

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;

11.2.9 all applicable Authority Policies and Legislation, as amended from time to time; and

11.2.10 the Partnering Charter.

11.3 **Social Value**

The Operator shall, at all times, comply with and meet the obligations in the Social Value Performance Management Framework in accordance with schedule 24 (Social Value Performance Management Framework).

11.4 **Works**

The Operator shall:

11.4.1 exercise Good Industry Practice in the delivery of any Works;

11.4.2 be responsible for:

11.4.2.1 procuring successful delivery of the Works, whether on its own behalf or via a contractor(s) pursuant to a Works Building Contract (in whole or part); and

11.4.2.2 the Capital Costs of such Works pursuant to clause 6.3 (Operator Commitments);

11.4.3 provide for approval (where the relevant Works are material in nature and involve a third party contractor) by the Authority acting reasonably of the terms of any proposed duty of care or other warranties from contractor(s) to enable the Authority to enforce the obligations set out in the relevant Works Building Contract, such warranties to be delivered to the Authority within fourteen (14) days of the date of the relevant Works Building Contract;

11.4.4 either insure the Works or ensure that the contractor(s) holds sufficient insurances (to the reasonable satisfaction of the Authority's Insurance Officer) to deliver the Works;

11.4.5 obtain all statutory, regulatory and any other consents necessary for successful delivery of the Works;

11.4.6 comply with its obligations as "client" for the purposes of the CDM Regulations, and agrees with the Authority to be the only client in relation to the Works for the purposes of Regulation 4(8) of the CDM Regulations, and ensure that the principal designer and the principal contractor that it appoints in relation to the Works comply with their respective obligations under the CDM Regulations;

11.4.7 make good any damage to any land or building, plant or machinery (including decorative damage) which is caused by the carrying out of the Works, at its own cost;

- 11.4.8 notify the Authority as soon as the Works have been completed, and send the Authority a copy of any As-Built Drawings showing each relevant Facility as altered by the Works;
- 11.4.9 take all proper steps to ensure that carrying out the Works does not make any of the following unsafe:
 - 11.4.9.1 the structure of the relevant Facilities and any building of which a relevant Facility forms part, if applicable;
 - 11.4.9.2 any plant or machinery at the relevant Facilities or building of which a relevant Facility forms part, if applicable; or
 - 11.4.9.3 any neighbouring land or building;
- 11.4.10 use all reasonable endeavours to ensure the Works (and the carrying out of the Works) does not disturb any asbestos at the relevant Facilities;
- 11.4.11 use all reasonable care and skill, and procure that its contractor(s) use all reasonable care and skill, not to infringe any of the Authority's rights, nor the rights of any Authority Related Party, in relation to the relevant Facilities of which the Operator is or should be aware of in respect of its obligations or by applying Good Industry Practice;
- 11.4.12 allow the Authority and its surveyors access to the relevant Facilities, both while the Works are being undertaken and afterwards, and will give the Authority the information it reasonably requests to establish that the Works are being and have been carried out in accordance with this clause 11.4.

11.5 Operator covenants

In performing its obligations under this Agreement, the Operator shall:

- 11.5.1 apply such time, attention, resources, trained personnel and skill as may be necessary for the due and proper performance of the Services;
- 11.5.2 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 11.5.3 ensure that neither it, nor any Operator Related Party, brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Operator's obligations under this Agreement;
- 11.5.4 ensure and shall procure that any Operator Related Party shall ensure that the Services are carried out in compliance with the Equality Requirements;
- 11.5.5 ensure that only new materials or recycled materials that are in accordance with British Standards and/or Good Industry Practice will be used in carrying out the Services (unless the Authority agrees otherwise in writing or the contrary is set out in the Services Specification);

11.5.6 ensure that all Goods will be of satisfactory quality; and

11.5.7 ensure that there will not be used in the provision of the Services or included in the Buildings:

11.5.7.1 any of those products and materials listed in schedule 8 (*Prohibited Materials*); nor

11.5.7.2 any products or materials which:

- (a) are generally known at the time of specification or use to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; or
- (b) are not in accordance with British or European standard or codes of practice or Building Research Establishment Digests (in each case current at the time of specification or use) or, where no such standard exists do not conform with a British Board of Agreement Certificate; or
- (c) do not comply with the guidance set out in Good Practice in the Selection of Construction Materials 2011 published by the British Council of Offices (as updated from time to time).

