);
"Cost Benchmarking Proposal"	the proposal produced pursuant to paragraph 2 of schedule 16 (<i>Benchmarking</i>);
"Cost Figure"	<p>means:</p> $A - B$ <p>where:</p> <p>A = the Actual Utility Cost of the Benchmarked Utilities at the Target Consumption Levels (or the actual consumption levels, if lower) since the last Cost Benchmarking Date and</p> <p>B = for the first Cost Benchmarking Procedure, the Base Utility Cost at the Target Consumption Levels and for each Cost Benchmarking Procedure thereafter, the updated Base Utility Cost at the Target Consumption Levels (or the actual consumption levels, if lower) agreed or determined at the previous Cost Benchmarking Procedure;</p>
"CPI"	the index published in Table 1 of the monthly Statistical Bulletin " Consumer price indices " published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in

	accordance with clause 73 (<i>Dispute resolution</i>) of this Agreement;
"Current Annual Payment"	the aggregate Annual Payment that would have been payable in respect of the period following the commencement date of the Retendered Contract had this Agreement not terminated pursuant to clause 40 (<i>Termination on Operator Default</i>) or clause 42 (<i>Termination on corrupt gifts and fraud</i>);
"Current Indexation Date"	being 1 April 2025 and thereafter on each anniversary of 1 April 2025 until the Expiry Date;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the parties under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach Incident;
"Data Processing Activities"	Processing activities undertaken by either party in relation to Personal Data either in the capacity of independent Controller, or Processor;
"Data Protection Legislation"	(a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data or marketing activities to which a party is subject, including UK GDPR, the DPA 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and (to the extent that it may be applicable) the EU GDPR; and

	(b) any code of practice or guidance (including any Information Commissioner's Office guidance) published by a competent supervisory authority in relation to the Processing of Personal Data or marketing activities to which a party is subject, from time to time;
"Data Protection Officer"	as defined in the UK GDPR;
"Data Record"	has the meaning given to it in clause 55.2.6.5;
"Data Subject Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation including, among others, to access, rectify, erase (the right to be forgotten), restrict Processing, transfer to another Controller (data portability), object to Processing of, their Personal Data;
"Data Subject"	has the meaning in, and shall be interpreted in accordance with, the Data Protection Legislation;
"Deed of Surrender"	the draft deed of surrender attached at Schedule 29 (Deed of Surrender);
"Defects"	<p>any defect in any of the Buildings, or any part of them, or anything installed in the Buildings attributable to:</p> <p>(a) defective design;</p> <p>(b) defective workmanship or defective materials (which, for the avoidance of doubt, shall exclude Asbestos), plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of the Building;</p> <p>(c) the use of materials in the construction of any Building which (whether or not defective in themselves) prove to be defective</p>

	in the use to which they are put in the construction of any such Building;
	(d) defective installation of anything in or on the Buildings;
	(e) defective preparation of the site on which the Building is constructed; or
	(f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;
"Deficit Annual Payment"	the Annual Payment where it is a negative;
"Design Data"	all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Facilities in each case that is used by or on behalf of the Operator and/or its Sub-Contractors in connection with the provision of the Services or the performance of the Operator's obligations under this Agreement;
"Direct Losses"	all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses;
"Directive"	the EC Transfers of Undertakings Directive 2001/23 as amended;
"Disclosed Data"	information relating to the Services disclosed to the Operator and/or its advisers before the Commencement Date including all information, documents and data: <ul style="list-style-type: none"> (a) on the procurement portal, made available to the Operator and created for the purposes of sharing

	procurement documents and dialogue with bidders; and
	(b) on the electronic data room, made available to the Operator and created for the purposes of selecting the Authority's preferred supplier to provide leisure and associated services at the Facilities;
"Disclosed Searches"	the searches listed in part 4 of schedule 11;
"Disclosed Title Matters"	the matters set out in part 2 of schedule 11;
"Disclosure and Barring Scheme"	the disclosure and barring scheme operated by the Disclosure and Barring Service;
"Disclosure and Barring Service"	the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;
"Discriminatory Change in Law"	a Change in Law, the terms of which apply expressly to: <ul style="list-style-type: none"> (a) the Project and not to similar projects; (b) the Contractor and not to other persons; and/or (c) persons who have contracted with the Government, a Local Authority or other public or statutory body to provide services under a public private partnership arrangement and not to other persons;
"Dispute Resolution Procedure"	the procedure for the resolution of disputes set out in clause 73 (<i>Dispute resolution</i>);
"Disputed Amount"	has the meaning given to it in clause 36.5.4 (<i>Disputed Amounts</i>);
"Disputing Party"	has the meaning given to it in clause 36.5.1 (<i>Disputed Amounts</i>);
"DOTAS/DASVOIT"	the Disclosure of Tax Avoidance Schemes rules as contained in Part 7 of the Finance Act 2004 and in secondary legislation made

under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992 or the Disclosure of Tax Avoidance Schemes: VAT and Other Indirect Taxes rules as contained in section 66 of, and Schedule 17 to, the Finance (No.2) Act 2017 and in secondary legislation made under vires contained in section 66 of, and Schedule 17 to, the Finance (No.2) Act 2017;

"DPA 2018"

the Data Protection Act 2018;

"EIRs"

the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

"Election Officer"

the Authority's presiding officer at a Facility for the purposes of overseeing or conducting Elections;

"Elections"

such local, regional or national elections or referenda that the Authority or its returning office is statutorily required to administer;

"Eligible Employees"

the Relevant Employees who in respect of their transfer to the Operator or Sub-Contractor are entitled to pension protection under the Best Value Direction and are active members of, or eligible to join, the LGPS immediately on the Relevant Transfer Date and whose names (or other form of identification) are appended to schedule 23 (Pensions). A person will cease to be an Eligible Employee where they are no longer employed in connection with the provision of the Services or part of such Services or cease to be eligible for membership of LGPS under the LGPS

	Regulations or the Operator Admission Agreement;
"Emergency Action Plan"	the comprehensive emergency plan that the Operator must have in place for each Facility as part of the safety management system, which aligns with the Authority's overall approach to emergency planning and is in accordance with industry best practice;
"Emergency"	an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
"Employee List"	has the meaning given to it in clause 59.3;
"Employment Costs"	all pay, benefits, PAYE payments/contributions, national insurance contributions, pension contributions and other amounts (including, without limitation, all wages, holiday pay, bonuses, commission, premiums, and subscriptions) payable to or in respect of the employment or engagement of any person;
"Employment Liabilities"	all liabilities including, but not limited to, claims for redundancy payments, Beckmann Rights, pay including holiday pay, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for discrimination or claims for equal pay, and any other claims whether in tort (including negligence), contract or statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by

	way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"Equalities Legislation"	the Racial and Religious Hatred Act 2006, the Civil Partnership Act 2004, the Sex Discrimination (Gender Reassignment) Regulations 1999 the Gender Recognition Act 2004 the Employment Equality (Sex Discrimination) Regulations 2005 the Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008, the Equality Act 2006 and the Equality Act 2010;
"Equality Requirements"	the requirements set out in schedule 18;
"Essential Maintenance Schedule"	the items identified in Part 1 of Schedule 28 (<i>Essential Maintenance and Authority Works</i>);
"Estimate"	has the meaning given to it in paragraph 2.3.1 of part 1 of schedule 21;
"Estimated Increased Maintenance Costs"	the meaning given to it in clause 15.4.7 (Schedule of Programmed Maintenance);
"EU GDPR"	as defined in section 3 of the DPA 2018;
"European Economic Area"	from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
"Exceptional Audit"	has the meaning given to it in clause 26.7.1 (Exceptional Audit);

"Excess Amount"	has the meaning given to it in paragraph 3.2 of schedule 23 (<i>Pensions</i>);
"Excess Surplus/Deficit" or "ES/D"	means the excess profit or deficit for the year, calculated as per paragraph 4 of Schedule 17 (<i>Surplus Share</i>);
"Excluded Costs"	all costs payable by the Operator in relation to any Performance Adjustment Payments payable in accordance with schedule 5 (<i>Payment and Performance Monitoring System</i>);
"Exercise Referral and Cardiac Rehabilitation Programme"	the existing national programme through which individuals are referred by General Practitioners (GPs) for exercise and cardiac rehabilitation services;
"Existing Facilities"	for the period from the Commencement Date up to the relevant Handover Date, the existing facilities particulars of which are set out at part 1 of schedule 3 (<i>Facilities</i>);
"Exit Credit"	has the meaning given to it in paragraph 3.5 of schedule 23 (<i>Pensions</i>);
"Exit Payment"	has the meaning given to it in paragraph 3.5 of schedule 23 (<i>Pensions</i>);
"Exit Plan"	the exit plan as developed between the parties in accordance with clause 51 (<i>Exit management</i>);
"Expenditure"	<p>means the amount of direct costs and expenditure actually paid (or incurred but not paid) by the Operator during the relevant Contract Year in respect of the Services including any Surplus Annual Payment but excluding:</p> <ul style="list-style-type: none"> (a) any sums paid in respect of a previous Contract Year (b) any Performance Adjustments levied through the terms of Schedule 5 (<i>Payment and Performance Monitoring System</i>); (c) any Base Profit; and

