

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;

7.1.2 the Additional Facilities Service Commencement Date the Authority shall grant to the Operator, and the Operator shall accept, the Head Lease for each of the Additional Facilities,

provided that:

7.1.3 failure to grant the Head Lease to the Operator (save to the extent such failure is caused by the act or omission of the Operator) in relation to each Existing Facility, on the Service Commencement Date, shall be deemed to be a Compensation Event; and

7.1.4 the Operator shall be permitted to occupy the Existing Facilities as licensee (and the Leisure Operator shall be entitled to occupy the Existing Facilities as a sub-licensee and Fitness and Health Operator, the Food and Beverage Operator shall be entitled to occupy the Existing Facilities as sub-sub-licensees), each pending completion of the relevant Head Lease and Underlease (as the case may be).

7.2 On or before the Service Commencement Date the Authority shall use its reasonable endeavours to enter into the SCT Surrender Agreement and shall use its reasonable endeavours to procure that the Phoenix Surrender Agreement is entered into to enable:

7.2.1 a surrender of the leases of the Existing Facilities (other than The English Institute of Sport) from Sheffield City Trust to the Authority on the Service Commencement Date;

7.2.2 a surrender of the lease of The English Institute of Sport) from Sheffield City Trust to Phoenix Sports Limited on the Service Commencement Date;

7.3 The grant of the Head Lease in respect of Tinsley Golf Course is subject to satisfaction of the Tinsley Charity Condition and the following shall apply:

7.3.1 the Authority shall use its reasonable endeavours to satisfy the Tinsley Charity Condition prior to the Service Commencement Date and shall keep the Operator informed of the progress in satisfying the Tinsley Charity Condition; and

7.3.2 in the event that the Tinsley Charity Condition has not been satisfied by the Service Commencement Date then the Authority shall grant to the Operator the Tinsley Tenancy at Will pending satisfaction of the Tinsley Charity Condition whereupon the Authority shall grant to the Operator, and the Operator shall accept the Head Lease in respect of Tinsley Golf Course.

7.4 The grant of the Head Lease in respect of Springs Leisure Centre is subject to superior landlord's consent ("**the Springs Consent**") and the following shall apply to the extent such consent has not been obtained prior to the date of this Agreement:

7.4.1 the Authority shall use its reasonable endeavours to obtain the Springs Consent prior to the Service Commencement Date and shall keep the Operator informed of the progress in obtaining the Springs Consent.

7.4.2 in the event that the Springs Consent has not been obtained by the Service Commencement Date then the Authority shall grant to the Operator the Springs Tenancy at Will pending the obtaining of the Springs Consent whereupon the Authority shall grant to the Operator, and the Operator shall accept the Head Lease in respect of Springs Leisure Centre.

#### 7.5 Grant of NCSEM Leases

7.5.1 On the Services Commencement Date the Operator shall procure that the Lesiure Operator (or the tenant of the Underlease at the relevant time) shall grant and the Authority shall take the Concord NCSEM Lease;

7.5.2 On the Additional Facilities Services Commencement Date the Operator shall procure that the Leisure Operator (or the tenant of the Underlease at the relevant time) shall grant and the Authority shall take the Graves NCSEM Lease and the Thorncliffe NCSEM Lease.

#### 7.6 Agreement of Head Leases

The Authority and the Operator acknowledge that the Head Leases attached at Schedule 15 are in draft form and shall use their respective reasonable endeavours to seek to agree the final form of the Head Leases prior to the Service Commencement Date (in respect of the Existing Facilities) and the Additional Service Commencement Date (in respect of the Additional Facilities).

#### 7.7 Exclusion of Security of Tenure for the Head Lease

The Operator hereby confirms that before it became contractually bound to enter into the tenancies created by the Head Leases pursuant to this Agreement:

7.7.1 the Authority served on the Operator a notice dated 5 day of December 2024 in relation to each tenancy created by each Head Lease (the "**Head Lease Notice**") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "**Order**");

7.7.2 the Operator, or a person duly authorised by the Operator, in relation to the Head Lease Notice made a statutory declaration in respect of each Head Lease (the "**Head Lease Declaration**") dated 5 day of December 2024 in a form complying with the requirements of Schedule 2 of the Order;

7.7.3 the Operator further confirms that, where the relevant Head Lease Declaration was made by a person other than the Operator, the declarant was duly authorised by the Operator to make the Head Lease Declaration on the Operator's behalf; and

7.7.4 the Authority and the Operator agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to each tenancy created by each Head Lease.