	(d) any Base Head Office Costs.
"Expiry Date"	31 March 2040
"Facilities"	the Existing Facility and/or each Additional Facility listed in schedule 3 (<i>Facilities</i>) being the buildings located on and consisting of the Sites and the other facilities at such Sites to be provided and/or maintained and serviced in accordance with this Agreement and reference to Facility and Facilities shall be construed accordingly;
"Facility Performance Failure"	a failure of the Operator to meet any Performance Standard and/or Operator Service Standard set out in Table 3: Performance Standards and Table 4: Operator Service Standards ((respectively) of paragraph 6 of Schedule 5 (Payment and Performance Monitoring System);
"Fees Regulations"	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
"FF&E schedule"	means the schedule of furniture, fixtures and equipment in respect of an Investment Facility to be provided by the Operator following the completion of the Investment Facility Works and as submitted or updated pursuant to clause 14 (<i>Investment Facilities</i>);
"Final Warning Notice"	has the meaning given to it in clause 41.2.1 (<i>Final Notice</i>);
"Fit-Out Commencement Date"	has the meaning given to it in clause 14.6.2;
"Fitness and Health Contract"	means the agreement in the Agreed Form between the Operator and the Fitness and Health Operator relating to the Fitness and Health Services;
"Fitness and Health Operator"	means SLM Fitness and Health Ltd (company number 03813612);

"Fitness and Health Services"	means those services set out in the Services Specification relating to health and fitness suites and associated services;
"Five Year Maintenance Plan"	the five year maintenance plan provided by the Operator to the Authority in accordance with clause 15.4.3 (<i>Schedule of Programmed Maintenance</i>);
"FOIA Code"	has the meaning given to it in clause 57.2.7 (<i>Freedom of information</i>);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
"Food and Beverage Contract"	means the agreement in the Agreed Form between the Operator and the Food and Beverage Operator relating to the Food and Beverage Services;
"Food and Beverage Operator"	means SLM Food & Beverage Ltd (company number 03813614);
"Food and Beverage Services"	means those services set out in the Services Specification relating to food and beverage facilities;
"Force Majeure Event"	the occurrence after the Commencement Date of: <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act by the Operator or its Sub-Contractors or any breach by the Operator of the terms of this Agreement; or

	(c) pressure waves caused by devices travelling at supersonic speeds;
	which directly causes either party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Agreement;
"Formal Performance Warning Notice"	a notice issued pursuant to paragraph 8 of Schedule 5 (Payment and Performance Monitoring System);
"Fund"	the South Yorkshire Pension Fund;
"Future Operator"	any successor provider, including any sub-contractor (of any tier) of any such successor provider, of all or part of the Services (or of any services equivalent to all or part of the Services) following the Operator or any Sub-Contractor ceasing to be responsible therefor (whether pursuant to a Change, termination, expiry or otherwise);
"General Change in Law"	a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
"Good Industry Practice"	that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator or facilities management contractor (engaged in the same type of undertaking as that of the Operator) or any sub-contractor under the same or similar circumstances;
"Goods"	all goods and equipment used in the provision of the Services;
"Graves NCSEM Lease"	the NCSEM Lease in respect of Graves Health and Sports Centre;
"Group"	in relation to the Operator, all group undertakings of the Operator ("group undertaking" having the meaning given to it under section 1161(5) of the Companies Act 2006) and any reference to a "Group

	"Company" means any such group undertaking;
"Guidance"	any applicable guidance or directions with which the Operator is bound to comply;
"H&S Conviction"	has the meaning given to it in the definition of Operator Default this clause 1.1 (<i>Definitions and interpretation</i>);
"Handback Requirements"	the requirement that the Facilities have been maintained in accordance with the terms of this Agreement;
"Hard FM"	any maintenance of a lifecycle nature provided by the Operator;
"Head Lease Declaration"	has the meaning given to it in clause 7.7.1;
"Head Lease Notice"	has the meaning given to it in clause 7.7.1;
"Head Lease"	the leases relating to the Sites to be granted by the Authority to the Operator as set out at schedule 15 in draft and subject to agreement between the Authority and the Operator;
"Health and Safety File"	has the meaning given to it in the CDM Regulations;
"Health and Safety Regime"	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, the Environment Act 1995, the Pollution Prevention and Control Act 1999 and any similar or analogous health, safety or environmental legislation in force from time to time;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Home Office Guidance"	guidance issued by the Home Office relating to the level and nature of Criminal Records Bureau checks or the Disclosure and Barring Scheme (as appropriate at that

	time) that should be undertaken with respect to staff employed at leisure centres;
"Income"	means the actual operating income of the Operator (or its Sub-Contractor (without double counting)) in the operation of the Facilities (for the avoidance of doubt including any Annual Payment where it is a Deficit Annual Payment actually received by the Operator in respect of the Services in respect of the relevant Contract Year) but excluding any sums received in respect of a previous Contract Year;
"Indemnified Party"	has the meaning given to it in clause 32.4 (<i>Notification of Claims</i>);
"Indemnifying Party"	has the meaning given to it in clause 32.4 (<i>Notification of Claims</i>);
"Index"	CPI;
"index-linked" or "indexed"	has the meaning given to it in clause 1.4 (<i>Indexation</i>);
"Indexed Annual Payment" or "IAP"	the Annual Payment as adjusted from time to time in accordance with paragraph 3 of Schedule 5 (Payment and Performance Monitoring System);
"Indirect Losses"	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of Revenue;
"Information"	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine readable medium (including CD ROM, magnetic and digital form);
"Instalment Dates"	has the meaning given to it in clause 50.2.1 (<i>Instalments</i>);
"Insurance Term"	any terms and/or conditions required to be in a policy of insurance by clause 33

(*Operator insurances*) and/or schedule 12 but excluding any risk;

"Intellectual Property Rights"

any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Operator or any Operator Related Party for the purposes of providing the Services and/or otherwise for the purposes of this Agreement;

"Investment Facility"

means:

- (a) the proposed new build replacement for Springs Leisure Centre;
- (b) the proposed refurbishment of Ponds Forge International Sports Centre;
- (c) the proposed new build replacement for Hillsborough Leisure Centre; and
- (d) the proposed new build replacement for Concord Sports Centre,

each as more particularly described in paragraph 2.7 of the Services Specification;

"Investment Facility Actual Utility Cost"

means the actual cost of the Benchmarked Utilities actually consumed or used at each relevant Investment Facility during each Annual Post Investment Consumption Period;

"Investment Facility Assumptions"

means the assumptions utilised by the Operator for the purposes of developing the

relevant Investment Facility Tab in the LOBTA, including:

- (a) the proposed development description as detailed in paragraph 2.7 of the Services Specification;
- (b) the designs and accommodation schedules as detailed in the data room;
- (c) the proposed closure and opening dates;
- (d) the proposed arrangements for fixtures, fittings and equipment (as proposed by the Operator in any update to the relevant Investment Facility Tab);
- (e) the proposed annual repair, maintenance and lifecycle replacement costs as included in the relevant Investment Facility Tab; and
- (f) the proposed utilities assumptions relating to both the proposed consumption and tariff to be applied to the proposed new Investment Facility, which for the avoidance of doubt during the tender period were based on the Potential Utility Tariffs and Consumption Rates,

as updated in accordance with the provisions of clause 14 (*Investment Facilities*) and clause 37 (*Financial Adjustments*);

"Investment Facility Base Utility Cost"

means the projected cost of the Benchmarked Utilities to be used at each relevant Investment Facility as updated pursuant to clause 14 (*Investment Facilities*) and as detailed in the relevant Investment Facility Tab;

"Investment Facility Date Change"	has the meaning given to it in clause 14.3.2;
"Investment Facility Closure Change"	has the meaning given to it in clause 14.3.3;
"Investment Facility Delay Period"	means the period from the Target Completion Date to the Actual Completion Date;
"Investment Facility Event"	means: <ul style="list-style-type: none"> (a) a change in the Investment Facility Assumptions; (b) the reaching of RIBA Stage 3 in respect of the relevant Investment Facility; or (c) the confirmation of the proposed completion date of the relevant Investment Facility;
"Investment Facility Lease"	a new lease relating to an investment Facility to be granted by the Authority to the Operator pursuant to clause 7 and substantially in the form set out in Schedule 15;
"Investment Facility Tabs"	means the relevant tabs of the LOBTA relating to the Investment Facilities and based on the Investment Facility Assumptions (as updated from time to time pursuant to Clause 14);
"Investment Facility Works"	means the works required to complete the construction, development and/or refurbishment of each Investment Facility;
"Irrecoverable VAT"	has the meaning given to it in clause 28.7 (<i>Payment of Irrecoverable VAT</i>);
"Joint Insurance Account"	the joint bank account in the names of both the Authority and the Operator, to be established as soon as practicable by the parties prior to the Commencement Date;
"Key Performance Indicators"	the performance indicators listed in Table 1 and 2 of paragraph 2.4.5 of the Services Specification, as updated from time to time in accordance with clause 24.7 (<i>Annual Review</i>);

"Legislation"

any one or more of the following:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or directives;
- (d) any exercise of the Royal Prerogative; and
- (e) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Leisure Contract"

subject to clause 6.1 (Documents and Co-operation) the agreement in the Agreed Form between the Operator and the Leisure Operator relating to the Leisure Services;

"Leisure Operator"

means SLM Community Leisure Charitable Trust (company number 30005R) with registered office at 2 Watling Drive, Hinckley, Leicestershire LE10 3EY;

"Leisure Operator's Base Trading Account or LOBTA"

the financial model included at schedule 22 and agreed between the parties prior to the Commencement Date (as updated from time to time in accordance with this Agreement) for the purpose of, amongst other things, calculating the Annual Payment and containing the various financial assumptions, income and costs relating to the proposed operation of the Investment Facilities;

"Leisure Services"

means the services set out in the Services Specification other than the Fitness and Health Services and the Food and Beverage Services;

"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and the Local Government Pension Scheme (Transitional Provisions, Savings, and Amendment) Regulations 2014 as amended, re-enacted or re-instated from time to time;
"LGPS" or "Local Government Pension Scheme"	the Local Government Pension Scheme as established by the LGPS Regulations;
"Licences to Occupy"	means the licences relating to parts of the Sites to be granted by the Leisure Operator to the Fitness and Health Operator and the Food and Beverage Operator in the Agreed Form;
"Lifecycle Assets"	each item of building fabric, plant and machinery, furniture, fittings and equipment to be renewed or replaced during the Contract Period as identified in the Lifecycle Replacement Schedule within the schedule of Programmed Maintenance and/or as may be identified by the parties applying Good Industry Practice;
"Lifecycle Profile"	the amounts profiled to be spent by the Operator on the replacement or renewal of Lifecycle Assets at each Facility as shown in the LOBTA in row 64 of the 'Summary (Existing 15yr)' tab as at the Commencement Date in respect of the Existing Facilities and as at the Additional Facilities Service Commencement Date, in respect of the Additional Facilities, as may be adjusted from time to time in accordance with this Agreement;
"Lifecycle Replacement Schedule"	the detailed annual Lifecycle Replacement schedule forming part of the schedule of Programmed Maintenance, showing when the Lifecycle Assets will be renewed or replaced;
"Local"	means any area in Sheffield that is covered by the "S" postcode and references to "Locally" shall be construed accordingly;

"Local Authority"	a principal council (as defined in section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to leisure services;
"Logged Time"	as defined in paragraph 5.7 of Schedule 5 (Payment and Performance Monitoring System);
"Loss of Revenue"	the decrease in Revenue (whether of a one-off or recurring nature) arising as a direct result of a Loss of Revenue Event or Relevant Event calculated and paid in accordance with schedule 20 (Loss of Revenue);
"Loss of Revenue Event"	an event occurring pursuant to one or more of the following: <ul style="list-style-type: none"> (a) clause 18 (<i>Emergencies</i>); (b) clause 19.4 (<i>Step-In without Operator Breach</i>); (c) clause 31.5 (<i>Notice to Continue</i>); or
"Losses"	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
"Maintenance Works"	any works of maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with the Services Specification and Service Delivery Proposals (including, without limitation, the renewal or replacement of any plant and equipment) throughout the Contract Period;
"Mandatory Social Value Objectives"	means the mandatory objectives as detailed in Appendix 2 to schedule 24 (Social Value Performance Management Framework);

"Marketing Plan"	the Operator's plan, detailed in paragraph 3.13.3 of the Services Specification, aimed at raising awareness of the Facilities and the Active Communities Service among current and potential customers;
"Material Breach"	has the meaning given to it in the definition of Operator Default this clause 1.1 (<i>Definitions and interpretation</i>);
"Membership Data"	data associated with and obtained in respect of persons paying for memberships (whether by direct debit or otherwise) to use the Facilities, including payment method and arrangement for renewal, duration and time of membership and originator numbers;
"Method Statement"	the Operator's method statements in relation to the Services as included in the Service Delivery Proposals;
"MFA"	<p>multi-factor authentication, which means authentication using two or more of the following factors to achieve authentication:</p> <ul style="list-style-type: none"> (a) something you know (e.g. password); (b) something you have (e.g. cryptographic identification device); <p>or</p> <p>something you are (e.g. biometric data such as a fingerprint or facial recognition);</p>
"Minimum Opening Hours"	the hours of required opening of the Facilities to Users as set out in Table 6 of paragraph 3.22 of the Services Specification;
"Monthly Payment"	<p>either:</p> <ul style="list-style-type: none"> (a) the gross monthly payment to be made by the Authority to the Operator as calculated in accordance with paragraph 2.1 of schedule 5 (<i>Payment and</i>

	<p><i>Performance Monitoring System</i>);</p> <p>or</p> <p>(b) the gross monthly payment to be made by the Operator to the Authority as calculated in accordance with paragraph 2.1 of schedule 5 (<i>Payment and Performance Monitoring System</i>);</p>
"Named Employee"	has the meaning given to it in clause 60.1.1 (<i>Disclosure and Barring</i>);
"National Non Domestic Rates or NNDR"	the National Non Domestic Rates as contained in the Local Government Finance Act 1988 (or any rates or tax that replaces it) payable in relation to the Sites and/or the Facilities;
"NCSEM"	the National Centre for Sport and Exercise Medicine, as set out in schedule 25 (<i>NCSEM</i>);
"NCSEM Areas"	the areas outlined in red on the relevant NCSEM Lease Plan for Concord Sports Centre, Graves Health and Sports Centre and Thorncliffe Health and Leisure Centre as modified pursuant to any Investment Facility Works that are to be used and occupied by NCSEM, as set out in schedule 25 (<i>NCSEM</i>);
"NCSEM Items"	any items or equipment identified as the responsibility of NCSEM, including within NCSEM Areas;
"NCSEM Lease"	the Concord NCSEM Lease, the Graves NCSEM Lease and the Thorncliffe NCSEM Lease as applicable as set out in Schedule 29;
"NCSEM Lease Plan"	the plans attached to the relevant draft NCSEM Lease;
"NCSEM NNDR Event"	has the meaning given to it in paragraph 1.3 of schedule 25 (<i>NCSEM</i>);
"NCSEM Party"	means:

- (a) an officer, agent, contractor, employee or sub-contractor (of any tier) of NCSEM acting in the course of his office or employment; or
- (b) any person visiting a Facility (including any NCSEM Area) at the invitation (express or implied) of NCSEM;

"NCSEM Recharge Services"

the services that the Operator is required to provide to NCSEM and/or in respect of the NCSEM Areas and that the Operator is entitled to recharge NCSEM for in accordance with Services Specification include:

- (a) on an annual basis only, portable appliance tests on appliances in the NCSEM Areas;
- (b) if applicable, the staff costs of reception staff that are employed where additional staffing is required to cover NCSEM Area reception requirements outside of the relevant Facility's Minimum Opening Hours;
- (c) any relevant phone line specific to the NCSEM Areas;
- (d) utilities (as shown through separate metering where available or by agreement between the parties);
- (e) IT support (if any) which shall be charged on the basis of ■■■ of the total support cost on a pass through basis at the relevant Facilities and includes maintenance of internal LAN cabling;
- (f) If applicable, services in relation to the security doors at the NCSEM Areas; and

	<p>(g) If applicable, specific cleaning costs for the NCSEM Areas on a full pass through basis,</p> <p>save that the Operator shall remain responsible for the relevant Facility maintenance costs (lifecycle, planned and reactive), building insurance and business rates as provided in paragraphs 2.8.3 and 5.2.16 of the Services Specification;</p>
"NCSEM Services"	the services that the Operator is required to provide to NCSEM or the NCSEM Areas, including the NCSEM Recharge Services;
"Necessary Consents"	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Operator's obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party excluding Authority Necessary Consents;
"New Employer"	has the meaning given to it in paragraph 11.2 of schedule 23;
"New Operator"	the person who has entered or who will enter into the Retendered Contract with the Authority following termination of this Agreement or the person who has entered or will enter into a new contract with the Authority following the expiry of this Agreement;
"NNDR Failure"	<p>(a) a failure by (or on behalf of) the Operator or Leisure Operator to submit, or do anything reasonably required by the Authority (acting in its capacity as Billing Authority) in support of, an application for NNDR Relief;</p> <p>(b) any act or omission of any Operator Related Party and any of their servants, agents or employees which is calculated or intended to</p>

	cause loss of or unavailability of NNDR Relief; or
	(c) any failure by the Operator or the Leisure Operator to exercise reasonable skill and care and use all reasonable endeavours to obtain NNDR Relief
	provided that any information provided in respect of NCSEM or any change in information, structure, or status of NCSEM or occupation of any part of a Facility by NCSEM shall not be deemed to be nor shall it give rise to a NNDR failure;
"NNDR Pre-Application Information"	shall have the meaning given in paragraph 1.2.1 (<i>Eligibility for NNDR Relief</i>);
"NNDR Pre-Application Rate"	shall have the meaning given in paragraph 1.2.1 (<i>Eligibility for NNDR Relief</i>);
"NNDR Relief"	relief from the obligation to pay NNDR applicable to the Sites and/or the Facilities pursuant to the provisions of: sections 47 to 50 of the Local Government Finance Act 1988 (and/or any such similar scheme making provision for relief or exemption from or reduction of the payment of any part of NNDR); and/or the NNDR Relief Policy;
"NNDR Relief Policy"	the Authority's policy (acting in its capacity as Billing Authority) for the application of NNDR Relief in the Authority's rating area and the exercise of its discretion to award NNDR Relief in respect of the Facilities pursuant to such policy;
"NNDR Report"	shall have the meaning given in paragraph 4.3 (<i>Alternative Structures</i>);
"Notice of Adjudication"	has the meaning given to it in clause 73.4 (<i>Adjudication</i>);