#### 7.8 EPCs at Springs Leisure Centre and the Additional Facilities

- 7.8.1 As at the date of this Agreement there is no EPC in respect of the Existing Facility at Springs Leisure Centre or at the Additional Facilities;
- 7.8.2 The Authority shall use its reasonable endeavours to obtain an EPC for Springs Leisure Centre and each of the Additional Facilities as soon as reasonably possible following the date of this Agreement and on receipt shall share such EPC with the Operator.
- 7.8.3 In the event that an EPC for the relevant Facility has an F or G rating then the following shall apply:
  - 7.8.3.1 The relevant Head Lease shall still be granted on the Service Commencement Date (in respect of Springs Leisure Centre) and on the Additional Service Commencement Date (in respect of the Additional Facilities).
  - 7.8.3.2 The relevant Head Lease will contain an acknowledgement by the Operator as tenant that it is entering into the Head Lease notwithstanding the fact that the EPC has an F or G rating.
  - 7.8.3.3 The Authority will carry out (at its own cost) the necessary upgrade works required to obtain at least an E rating for a revised EPC subject to such works being (in the Authority's opinion (acting reasonably)) commercially prudent to carry out.
- 7.8.4 In coming to its decision in clause 7.8.3.3 as to whether it is commercially prudent to carry out the necessary upgrade works the Authority shall take the following into account (without limitation):
  - 7.8.4.1 the anticipated cost of the works;
  - 7.8.4.2 the timescale for completion of the works;
  - 7.8.4.3 the level of disruption to the operation of the Facility required as a result of the works;
  - 7.8.4.4 the future plans for the relevant Facility;
  - 7.8.4.5 the level of potential liability for the Operator and the Authority as a result of a failure to have a compliant EPC.
- 7.8.5 If the Authority decides after considering the matters outlined in clause 7.8.4 that it does not intend to carry out the necessary upgrade works it shall inform the Operator and shall meet with the Operator to seek to agree a mutually acceptable solution.

## 7.9 **Grant of the Head Lease**

The grant of the Head Leases shall take place at the offices of the Authority. The term of each Head Lease relating to the Existing Facilities shall commence on the Service Commencement Date and in relation to the Additional Facilities on the Additional Facilities Services Commencement Date.

#### **7.10 Registration**

The Operator shall apply for, and procure, registration of the Head Leases at the Land Registry as soon as reasonably practicable after the relevant Head Lease is completed. The Authority shall use all reasonable endeavours to assist the Operator in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request.

#### **7.11 Early Termination**

If this Agreement is terminated for any reason prior to the Expiry Date, the Head Leases shall automatically cease and determine with effect from the date of termination of this Agreement (or, if not granted at the time, the obligation to grant the Head Leases shall automatically cease to apply). Where the Head Leases have been entered into, the Operator shall forthwith deliver to the Authority the Head Leases together with all relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the Head Leases. The Operator shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry and the Land Charges Registry in relation to the Head Leases.

#### **7.12 No Compensation**

The Operator shall not be entitled to any compensation in respect of any variation of the terms of the Head Leases or the unexpired part of its interest as tenant under the Head Leases on assignment or surrender or automatic determination in accordance with this clause.

#### **7.13 Compliance with Disclosed Title Matters**

The Operator shall without prejudice to clause 5.4 (*Authority Title Warranty*) procure that:

7.13.1 the provision of the Services at the Sites by or on behalf of the Operator shall be carried out in a manner which does not breach any provisions of the Disclosed Title Matters relating to the Sites or the Facilities; and

7.13.2 in providing the Services at the Sites, there shall be no action, or omission to act, by the Operator or any Operator Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Sites or any part of them (save in accordance with the terms of this Agreement);

#### **7.14 Investment Facilities**

7.14.1 The Authority may carry out certain works in relation to the Investment Facilities pursuant to clause 14 of this Agreement in which case the following provisions of this clause 7.14 shall apply in relation to each Head Lease of an Investment Facility.