"Occasion of Tax Non-Compliance"	<p>(a) any tax return of the Operator submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Operator under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Operator was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS/DASVOIT or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Operator submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud, dishonesty, evasion, or a deliberate and concealed loss of tax;</p>
"Operating Manual"	has the meaning given to it in clause 16.2.1 (<i>Operating Manual</i>);

"Operating Surplus Statement"	has the meaning ascribed to it in paragraph 2 of Schedule 17 (<i>Surplus Share</i>);
"Operating Surplus/Deficit"	has the meaning ascribed to it in paragraph 3 of Schedule 17 (<i>Surplus Share</i>);
"Operator Admission Agreement"	an admission agreement entered into in accordance with paragraph 1 of part 3 of schedule 2 of the LGPS Regulations by the Administering Authority, the Authority and the Operator or a Sub-Contractor (as appropriate);
"Operator Assets"	the rights and assets of the Operator that are not Assets;
"Operator Change"	a Change that is initiated by the Operator;
"Operator Damage"	any damage to any Facility or Site caused by any omission, default or negligent act by the Operator or an Operator Related Party;
"Operator Default"	any one or more of the following: <ul style="list-style-type: none"> (a) a breach by the Operator of any of its obligations under this Agreement which materially and adversely affects the performance of the Services ("Material Breach"); (b) a failure by the Operator to make payment(s) of an amount of money exceeding (in aggregate) one month's Monthly Payment (from time to time) that is due and payable by the Operator under this Agreement within 20 Business Days of service of a formal written demand by the Authority, where the amount fell due and payable one (or more) months prior to the date of service of the written demand; (c) a Persistent Breach occurs; (d) a court makes an order that the Operator be wound up or a

resolution for a voluntary winding-up of the Operator is passed;

- (e) any receiver or receiver manager in respect of the Operator is appointed or possession is taken by or on behalf of any creditor of any property of the Operator that is the subject of a charge;
- (f) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Operator;
- (g) an administration order is made or an administrator is appointed in respect of the Operator;
- (h) failure to comply with clauses 63.2 (*Restrictions on Operator*) and 63.2.2 (*Restrictions on Operator*) or clause 64 (*Change in ownership*);
- (i) in any ■ consecutive month period the Operator has:
 - (i) prior to the expiry of the third Contract Year incurred ■ or more Performance Adjustment Points;
 - (ii) after the expiry of the third Contract Year incurred ■ or more Performance Adjustment Points;
- (j) the Operator has incurred:
 - (i) prior to the expiry of the third Contract Year, ■ or more Performance Adjustment Points in each and every month of any ■ consecutive month;

- (ii) after the expiry of the third Contract Year, [REDACTED] or more Performance Adjustment Points in each and every month of any [REDACTED] consecutive month;
- (k) the Operator has incurred [REDACTED] or more cumulative Performance Adjustment Points during the Contract Period;
- (l) subject to clause 35 (*Risks that become uninsurable*) a breach by the Operator of its obligations to take out and maintain any of the Operator Insurances;
- (m) the Operator committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by the Authority of its obligations under this Agreement) which results in the criminal investigation, prosecution and conviction of the Operator or any Operator Related Party or the Authority under the Health and Safety Regime (an "**H&S Conviction**") provided that an H&S Conviction of an Operator Related Party or the Authority shall not constitute an Operator Default if, within 90 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Services of each relevant Operator Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Operator Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Operator in

accordance with clauses 63.2 (*Restrictions on Operator*) and 63.2.2 (*Restrictions on Operator*) provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of an Operator Related Party under this limb (m), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (n) the Operator has failed to implement or procure the implementation of measures to address an Occasion of Tax Non Compliance in accordance with clause 36.12 (*Promoting Tax Compliance*); or
- (o) the Operator has, at the Commencement Date, been in one of the situations referred to in regulation 57(1) of The Public Contracts Regulations 2015 (S.I.2015/102), including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015 (S.I.2015/102) and should therefore have been excluded from the procurement proceedings;

"Operator Insurances"

the insurances set out at part 1 of schedule 12 and any insurances required by law;

"Operator IPR"

any Intellectual Property Rights created by or on behalf of the Operator (and by or on behalf of its Group, if applicable) in respect of, in each case, their:

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

but excluding:

- (i) the Operating Manual;
- (ii) any User or member database relevant to the Facilities; and
- (iii) any booking system used at and in respect of the Facilities;

"Operator Notice of Change"

has the meaning given to it in paragraph 1 of part 2 of schedule 21;

"Operator Related Party"

- (a) an officer, servant, employee, worker or agent of the Operator, or any Affiliate of the Operator and any officer, servant, employee, worker or agent of such a person;

	<p>(b) any Sub-Contractor or other sub-contractor of the Operator of any tier and any of their officers, servants, employees, workers or agents; and</p> <p>(c) any person on or at any of the Facilities at the express or implied invitation of the Operator (other than an Authority Related Party or a User);</p>
"Operator Scheme"	has the meaning given to it in paragraph 1.2 of schedule 23 (Pensions);
"Operator Service Standards"	the key deliverables from the Service Delivery Proposals as detailed in Table 4: Operator Service Standards in paragraph 6 of Schedule 5 (Payment and Performance Monitoring System);
"Operator Warranted Data"	the information relating to the Operator and its Affiliates contained in part 3 of schedule 9;
"Operator's Holding Company"	Castle View International Holdings Limited (registered company number SC129442) of 4 Steuart Road, Bridge Of Allan, Scotland, FK9 4JX or such other person as shall guarantee the obligations of the Operator under this Agreement;
"Operator's Projected Surplus"	means the "Base Profit" plus "Base Head Office Costs" for the relevant Contract Year;
"Operator's Representative"	the person to be appointed by the Operator pursuant to clause 17.2 (<i>Representative of the Operator</i>);
"Operator's Social Value Objectives"	<p>means the relevant objectives identified by the Operator against:</p> <p>(a) the Mandatory Social Value Objectives; and</p> <p>(b) the Additional Social Value Objectives chosen by the Operator from time to time;</p>

	as amended in accordance with the provisions of Schedule 24 (Social Value Performance Management Framework);
"Option Period"	has the meaning given to it in clause 35.3.2 (<i>Consequences</i>);
"Order"	has the meaning given to it in clause 7.7.1;
"Outgoing Operator"	any entity that manages and operates the Services (or any part of them) that will be transferring its responsibilities upon expiry or earlier termination of the Agreement;
"Outstanding Maintenance"	those items of the Essential Maintenance Schedule that have not been completed by SCT (or its sub-contractor) prior to the Services Commencement Date;
"Outstanding Work"	has the meaning given to it in clause 52.4 (<i>Maintenance Work</i>);
"Parent Company Guarantee"	the guarantee of the Operator's Holding Company in the Agreed Form as set out in Schedule 31 (Parent Company Guarantee);
"Partial Termination Authority Change Notice"	has the meaning given to it in the Change Protocol;
"Partnering Charter"	the partnering charter set out at schedule 26;
"Payment and Performance Monitoring System"	the payment and performance monitoring system set out in schedule 5 (<i>Payment and Performance Monitoring System</i>);
"Payment Period"	each calendar month or (in the case of the first and final Payment Period) part thereof during the Contract Period;
"Pensionable Pay"	shall have the same meaning as defined in the LGPS Regulations;
"Performance Adjustment Payments"	the payments to be made in respect of Facility Performance Failures, as calculated in accordance with Schedule 5 (Payment and Performance Monitoring System);
"Performance Adjustment Points"	the points awarded for each Facility Performance Failure, calculated in

"Performance Management Framework"

accordance with this Schedule 5 (Payment and Performance Monitoring System);

the framework and methodology for assessing the Operator's performance against given Performance Standards as detailed in paragraph 5 of Schedule 5 (Payment and Performance Monitoring System);

"Performance Standard"

the performance standards realised by the Operator as detailed in Table 3: Performance Standards of paragraph 6 of Schedule 5 (Payment and Performance Monitoring System);

"Persistent Breach"

a breach for which a Final Warning Notice has been issued which has continued for more than 14 days or recurred in three or more months within the six month period after the date on which such Final Warning Notice is served on the Operator;

"Personal Data"

personal data as defined in the Data Protection Legislation which is supplied to the Operator by (or on behalf of) the Authority or obtained or otherwise Processed by (or on behalf of) the Operator in the course of performing or providing the Services and for the avoidance of doubt includes the Membership Data, any special categories of personal data and personal data relating to actual or potential criminal offences;

"Personal Data Breach Incident"

any event that results, or may result, in actual or potential accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, corruption or unavailability of the Personal Data Processed;

"PFP Advanced Income Payments"

means all income and monies taken by PFP (or a third party on its behalf) (excluding any amount which is received in respect, or is otherwise accountable to a Relevant Tax Authority as, VAT) for all advance income in connection with the Services which are to

	<p>commence or continue on or after the Additional Facilities Service Commencement Date (including but not limited to pre-booked sessions and courses, annual memberships (including but not limited to swim school annual memberships), catering bookings and conference bookings and golf memberships, courses and/or sessions). For the avoidance of doubt, where PFP Advanced Income Payments relate to Services which commenced before the Additional Facilities Service Commencement Date and continue after that date, the PFP Advanced Income Payments payable by the Authority shall be allocated on a pro rata basis;</p>
"PFP Revised Employment Information"	has the meaning given to it in clause 59.5.6;
"PFP Service Transfer Date"	the date on which the Operator's responsibility for provision of (or procuring the provision by Sub-Contractors of) the PFP Services in accordance with this Agreement begins;
"PFP"	Places For People Leisure Management Limited and/or Places For People Leisure Limited;
"PFP Services"	such of the Services as are (or are equivalent to) the services (or any of them) which were provided to the Authority immediately prior to the Additional Facilities Service Commencement Date by PFP and/or by any sub-contractor of PFP;
"Phoenix Authority Lease"	a lease of The English Institute of Sport from Phoenix Sports Limited to the Authority;
"Phoenix Surrender"	surrender of the existing lease of the The English Institute of Sport between the Phoenix Sports Limited and Sheffield City Trust;
"Phoenix Surrender Agreement"	an agreement to be made between (1) Sheffield City Trust and (2) Phoenix Sports

Limited to enter into the Phoenix Surrender on 2 January 2025;

"Planned Closure Date"

means the date that an Investment Facility is planned to be closed in order to carry out the Investment Facility Works, as detailed in the LOBTA and/or updated in line with clause 15 (*Investment Facilities*);

"Planned Partial Closure Date"

means the date that part or parts of an Investment Facility are planned to be closed in order to carry out the Investment Facility Works, as detailed in the Services Specification and the LOBTA and/or updated in line with clause 14 (*Investment Facilities*);

"Potential Utility Tariffs and Consumption Rates"

for the purposes of developing the Investment Facility Tabs, the following tariffs and consumption rates were assumed:

- (a) Gas: [REDACTED]
- (b) Electricity: [REDACTED]
- (c) Biomass Heat (EISS / ICE) – [REDACTED]
[REDACTED]
[REDACTED]
- (d) District Heat Network (Ponds Forge) – Weekends [REDACTED] per MWh, Weekdays [REDACTED] per MWh and [REDACTED] per day standing charge;
- (e) New facility replacement for Springs Leisure Centre: Electricity
[REDACTED]
[REDACTED]
- (f) Refurbished Ponds Forge International Sports Centre: Electricity [REDACTED]
[REDACTED]
[REDACTED]
- (g) New facility replacement for Concord Sports Centre: Electricity -

- [REDACTED]
[REDACTED]
- (h) New facility replacement for Hillsborough Leisure Centre: Electricity - [REDACTED]
[REDACTED]
[REDACTED]

"Post Transfer Pension Liabilities"

the aggregate liabilities in respect of the Eligible Employees and their spouses and dependants (whether immediate, prospective or contingent) attributable to benefits accrued from pensionable service in the LGPS on and from the Relevant Transfer Date (excluding any aggregation under regulation 22 of the LGPS Regulations) to the earlier of the date they cease to be active members and the termination of this Agreement but making proper allowance for projected increases in the rate of pensionable salary to the date of withdrawal, retirement or death and increases in pensions in payment using the demographic and actuarial assumptions which were adopted for the most recent funding valuation of the Fund;

"Pre Transfer Pension Liabilities"

the aggregate liabilities in respect of the Eligible Employees and their spouses and dependants (whether immediate, prospective or contingent) attributable to benefits accrued in respect of pensionable service in the LGPS immediately before the Relevant Transfer Date but making proper allowance for projected increases in the rate of pensionable salary to date of withdrawal, retirement or death and increases in pensions in payment using the demographic and actuarial assumptions which were adopted for the most recent funding valuation of the Fund;

"Prescribed Rate"

[REDACTED] above the Bank of England's base rate from time to time;

"Processing"

has the definition in, and shall be interpreted in accordance with, the Data

	Protection Legislation, and the terms "Process" and "Processed" shall be construed accordingly;
"Processor Personnel"	all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;
"Processor"	has the definition in, and shall be interpreted in accordance with, the Data Protection Legislation;
"Profit Payment"	the projected loss of profit that would be suffered by the Operator as a result of termination of this Agreement pursuant to clause 43 (<i>Termination on Authority Default</i>) for the period of 24 months from the date of termination or the period to the Expiry Date (whichever is shorter) (as shown at schedule 22), subject to a cap of [REDACTED] (as such amount is updated in line with any changes to the LOBTA pursuant to clause 14 (<i>Investment Facilities</i>));
"Programmed Maintenance Information"	has the meaning given to it in clause 15.4.3 (<i>Schedule of Programmed Maintenance</i>);
"Programmed Maintenance"	the maintenance work and lifecycle replacement which the Operator is to carry out in accordance with the schedule of Programmed Maintenance;
"Programmes of Use"	shall denote the annual plan of activities to be conducted within the Facilities under the management of the operators. The development and review of these programs shall be subject to regular discussions as outlined in the Specification;
"Prohibited Act"	(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under Legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority or any other public body;
- (d) committing any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
- (e) any activity, practice or conduct which would constitute one of the offences listed under (b) above if such activity, practice or conduct had been carried out in the UK;

"Project"

the provision and operation of serviced facilities to the Authority at each and every one of the Facilities by the Operator as

	contemplated by this Agreement including the provision of the Services;
"Project Data"	<p>(a) all Design Data; and</p> <p>(b) any other materials, documents or data acquired, brought into existence or used in relation to the Services or this Agreement;</p> <p>in each case that is used by or on behalf of the Operator and/or its sub-contractors in connection with the provision of the Services or the performance of the Operator's obligations under this Agreement;</p>
"Project Documents"	the documents listed in part 1 of schedule 10;
"Proposed Maintenance"	the maintenance works to be undertaken by the Authority or an Authority's Related Party as identified in the Essential Maintenance Schedule;
"Proposed Workforce"	has the meaning given to it in clause 59.4.2 (<i>Proposed Workforce Information</i>);
"Proposed Works"	<p>the critical maintenance works to be undertaken at the Tinsley Golf Club Building by the Authority or an Authority's Related Party as more particularly described in Part 2 of Schedule 28 (<i>Essential Maintenance and Authority Works</i>), being the items listed as being categorised as both:</p> <p>(a) 'condition' C and D; and</p> <p>(b) having a 'remaining useful life' of less than 2 years;</p>
"Protected Characteristics"	has the meaning given to it in Part 2, Chapter 1 of the Equality Act 2010;
"Protective Measures"	appropriate technical and organisational measures designed to ensure compliance with obligations of the parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal

Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in paragraph 3 of part 2 of schedule 13 (*Data Processing and Information Security*);

"Qualification Criteria"

the criteria that the Authority requires tenderers to meet as part of the Retendering Process, which (subject to compliance with the procurement regulations) shall be:

- (a) the Retendered Contract terms;
- (b) tenderers should have the financial ability to deliver the Services for the price tendered;
- (c) the tenderer is experienced in providing the Services or similar services;
- (d) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and

any other tender criteria agreed by the Authority and the Operator;

"Qualifying Change in Law"

means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law, which involves Capital Expenditure,

which was not foreseeable at the Commencement Date;

"Quality Management System"

the quality management system that covers all Facilities and aspects of the services as

	defined in paragraph 2.10.1 of the Services Specification;
"Quarterly Performance Adjusted Payments"	the aggregate amount of the Performance Adjustment Payments arising in the relevant preceding Contract Quarter, as calculated in accordance with Schedule 5 (Payment and Performance Monitoring System);
"Quarterly Performance Report"	the quarterly report on the performance of the Services that the Operator is required to submit in accordance with paragraphs 5.2.9 and 5.2.10 of the Services Specification;
"Quest"	the UK Quality Scheme for Sport and Leisure of the same name (supported by, inter alia, Sport England) or any successor scheme thereto that is supported by Sport England (or its successors);
"Recipient"	has the meaning given to it in clause 36.11.2 (<i>VAT on Payments</i>);
"Rectification Period"	the relevant period applicable to the Service Rectification Category as specified in Table 1: Service Rectification Period in paragraph 5 of Schedule 5 (Payment and Performance Monitoring System);
"Redundancy Costs"	means the statutory notice and redundancy payments, any accrued but untaken holiday pay and any contractual notice and redundancy payments that were inherited by the Operator or Sub-Contractor as a result of each Relevant Transfer pursuant to clause 59.1 (Relevant Transfers) together with any payment to the Fund under Regulation 68(2) of the LGPS 2013 Regulations arising from benefits becoming immediately payable under Regulation 30(7) of the LGPS 2013 Regulations;
"Referral Notice"	has the meaning given to it in clause 73.4.2 (<i>Referral of the Dispute</i>);
"Referring Party"	has the meaning given to it in clause 73.4 (<i>Adjudication</i>);