- 7.14.2 The Authority shall serve not less than six months' written notice on the Operator confirming that it intends to carry out re-development/refurbishment works in accordance with clause 14 to an Investment Facility or Facilities ("**the Initial Notice**") and that as a result the relevant Investment Facility will be required to close and a surrender of the Head Lease and any existing Underleases/Licences to Occupy will be required as follows:
- 7.14.2.1 Following service of the Initial Notice the Authority shall then serve not less than one months' written notice on the Operator confirming the date of completion of the surrender of the relevant Head Lease(s) ("**the Surrender Notice**");
- 7.14.2.2 Following service of the Surrender Notice the Authority and the Operator shall enter into a deed of surrender in relation to the relevant Head Lease substantially in the form of the draft Deed of Surrender and the Operator shall terminate any Underleases or Licences to Occupy (or other third party occupational interests) in existence at the time.
- 7.14.3 Following the surrender of the relevant Head Lease under this Clause 7.14 and commencement of any refurbishment/redevelopment works pursuant to Clause 14 of this Agreement the Authority shall serve not less than six months' written notice on the Operator of the target practical completion date in respect of any such refurbishment/redevelopment works being carried out at an Investment Facility or Facilities pursuant to Clause 14 of this Agreement ("**the Initial PC Notice**").
- 7.14.4 Following the service of the Initial PC Notice:
- 7.14.4.1 the Authority shall:
- (a) give not less than 1 months' written notice to the Operator confirming the target practical completion date given in the Initial PC Notice or notifying the Operator of an alternative target practical completion date;
  - (b) serve a notice in the form or substantially in the form set out in Schedule 3 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the 2003 Order") on the Operator in relation to each Investment Facility Lease;
- 7.14.4.2 the Operator shall or a person duly authorised by the Operator to do so shall make a statutory declaration in the form or substantially in the form set out in Schedule 4 to the 2003 Order in relation to each Investment Facility Lease.
- 7.14.5 The Operator shall have a licence to enter the relevant Investment Facility from the Fit-Out Commencement Date until the Actual Completion Date for the purposes of carrying out its fit out and the following shall apply:

- 7.14.5.1 such occupation shall be by way of licence only;
  - 7.14.5.2 the Operator not have, and is not entitled to, any estate, right or interest in the relevant Investment Facility;
  - 7.14.5.3 the parties shall observe and perform their respective obligations imposed by the covenants and conditions in the relevant Head Lease (to the extent that they are not inconsistent with the other provisions of this agreement) as if the Head Lease had been completed on the Fit-Out Commencement Date;
  - 7.14.5.4 the Authority shall have the same rights and remedies in respect of any breach of the obligations imposed on the Operator by the covenants and conditions in the relevant Head Lease as if the relevant Head Lease had been completed on the Fit-Out Commencement Date.
- 7.14.6 At least 10 Working Days prior to the Actual Completion Date the Authority shall procure that engrossments of the relevant Investment Facility Lease shall be delivered to the Operator.
- 7.14.7 On the Actual Completion Date the Authority shall grant to the Operator, and the Operator shall accept, the Investment Facility Lease for each Investment Facility.

#### **7.15 Compliance with Head Lease**

- 7.15.1 The Authority and the Operator shall comply with their respective obligations in the Head Leases.
- 7.15.2 Without prejudice to the express rights of the Authority under this Agreement and the Head Lease, the Authority (and those nominated by the Authority from time to time) shall be entitled at all reasonable times to access to the Facilities, but not so as to interfere with or impede the provision of the Services.
- 7.15.3 Where there is any inconsistency between the terms of this Agreement and the relevant Head Lease and/or other property document (as the case may be) this Agreement shall prevail.

#### **7.16 Grant of Underleases and sub-licences**

The Authority hereby consents to:

- 7.16.1 the grant by the Operator to the Leisure Operator of the Underleases; and
- 7.16.2 the grant by the Leisure Operator of the Licences to Occupy,

subject to the Underleases and Licences to Occupy being validly excluded from the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to each Underlease and Licence to Occupy.

## **8. The Sites**

### **8.1 Access**

Subject to the terms of this Agreement, if at any time the Operator requires access to the Sites or any interest in any land which does not form part of the Sites or any additional rights beyond those which the Operator has in relation to any part of the Sites, the responsibility and cost of securing or acquitting such access shall be entirely the responsibility of the Operator.