"Reinstatement Outline"	has the meaning given to it in clause 34.3.1 (<i>Obligations</i>);
"Reinstatement Plan"	has the meaning given to it in clause 34.3.4 (<i>Obligations</i>);
"Reinstatement Works"	has the meaning given to it in clause 34.3.1 (<i>Obligations</i>);
"Relevant Authority"	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
"Relevant Employees"	(a) the employees or workers who are the subject of a Relevant Transfer and (b) any Authority PFP Existing Employees or Authority SCT Existing Employees who have been offered employment in accordance with clause 59.1.2 of this Agreement and who accept such employment;
"Relevant Event"	an Authority Change, Qualifying Change in Law, Compensation Event or other matter as a result of which this Agreement provides for an adjustment to the Annual Payment in accordance with clause 37 (<i>Financial adjustments</i>);
"Relevant Payment"	has the meaning given to it in clause 35.3.2 (<i>Consequences</i>);
"Relevant Period"	in relation to each Investment Facility, a consecutive period of 24 months from the relevant Actual Completion Date;
"Relevant Proceeds"	has the meaning given to it in clause 34.3.5.2;
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority"	HMRC, or, if applicable, any other tax authority outside the UK;
"Relevant Transfer Date"	the date on which an Eligible Employee transfers to the Operator and/or a Sub-Contractor by virtue of a Relevant Transfer;
"Relevant Transfer"	has the meaning given in clause 59.1.1;
"Relief Event"	<p>any of the following:</p> <ul style="list-style-type: none"> (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion; (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services; (c) any accidental loss or damage to the Sites or any roads servicing them; (d) any failure or shortage of power, fuel or transport; (e) any blockade or embargo which does not constitute a Force Majeure Event; or (f) any: <ul style="list-style-type: none"> (i) official or unofficial strike; (ii) lockout; (iii) go-slow; or (iv) other dispute; <p>generally affecting the facilities management industry or a significant sector of the local authority leisure management industry in the United Kingdom but not including industrial action</p>

	specific to the Sites or industrial action which affects only the employees of the Operator or its Sub-Contractors or;
	(g) the discovery of fossils, antiquities or human remains requiring action in accordance with clause 10 (Fossils and Antiquities),
	unless any of the events listed in paragraphs (a) to (g) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Operator or any of its Sub-Contractors;
"Remediation Plan"	a plan for remedying a series of failures resulting in 1500 or more Performance Adjustment Points accruing during any relevant Contract Quarter;
"Remuneration Costs"	has the meaning given to it in clause 59.4.3;
"Reorganisation Costs"	has the meaning given to it in clause 59.4.4;
"Replies to Enquiries"	the matters set out in part 3 of schedule 11;
"Representative"	the Authority's Representative or the Operator's Representative (as appropriate);
"Reputable Operator"	a reputable private sector leisure/sports facilities operator or trust leisure/sports facilities operator possessing a broadly comparable degree of skill, resources and financial standing as the Operator;
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);
"Required Action"	has the meaning given to it in clause 19.3.1 (<i>Action by Authority</i>);
"Required Periods"	has the meaning given to it in clause 14.4.1.2;
"Required Standard"	has the meaning given to it in clause 52.3.1 (<i>Results of Survey</i>);

"Responding Party"	has the meaning given to it in clause 73.6 (<i>Referral of the Dispute</i>);
"Response"	has the meaning given to it in clause 73.7 (<i>Response to the Referral</i>);
"Retendered Annual Payment"	has the meaning given to it in clause 46.1.7 (<i>Retendering process</i>);
"Retendered Contract"	<p>a leisure operating agreement for the same or similar services as the Services, entered into following the Retendering Process with a replacement operator on substantially similar terms and conditions as and which are no more onerous as regards the Operator than this Agreement and the Head Leases at the Termination Date, but with the following amendments:</p> <p>(a) any accrued Performance Adjustment Points and/or warning notices issued pursuant to clause 41 (<i>Termination for persistent breach by the Operator</i>) shall, for the purposes of termination only, and without prejudice to the application of Performance Adjustment Payments, be cancelled;</p> <p>(b) the term of such agreements shall be equal to the term from the Termination Date to the Expiry Date,</p> <p>any other amendments which do not adversely affect the Operator;</p>
"Retendering Costs"	the reasonable and proper costs of the Authority incurred in carrying out the Retendering Process;
"Retendering Information"	has the meaning given to it in clause 59.10.1.1;
"Retendering Process"	shall have the meaning given in clause 46 (<i>Retendering process</i>);

"Retention Fund Account"	has the meaning given to it in clause 52.5 (<i>Retention Fund</i>);
"Return Date" or "Return Dates"	have the meaning given to them in clause 59.11.1 (<i>Termination of Agreement</i>);
"Returning Employees"	those employees or workers (of the Operator or any Sub-Contractor) wholly or mainly engaged in the provision of the Services (or any of them) immediately before the Return Date(s) and whose employment or engagement transfers to the Authority or a Future Operator pursuant to TUPE;
"Revenue"	the revenue or income received by the Operator or Leisure Operator (or where relevant would have been received but for the occurrence of a Relevant Event or Loss of Revenue Event) from Users of the relevant Facility for the provision of the Services at the relevant Facility;
"Review Procedure"	the procedure set out in schedule 7 (<i>Review Procedure</i>);
"Schedule of Programmed Maintenance"	the Operator's annual programme for the maintenance of each Facility to satisfy the Services Specification which, for the avoidance of doubt, includes the Lifecycle Replacement Schedule;
"SCA"	Subsidy Control Act 2022;
"SCT"	Sheffield City Trust;
"SCT Advanced Income Payments"	means all income and monies taken by SCT (or a third party on its behalf) (excluding any amount which is received in respect, or is otherwise accountable to a Relevant Tax Authority as, VAT) for all advance income in connection with the Services which are to commence or continue on or after the Service Commencement Date (including but not limited to pre-booked sessions and courses, annual memberships (including but not limited to swim school annual memberships), catering bookings and conference bookings and golf

	<p>memberships, courses and/or sessions). For the avoidance of doubt, where SCT Advanced Income Payments relate to Services which commenced before the Service Commencement Date and continue after that date, the SCT Advanced Income Payments payable by the Authority shall be allocated on a pro rata basis;</p>
"SCT Revised Employment Information"	<p>has the meaning given to it in clause 59.5.1;</p>
"SCT Service Transfer Date"	<p>the date on which the Operator's responsibility for provision of (or procuring the provision by Sub-Contractors of) the SCT Services in accordance with this Agreement begins;</p>
"SCT Services"	<p>such of the Services as are (or are equivalent to) the services (or any of them) which were provided to the Authority immediately prior to the Service Commencement Date by SCT and/or by any sub-contractor of SCT;</p>
"SCT Surrenders"	<p>surrender of the existing leases of the Existing Facilities (other than The English Institute of Sport) between the Authority and Sheffield City Trust;</p>
"SCT Surrender Agreement"	<p>an agreement to be made between (1) Sheffield City Trust and (2) the Authority to enter into the SCT Surrenders on 2 January 2025;</p>
"Security Management Arrangements"	<p>the Operator's internal documents and policies for managing security and for dealing with the IT security requirements provided in paragraph 2.2 of part 2 of schedule 13 (<i>Data Processing and Information Security</i>), copies of which will be provided by the Operator to the Authority and as updated from time to time;</p>
"Service Commencement Date"	<p>2 January 2025 or such other date as agreed between the parties acting reasonably;</p>

"Service Delivery Proposals"	the proposals for the method of providing the Services to satisfy the Services Specification set out in schedule 2 (<i>Service Delivery Proposals</i>);
"Service Rectification Category"	the relevant rectification category applicable to certain failures as identified in Table 1: Service Rectification Period and Table 3: Performance Standards of Schedule 5 (Payment and Performance Monitoring System);
"Services"	the services required to be performed by the Operator (whether directly or via a Sub-Contractor) to satisfy the Services Specification, and requirements of the Agreement, including the Operator's Social Value Objectives;
"Services Media"	all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;
"Services Specification"	the specification contained in schedule 1 (<i>Services Specification</i>);
"Shareholder"	any person from time to time holding share capital in the Operator;
"Shortfall Amount"	has the meaning given to it in paragraph 133.4 of schedule 23 (Pensions);
"Site Conditions"	the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
"Site Plans"	the plans of the Sites set out in schedule 4 (<i>Site Plans</i>);
"Sites"	the area edged red on the relevant Site Plan for each Facility together with the Buildings

"SLA"

and the service ducts and media for all utilities and services serving the Buildings;

has the meaning given to it in paragraph 1.5.2 of schedule 25 (NCSEM);

"Social Value Agreed Abatement"

means in respect of:

(a) a Social Value Reporting Failure:

(i) an amount of [REDACTED] in respect of the first failure; or

(ii) an amount of [REDACTED] in respect of any continued failure to submit the SV Report or SV Summary Report within each further twenty (20) Business Days from the date that such report was due to be submitted;

(b) a Social Value Performance Failure:

(i) where no SV Rectification Plan is submitted an amount of [REDACTED] and/or

(ii) an amount of the aggregated failure values (as detailed in column headed "Failure Values" of Appendix 1 (Social Value Objectives)) against the number of SV Outcomes that have not been achieved during the relevant SV Review Period save to the extent that such failures have been mitigated by any SV Rectification Plan;