### **8.2 Site Matters**

8.2.1 Subject to the other terms of this Agreement, the Site Conditions shall be the sole responsibility of the Operator and accordingly (but without prejudice to any other obligation of the Operator under this Agreement) the Operator shall be deemed to have:

8.2.1.1 inspected and examined the Sites and their surroundings and (where applicable) any existing structures on the Sites;

8.2.1.2 satisfied itself as to the nature of the Site Conditions, the form and nature of the Sites, the risk of injury or damage to property affecting the Sites, and the nature of the works, labour and materials necessary for the execution of the Services;

8.2.1.3 satisfied itself as to the adequacy of:

(a) the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Sites); and

(b) its rights under the Head Lease;

8.2.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority or any Authority Related Party) with access to or use of, or rights in respect of, the Sites with particular regard to the owners of any land adjacent to the Sites; and

8.2.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.

8.2.2 Subject to the other terms of this Agreement, the Operator accepts full responsibility for all matters referred to in clause 8.2.

8.2.3 Subject to clause 8.2.5, the Authority shall be responsible for:

8.2.3.1 ground conditions; and/or



- 8.2.3.2 Contamination existing in any parts of the Sites as at the Commencement Date (save as to where any Contamination is located at the Additional Facilities, in which case the Additional Facilities Service Commencement Date will apply).
- 8.2.4 Where the Authority is responsible for any of the matters referred to in clauses 8.2.2, and 8.2.6, the following provisions shall apply:
- 8.2.4.1 such matter shall be deemed to be a Relief Event (save that, notwithstanding clause 30.4 (*Performance Adjustment Points and Performance Adjustment Payments*) and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of the relevant part(s) of the affected Facility pursuant to schedule 5 (*Payment and Performance Monitoring System*));
- 8.2.4.2 any work or change to the Services or to the operation of the affected Facility or part thereof as a result or which is required or instructed to be done in consequence of it, shall be deemed to be an Authority Change; and
- 8.2.4.3 where any such matter is Contamination the Authority shall further hold the Operator harmless from cleaning up and otherwise dealing with such Contamination and shall indemnify the Operator in respect of all Direct Losses incurred by the Operator resulting from such Contamination,
- and the Operator shall in carrying out any works referred to in clause 8.2.5.3 do so in accordance with and so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Operator).
- 8.2.5 Subject to clause 8.2.6, to the extent that, after the Commencement Date (or the Additional Facilities Service Commencement Date, if applicable), any part(s) of the Sites (or the Additional Facilities, if applicable) suffer from or are affected by Contamination arising from a source off Site (whether or not on adjacent land) the Operator shall be responsible for cleaning up or otherwise dealing with such Contamination and for preventing the reoccurrence of such Contamination on the Site and then the following provisions shall apply:
- 8.2.5.1 such matter shall be deemed to be a Relief Event (save that, notwithstanding clause 30.4 (*Performance Adjustment Points and Performance Adjustment Payments*) and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of the relevant part(s) of the affected Facility pursuant to schedule 5 (*Payment and*

*Performance Monitoring System*) for a reasonable period (to be agreed between the parties acting reasonably));

8.2.5.2 any work or change to the Services required or instructed to be done in consequence of it, shall be the Operator's responsibility and shall not constitute an Authority Change;

8.2.5.3 the Operator shall:

- (a) clean up, or otherwise deal with, such Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, all relevant Necessary Consents and Legislation; and
- (b) other than where clause 8.1 applies hold the Authority harmless from, and indemnify the Authority in respect of, all Direct Losses incurred by the Authority resulting from such Contamination;

8.2.5.4 the Authority shall, but only to the extent that the Operator is able to demonstrate to the Authority that it does not have the right to take action against third parties in its own name to recover the losses suffered or incurred by the Operator in cleaning up or otherwise dealing with such Contamination, at the Authority's option either:

- (a) take such action against third parties in its own name as the Operator may (acting reasonably) direct; or
- (b) permit the Operator to take such action in the name of the Authority at the Operator's own expense in which case the provisions of clauses 32.5 (*Conduct of Claims*) and 32.6 (*Costs of Claims*) shall apply as if the Operator were the Indemnifying Party and the Authority were the Indemnified Party, except that the Operator shall not pay or settle such claims without the prior consent of the Authority,

subject to the Operator indemnifying the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action. Where the Authority takes action under clause (a) or clause (a) (or where it is otherwise obliged to take action against third parties in respect of such losses), the Authority shall be liable to the Operator for all losses suffered or incurred by the Operator as a result of its obligations under this clause 8 (*The Sites*) provided that the Operator's entitlement in respect of any matter to which this clause 8.2.5 applies shall be limited to the amount recovered by or in the name of the Authority from the relevant third party in respect of the losses referred to in this clause 8.2.5.

- 8.2.6 To the extent that any part(s) of the Sites suffer from or are affected by Contamination arising from a source off Site where such off Site source is land for which the Authority is responsible, the Authority shall be responsible for such Contamination and the provisions of clause 8.2.4 shall apply.
- 8.2.7 Subject to clause 8.2.8, the Operator shall be responsible for any Contamination at the Sites caused or to the extent exacerbated as a direct result of the act or omission of the Operator or any Operator Related Party. The Operator shall:
- 8.2.7.1 clean up, or otherwise deal with, such Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, all relevant Necessary Consents and Legislation; and
  - 8.2.7.2 hold the Authority harmless from, and indemnify the Authority in respect of, all Direct Losses incurred by the Authority resulting from such Contamination.
- 8.2.8 To the extent that any part(s) of the Sites suffer from or are affected by Contamination arising from a source off Site where such off Site source is land for which the Authority is responsible, the Authority shall be responsible for such Contamination and the provisions of Clause 8.2.4 shall apply.

### **8.3 No Warranty**

Except as otherwise expressly provided in this Agreement the Operator shall take the Sites in their state and condition in all respects as at the Commencement Date and nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Sites or any part thereof for the Services or for any other purpose.

### **8.4 Third Party Rights**

The Operator shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Sites, and the Operator shall ensure that the Services are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

### **8.5 Birley Wood**

The parties acknowledge that there is a mine shaft at the Birley Wood Facility which was not known to either Party prior to the Operator submitting its Tender ("the Mine Shaft"). The Parties agree and acknowledge that the Mine Shaft has been isolated and that the Mining Remediation Authority (formerly the Coal Authority) remains primarily responsible. However, in the event that the presence of Mine Shaft has an adverse impact, which is more than nominal, on the Operator (in the Operator's reasonable opinion) it shall be entitled to treat the existence of the Mine Shaft as an Authority Change.

## 9. Defects and asbestos

### 9.1 Surveys

9.1.1 The Authority shall provide to the Operator on or before the Commencement Date:

9.1.1.1 the Buildings Surveys; and

9.1.1.2 the Asbestos Surveys.

9.1.2 The Authority shall deliver to the Operator As-built Drawings (as may be relevant, necessary and/or available) for each Investment Facility prior to or on the Target Completion Date for the relevant Investment Facility.

### 9.2 Defects

9.2.1 Subject to clause 9.2.2, the Operator accepts, in relation to the Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for:

9.2.1.1 any Defects identified in the Buildings Surveys; and

9.2.1.2 any Defects caused by the Operator.

9.2.2 The Authority accepts:

9.2.2.1 in relation to the Buildings, entire responsibility for Defects which have not been identified in the Buildings Surveys (other than those referred to in clause 9.2.1.2) and:

(a) the discovery of any such Defects shall be deemed to be a Relief Event (save that, notwithstanding clause 30.4 (*Performance Adjustment Points and Performance Adjustment Payments*) and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of the relevant part(s) of the affected Facility pursuant to schedule 5 (*Payment and Performance Monitoring System*) for the period during which the Defect subsists and/or in respect of which remedial works are being carried out); and

(b) any work or change to the Services or to the operation of the affected Facility or part thereof as a result or which is required or instructed to be done in consequence of it, shall constitute an Authority Change; and

9.2.2.2 in relation to the Buildings (other than the Additional Facilities), entire responsibility for any Authority Works that have not been suitably undertaken on or before the Service Commencement Date and the carrying out of any outstanding Authority Works by the Authority following the Service Commencement Date shall be

carried out on dates to be agreed with the the Operator and such work shall be deemed a Compensation Event; and

9.2.2.3 in relation to the Investment Facilities, entire responsibility for any Defects arising on or after the Fit-Out Commencement Date and:

- (a) the Authority will require the Operator to assist with the identification and rectification of such Defects;
- (b) the Authority will require the Operator not to do anything or omit to do anything that in the sole opinion of the Authority would remove any rights of recourse for the Authority in relation to any Building Contractor;
- (c) the discovery of any such Defects shall be deemed to be a Relief Event for the period during which the Defect subsists and/or in respect of which remedial works are being carried out); and
- (d) any work or change to the Services or to the operation of the affected Facility or part thereof as a result or which is required or instructed to be done in consequence of it, shall constitute an Authority Change, and

9.2.2.4 in relation to the Additional Facilities, entire responsibility for any Defects arising after the Additional Facilities Service Commencement Date and:

- (a) the discovery of any such Defects shall be deemed to be a Relief Event for the period during which the Defect subsists and/or in respect of which remedial works are being carried out); and
- (b) any work or change to the Services or to the operation of the affected Facility or part thereof as a result or which is required or instructed to be done in consequence of it, shall constitute an Authority Change.