(c) any Additional Social Value Objective that the Parties agree is undeliverable and not capable of being replaced, the amount

	determined in accordance with paragraph 4.8 of Schedule 24 (Social Value Performance Management Framework);
"Social Value Delivery Plan"	means the Social Value delivery plan attached at Appendix 2 of Schedule 24 (Social Value Performance Management Framework) and as updated from time to time in accordance with paragraph 3 of Schedule 24 (Social Value Performance Management Framework) detailing the Operator's proposal for the delivery of the Operator's Social Value Objectives;
"Social Value Performance Failure"	means a failure by the Operator to: <ul style="list-style-type: none"> (a) comply with the provisions of paragraph 4.5 of Schedule 24 (Social Value Performance Management Framework) or (b) achieve an SVA%, at the end of the relevant SV Review Period, that exceeds ■■■ of the SVA% Target;
"Social Value Performance Management Framework"	means the Social Value performance management framework provided in schedule 24 (Social Value Performance Management Framework) of the Agreement;
"Social Value Portal"	means the social value portal, managed and operated by Social Value Portal Limited, a company incorporated in England and Wales (company number 09197997) and whose registered office is at Tintagel House, 92 Albert Embankment, London, England, SE1 7TY;
"Social Value Reporting Failure"	means a failure as described in paragraph 3.8 of Schedule 24 (Social Value Performance Management Framework);
"Specific Change in Law"	any Change in Law which specifically refers to the operation and maintenance of premises for the provision of a service the same as or similar to the Services or to the holding of shares in companies whose main

	business is the operation and maintenance of premises for the provision of services the same as or similar to the Services;
"SPEI"	a Service of Public Economic Interest as defined at Section 29(9) of the SCA and the published Statutory Guidance;
"Sport England"	the Sport England (or its successors) of First Floor, 21 Bloomsbury Street, London WC1B 3HF;
"Sport England Guidance"	the guidance adopted and published by Sport England at the Commencement Date together with any changes in such guidance which were reasonably foreseeable at the Commencement Date;
"Springs Consent"	Landlord's consent as required pursuant to the Springs Leases;
"Springs Leases"	Lease of the Sports Centre at Springs Academy dated 1 September 2006 between (1) United Learning Trust and (2) Sheffield City Council and lease of the Youth Centre at Springs Academy dated 1 September 2006 between (1) United Learning Trust and (2) Sheffield City Council;
"Springs Tenancy at Will"	a tenancy at will in respect of the Site known as Springs Leisure Centre substantially in the form of the draft tenancy at will attached to this agreement at Schedule 15;
"Strategic Objectives"	the Authority's strategic objectives and Strategic Objectives as referred to in Table 2 in paragraph 2.4.5 of the Services Specification (and updated from time to time in accordance with this Agreement);
"Strategic Partnership Board"	the strategic partnership board which shall consist of the representatives as described in paragraph 2.2.4 of the Services Specification;
"Sub-Contractor"	the Fitness and Health Operator, the Food and Beverage Operator and the Leisure Operator or any other person engaged by the Operator from time to time as may be

permitted by this Agreement to provide or procure the provision of the Services (or any of them) or any sub-contractor (of any tier) of the Operator;

"Sub-Contractor Breakage Costs"

Losses that have been or will be reasonably and properly incurred by the Operator as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the provision of Services, including:
 - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of Services in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Services; and
 - (iv) redundancy payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;
- (c) the Operator and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses; and
- (d) the Losses do not include any element of Profit Payment;

"Sub-Contracts"	the contracts entered into between the Operator and the Sub-Contractors;
"Submitted Item"	has the meaning given to it in paragraph 1.2 of schedule 7 (<i>Review Procedure</i>);
"Sub-processor"	any third party appointed to Process Personal Data on behalf of the Processor;
"Subsidiary"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Subsidy"	as defined at Section 2(1) of the SCA;
"Subsidy Control Law"	the legal regime which applies to the award of subsidies in the United Kingdom, including the SCA and the Windsor Framework, as well as any other directly effective subsidy control provisions contained in trade agreements entered into between the UK and other states and taking account of related secondary legislation, applicable judgments, court orders, decisions and published Statutory Guidance;
"Suitable Third Party"	any person who is not an Unsuitable Third Party;
"Supplier"	has the meaning given to it in clause 36.11.2 (<i>VAT on Payments</i>);
"Surplus Annual Payment"	the Annual Payment where it is a positive;
"SV Outcomes"	means the proxy value attributable to the Operator's Social Value Objectives delivered on a Local basis as stated in the Operator's Social Value Objectives;
"SV Review Date"	means: <ul style="list-style-type: none"> (a) the third anniversary of the Service Commencement Date; (b) the sixth anniversary of the Service Commencement Date; (c) the ninth anniversary of the Service Commencement Date;

(d) the twelfth anniversary of the Service Commencement Date;

"SV Review Period"

means the period between any two consecutive SV Review Dates (as the case may be);

"SVA%"

means the social value additionality percentage achieved by the Operator over the SV Review Period being calculated as:

$$SVA\% = \left(\frac{PV_{RP}}{T_{y-3} + T_{y-2} + T_{y-1}} \right) \times 100\%$$

Where:

SVA% is the social value additionality percentage achieved over the SV Review Period;

PV_{RP} is the actual proxy value as agreed and reported by the Social Value Portal over the SV Review Period;

T_{y-1}, T_{y-2} and T_{y-3} is the actual aggregated turnover over for each Facility for each year of the SV Review Period;

"SVA % Target"

means the social value additionality percentage target to be achieved by the Operator over the SV Review Period being calculated as:

$$SVA\% = \left(\frac{FPV_{RP}}{FT_{y+3} + FT_{y+2} + FT_{y+1}} \right) \times 100\%$$

Where:

SVA% is the social value additionality percentage target to be achieved over the SV Review Period;

FPV_{RP} is the forecast proxy value as detailed in the Operator's Social Value Delivery Plan;

FT_{y+1}, FT_{y+2} and FT_{y+3} is the aggregated forecast turnover over for all Facilities for each year of the forthcoming SV Review Period as detailed in the LOBTA;

"SV Rectification Plan"	a plan to remedy any Social Value Performance Failure at the end of an SV Review Period;
"SV Rectification Plan Report"	a report submitted by the Operator to the Authority in accordance with paragraph 4.4.2 of Schedule 24 (Social Value Performance Management Framework);
"SV Summary Report"	a report submitted by the Operator to the Authority in accordance with paragraph 3.6 of Schedule 24 (Social Value Performance Management Framework);
"Target Completion Date"	<p>means:</p> <ul style="list-style-type: none"> <li data-bbox="884 779 1422 925">(a) in respect of Ponds Forge, the Investment Facility Works that such works will be complete by [REDACTED] <li data-bbox="884 969 1422 1115">(b) in respect of Springs, the Investment Facility Works that such works will be complete by [REDACTED] <li data-bbox="884 1149 1422 1294">(c) in respect of Concord, the Investment Facility Works that such works will be complete by [REDACTED] <li data-bbox="884 1328 1422 1473">(d) in respect of Hillsborough, the Investment Facility Works that such works will be complete by [REDACTED]
"Target Consumption Level"	<p>each as updated in accordance with the provisions of clause 14 (<i>Investment Facilities</i>);</p> <p>the target consumption levels of Benchmarked Utilities at the Facilities as shown in appendix 1 of schedule 16 (<i>Benchmarking</i>) as may be adjusted in accordance with paragraph 5. of appendix 1 of schedule 16 (<i>Benchmarking</i>) and/or as may apply following the completion of any Investment Facility Works at an Investment Facility;</p>

"Tax"	any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Commencement Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
"Termination Date"	the date of early termination of this Agreement in accordance with its terms;
"Termination Notice"	a written notice of termination given by one party to the other, notifying the party receiving the notice of the intention of the party giving notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Termination Sum"	any compensation payable by the Authority to the Operator or the Operator to the Authority on an early termination of this Agreement under clauses 44 (<i>Compensation on termination for Authority Default/ Voluntary Termination</i>), 45 (<i>Compensation on termination for operator default and corrupt gifts and fraud</i>) and 47 (<i>Compensation on termination for force majeure</i>);
"Third Party Agreements"	the third party agreements relating to the operation of the Facilities as detailed in paragraph 2.6 of the Services Specification;
"Third Party Claim"	has the meaning given to it in clause 32.4 (<i>Notification of Claims</i>);
"Thornccliffe NCSEM Lease"	the NCSEM Lease in relation to Thornccliffe Health and Sports Centre;
"Tinsley Charity Condition"	written approval to the grant of the Head Lease in respect of the Site known as Tinsley Golf Course from the Authority's charity sub-committee;
"Tinsley Tenancy at Will"	a tenancy at will in respect of the Site known as Tinsley Golf Course substantially in the form of the draft tenancy at will attached to this agreement at Schedule 15;
"Transition Plan"	the transition plan for each of the planned facility developments detailing the transition

	process from the existing center to its replacement as outlined in paragraph 2.3.4 of the Services Specification;
"Transition Tasks"	the transition tasks identified by the Operator, including the handover from any construction contractor employed by the Authority and the mobilisation tasks required during the fit out as detailed in the Transition Plan;
"TUPE "	the Transfer of Undertaking (Protection of Employment) Regulations 2006 (246/2006) as amended and/or any other Regulations enacted for the purpose of implementing the Directive into English law;
"UK Subsidy Control database"	https://searchforuksubsidies.beis.gov.uk/ or other government website created for public authorities to satisfy the requirements of Sections 33 and 34 of the SCA;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018;
"Undeliverable Additional Social Value Objective"	an Additional Social Value Objective which through no fault, error or omission of the Operator, it is unable to deliver;
"Underlease"	the underleases relating to the Sites to be granted by the Operator to the Leisure Operator in the Agreed Form;
"Uninsurable"	in relation to a risk, either that: <ul style="list-style-type: none"> (a) insurance is not available to the Operator in respect of the Services in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable

insurers of good standing by
Operators in the United Kingdom;