### 9.3 **Asbestos Liability**

9.3.1 Subject to clause 9.3.2 (*Asbestos Liability*) the Operator accepts, in relation to the Buildings, full responsibility (including any financial and other consequences which result whether directly or indirectly) for any Asbestos identified in the Asbestos Surveys.

9.3.2 The Authority accepts, in relation to the Buildings, full responsibility for Asbestos which has not been identified in the Asbestos Surveys (other than any Asbestos liability referred to in clause 9.3.1 (*Asbestos Liability*)) and:

9.3.2.1 the discovery of any such Asbestos shall be deemed to be a Relief Event (save that, notwithstanding clause 30.4 (*Performance*

*Adjustment Points and Performance Adjustment Payments*) and no Performance Adjustment Points will accrue and no Performance Adjustment Payments may be made in respect of any relevant part(s) of the affected Facility during which such Asbestos is subsisting and in respect of which removal or remedial works are being carried out); and

9.3.2.2 any work or change to the Services or to the operation of the affected Facility or part thereof as a result of which is required or instructed to be done in consequence of it, shall constitute an Authority Change.

9.3.3 Unless the exposure arises directly or indirectly as a result of any negligent act or omission of the Operator or any Operator Related Party, the Authority accepts, in relation to the Buildings, full responsibility (including any financial and other consequences which result whether directly or indirectly) for death and personal injury in respect of exposure to Asbestos in such Buildings.

## 10. **Fossils and antiquities**

10.1 As between the parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Sites are or shall become, upon discovery, the absolute property of the Authority.

10.2 Upon the discovery of such item during the course of the Services, the Operator shall:

10.2.1 immediately inform the Authority's Representative of such discovery;

10.2.2 take all steps not to disturb the object and, if necessary, cease any Services insofar as the carrying out of such Services would endanger the object or prevent or impede its excavation; and

10.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

10.3 The Authority shall procure that the Authority's Representative promptly, and in any event within 10 Business Days, issues an instruction to the Operator specifying what action the Authority's Representative requires to be taken in relation to such discovery provided that if no such instruction is forthcoming within such period the Operator may decide how to manage the discovery and may decide to either continue to carry out the Services or consult with the Authority's representative on the Operator's proposed plan to manage the discovery. The Operator shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in clause 10.3 (*Fossils and antiquities*) at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to clause 10.5 (*Fossils and antiquities*) in which case the provisions of the Change Protocol shall apply).

10.4 If directed by the Authority's Representative, the Operator shall allow representatives of the Authority to enter the Sites for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with all

relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Facility from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Operator's Representative from time to time.

- 10.5 If any instruction referred to in clause 10.3 (*Fossils and antiquities*) includes a requirement for the Operator to suspend the carrying out of the Services and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in any Facility) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be deemed to be an Authority Change and the provisions of the Change Protocol shall apply.
- 10.6 The Authority shall act promptly and diligently in dealing with its obligations in this clause 10 (*Fossils and antiquities*) in relation to any find so as to mitigate any effect on the Operator and the Services.

### **PART 3 - THE SERVICES**

#### **11. Services**

- 11.1 The Operator shall, in respect of:
- 11.1.1 the Facilities (excluding the Investment Facilities and the Additional Facilities), provide the Services for the Contract Period;
  - 11.1.2 the Additional Facilities, provide the Services from 1 September 2026 for the remainder of the Contractor Period; and
  - 11.1.3 the Investment Facilities, provide the Services throughout the Contract Period save for any period during which the Investment Facility is duly closed in accordance with the provisions of clause 14 (*Investment Facilities*).
- 11.2 **Standard of Services**
- Subject to clause 11.6.1 (*Discrepancies*), the Operator shall provide the Services in accordance with (and so as to comply with):
- 11.2.1 the terms of this Agreement;
  - 11.2.2 the Services Specification;
  - 11.2.3 the Service Delivery Proposals;
  - 11.2.4 the Equality Requirements;
  - 11.2.5 the NCSEM requirements in schedule 25;
  - 11.2.6 Good Industry Practice;
  - 11.2.7 Quest;
  - 11.2.8 Sport England Guidance;