"Uninsured Losses"

losses arising from any risks against which the Operator or any Operator Related Party does not maintain insurance (where not required to maintain insurance for such risk under this Agreement or by law), provided that:

- (a) the amount of any losses that would otherwise be recoverable under any Operator Insurance but for the applicable uninsured deductible in respect of such insurance;
- (b) any exclusion of loss of insurance proceeds caused by or contributed to by any act or omission of the Operator or any Operator Related Party; and
- (c) shall not be treated as Uninsured Loss;

"Unprogrammed Maintenance Works"

has the meaning given to it in clause 15.5.1 (Unprogrammed Maintenance Works);

"Unsuitable Third Party"

any of:

- (a) any person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography;
- (b) any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of leisure services in the area;
- (c) any person who is not an excluded supplier as defined in section 57(1) of the Procurement Act 2023; or
- (d) any person whose activities, in the reasonable opinion of the Authority,

	pose or could pose a threat to national security;
"Updated NNDR Rate"	shall have the meaning given in paragraph 2.4 (<i>Initial Application for NNDR Relief</i>);
"Users"	those persons who use, or are entitled to use (whether they have done so or not) the Facilities and/or any or all of the Services from time to time;
"Utilities"	each of natural gas, fuel oil, electricity, water and other utilities that may be required in order to provide the Services at the Facilities;
"VAT"	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994, or any similar or replacement tax;
"Vitiating Act"	has the meaning given to it in paragraph 2.1.3.1 of part 2 of schedule 12.
"Works"	the works to be undertaken by the Operator at certain Facilities, the details of which are set out in the Capital Investment Proposals (Operator-led Investment) section of the Executive Summary of the Service Delivery Proposals;
"Works Building Contractor"	a building contract entered into by the Operator with a contractor for the delivery of a Works;

1.2 In this Agreement except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to any clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.2.4 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 headings are for convenience of reference only; and
- 1.2.8 words preceding **"include"**, **"includes"**, **"including"** and **"included"** shall be construed without limitation by the words which follow those words.

1.3 Schedules

The schedules to this Agreement form part of this Agreement.

1.4 Indexation

Unless expressly stated otherwise, references to amounts or sums expressed to be **"index-linked"** are references to amounts or sums in December 2024 ("**Base Date**") prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured on the relevant calculation date (which unless expressly provided to the contrary shall be each anniversary of the Commencement Date) by changes in the Index from the Base Date as calculated in accordance with the following formula:

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

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

1.5 Precedence of Documentation

In the event of any inconsistency between the provisions of the body of this Agreement and the schedules, or between the schedules, the inconsistency shall be resolved according to the following descending order of priority:

- 1.5.1 the clauses of this Agreement and schedule 5 (*Payment and Performance Monitoring System*), schedule 7 (*Review Procedure*), schedule 14 (*NNDR*), schedule 16 (*Benchmarking*), schedule 17 (*Surplus Share*), and schedule 21 (*Change Protocol*);
- 1.5.2 schedule 1 (*Services Specification*);
- 1.5.3 the schedules (excluding schedules referred to under clause 1.5.1 (*Precedence of Documentation*), schedule 1 (*Services Specification*) and schedule 3 (*Facilities*); and
- 1.5.4 schedule 3 (*Facilities*).

1.6 Responsibility for Related Parties

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

1.7 Approval

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

1.8 Succession

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

2. Commencement and duration

2.1 This Agreement and the rights and obligations of the parties shall come into force on the Commencement Date and (subject to the provisions for early termination set out in this Agreement and the express provisions relating to Investment Facilities) shall continue until the Expiry Date, provided that the obligation of the Operator to provide the Services in respect of each Additional Facility shall not commence until the Additional Facilities Service Commencement Date.

3. Ancillary documents and guarantees

3.1 The Operator shall, on or before the Commencement Date deliver to the Authority:

3.1.1 certified copies of the Ancillary Documents;

3.1.2 the Collateral Warranty from the Leisure Operator to the Authority on or before the date of this Agreement; and

3.1.3 the Parent Company Guarantee;

3.2 The Operator shall not engage any new Leisure Operator, Fitness and Health Operator or Food and Beverage Operator in connection with the Project unless such person has delivered to the Authority a duly executed agreement substantially in the Agreed Form

of the relevant Collateral Warranty duly executed as a deed and in each case such Collateral Warranties must be delivered to the Authority before such entity enters onto any Site.

4. General warranties

4.1 Operator Warranties

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

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

dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

- 4.1.11 each of the Ancillary Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto;
- 4.1.12 the copies of the Project Documents which the Operator has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents; and
- 4.1.13 it has reviewed and confirms the accuracy of schedule 6,
and the Authority relies upon such warranties and representations.

4.2 Operator Undertakings

The Operator undertakes with the Authority that for so long as this Agreement remains in full force:

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

4.2.5 it will pay its employees in accordance with the obligation contained in paragraph 3.7.8 of Schedule 1 (*Services Specification*).

4.3 **Status of Warranties**

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

5. **Authority warranties**

5.1 **No Warranty by Authority**

Subject to clause 5.3 (*Fraudulent Statements*) and clause 5.4 (*Authority Title Warranty*), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

5.2 **No Liability to Operator**

Subject to clause 5.3 (*Fraudulent Statements*) and clause 5.4 (*Authority Title Warranty*), neither the Authority nor any of its agents or employees shall be liable to the Operator in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

5.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

5.2.2 any failure to make available to the Operator any materials, documents, drawings, plans or other information relating to this Agreement.

5.3 **Fraudulent Statements**

Nothing in this clause 5 (*Authority warranties*) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Operator in respect of any statements made fraudulently prior to the Commencement Date.

5.4 **Authority Title Warranty**

The Authority warrants to the Operator on the terms set out in part 1 of schedule 11, provided that no inaccuracies or omissions in such information shall be capable of giving rise to an Authority Default. Breach of this warranty shall be deemed to be a Compensation Event.

5.5 **Operator's Due Diligence**

The Operator shall, subject to the terms of this Agreement, be deemed to have:

5.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and

5.5.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed including:

- 5.5.2.1 information as to the nature, location and condition of the Facilities;
- 5.5.2.2 information relating to areas of natural interest, local conditions and facilities in the Facilities and the quality of existing structures forming part of each Facility;
- 5.5.2.3 any other risk or contingency that affects the performance of the Services and/or affects the performance of the Operator's obligations under this Agreement.

5.6 **No Relief**

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

5.7 **Operator acknowledgement**

The Operator hereby acknowledges and agrees that it has been provided with copies of all of the Disclosed Title Matters, Replies to Enquiries and Disclosed Searches listed in part 2, part 3 and part 4 of schedule 11 and that all such matters that are disclosed within the Disclosed Title Matters, Replies to Enquiries and Disclosed Searches are disclosed against the warranties set out in part 1 of schedule 11.

6. **Documents and commitments**

6.1 **Ancillary Documents**

The Operator shall perform its obligations under, and observe all of the provisions of, the Ancillary Documents and shall not:

- 6.1.1 terminate or agree to the termination of all or part of any Ancillary Document;
- 6.1.2 make or agree to any material variation of any Ancillary Document;
- 6.1.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or
- 6.1.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under the Review Procedure and there has been no objection in accordance with paragraph 3 of the Review Procedure within 20 Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter

period as may be agreed by the parties, and, in the circumstances specified in clause 6.1.1 (*Ancillary Documents*) or clause 6.1.3 (*Ancillary Documents*), the Operator has complied with clauses 3.1 (*Ancillary documents and guarantees*), 63 (*Assignment and subcontracting*) and 64 (*Change in ownership*).

6.2 Delivery of Changed Ancillary Documents

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

6.3 Operator commitments

6.3.1 It is acknowledged that the Operator has committed to:

6.3.1.1 incurring Capital Costs of [REDACTED] as detailed in paragraph 3 (Capital Investment Proposals (Operator-led Investment)) of the Executive Summary to the Service Delivery Proposals,

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

6.3.2 The Authority shall be deemed to have agreed to the Operator incurring the Capital Costs as referred to in clause 6.3 (*Operator commitments*).

6.4 SCT third party contract commitment

6.4.1 The Operator acknowledges that SCT (though itself or its subsidiaries) has a contract with COOPS EMBS Ltd, in relation to the provision of maintenance services at the Facilities ("**Coops Contract**"), in respect of which SCT's future rights and obligations (for the period from and including the Service Commencement Date) are proposed to be novated to the Operator.

6.4.2 The Operator further acknowledges and agrees that it shall, as soon as reasonably practicable following the Commencement Date, seek to complete a novation agreement of the Coops Contract with effect from the Service Commencement Date.

PART 2 - LAND SITE MATTERS

7. Nature of land interests

7.1 Grant of the Head Lease

On or before:

7.1.1 the Service Commencement Date the Authority shall grant to the Operator, and the Operator shall accept, the Head Lease for each Existing Facility;