11.6 Discrepancies

11.6.1 Subject to clause 11.6.2 (*Discrepancies*), in the event of a conflict or potential conflict between the standards listed in clause 11.2 (*Standard of Services*), the Operator shall, as soon as reasonably practicable, notify the Authority in writing of the same and the Operator shall submit proposals to the Authority for review through schedule 7 (*Review Procedure*) as to how it proposes to deal with such inconsistency or conflict and, after such review, the standards shall be amended accordingly and any amendment shall be made without adjustment to the Annual Payment. The Authority may not withhold its approval (or impose conditions in giving its approval) where the purpose of such withholding or such conditions is to deal with matters other than the correcting of any such inconsistency or conflict.

11.6.2 The Services Specification shall at all times have priority over the Service Delivery Proposals. Any changes to the Service Delivery Proposals may only be made in accordance with the Review Procedure.

11.7 Ordering of Goods and Services

Neither party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other party or any representative of the other party.

12. **Consents**

12.1 Subject to clauses 12.2 (*Authority Necessary Consents*) and 12.2.2 (*Authority Necessary Consents*), the Operator shall:

- 12.1.1 obtain and maintain all Necessary Consents which may be required for the performance of the Services;
- 12.1.2 be responsible for implementing each Necessary Consent within the period of its validity in accordance with its terms;
- 12.1.3 supply free of charge to the Authority's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained;
- 12.1.4 comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Operator to carry out the Services; and
- 12.1.5 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Authority under this Agreement (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the Commencement Date) or of any condition attached to it but, subject to the compliance by the Operator with its obligations under this clause 12.1 (*Consents*), references in this Agreement to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

12.2 **Authority Necessary Consents**

- 12.2.1 The Authority shall obtain the Authority Necessary Consents (including any Authority Necessary Consents relevant to the Investment Facilities), or shall procure that the Authority Necessary Consents are obtained, subject to the Operator using all reasonable endeavours to assist the Authority to obtain or procure the obtaining of the Authority Necessary Consents.
- 12.2.2 Where the Authority has obtained or procured the obtaining of an Authority Necessary Consent then such consent shall be treated as a Necessary Consent for the purposes of clauses 12.1.2 (*Consents*), 12.1.4 (*Consents*) and 12.1.4 (*Consents*) unless such ongoing obligations and/or maintenance can only reasonably be carried out or procured by the Authority.
- 12.2.3 The Authority shall comply with any planning conditions with which the Authority is required to comply or discharge under the Authority Necessary Consents granted in respect of the Facilities and/or any Investment Facilities.

13. Use of the Facilities

13.1 Priority

The Facilities shall be made available for use in the provision of the Services during the Contract Period as set out in the Services Specification.

13.2 Use of the Facilities

The Operator may enter into arrangements for alternative use of the Facilities provided that:

- 13.2.1 any such use is in accordance with Legislation;
- 13.2.2 the use cannot reasonably be expected to impair the provision of the Services and such use is not incompatible with the use of the Facilities;
- 13.2.3 the proposal has been submitted to the Authority pursuant to the Review Procedure and the Authority has not objected to or made comments in respect of such proposal;
- 13.2.4 the use does not involve sponsorship, advertisement or other direct involvement by any organisation, entity or person engaged, or with substantial interest in the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons; and
- 13.2.5 the use is not one which could be expected to involve undue violence (provided that the provision of organised sport shall not be considered undue violence) or otherwise be incompatible with the ethos of the Authority.

13.3 Third Party Use

Subject to the Authority Pricing Requirements and the Services Specification, the Operator shall be entitled to charge for, and be paid by, each User, a fee determined by the Operator for the use made of the Facilities.

13.4 Elections

The Operator will allow the Authority to use the Facilities for the purpose of Elections provided reasonable prior notice has been given to the Operator and the Authority agrees to pay for the use of the relevant parts of the Facilities for such purposes, with terms to be agreed between the parties acting reasonably. In exercising its right to use the Facilities pursuant to this clause only the Authority shall be regarded as a User. The Operator shall not exclude any person entering a Facility for the purpose of voting in an Election except with the agreement of the Election Officer (acting reasonably) provided that if any such person is acting in a disruptive manner which is likely to cause harm to persons or damage to property the Operator shall be entitled in consultation with the Election Officer to remove or exclude such person from the relevant Facility.

14. Investment Facilities

14.1 Design of an Investment Facility

- 14.1.1 The Parties agree and acknowledge that the LOBTA, together with the Service Delivery Proposals as at the Commencement Date were predicated on the delivery of Services at the existing Facilities and that upon completion of relevant Investment Facility Works the Parties will adopt the relevant Investment Facility Tabs (as amended pursuant to this Clause 14).
- 14.1.2 The development of an Investment Facility will be at the sole discretion of the Authority and the Operator will bear no design risk in relation to the Investment Facility.
- 14.1.3 Without prejudice to clause 14.1.2 above:
 - 14.1.3.1 the Operator shall, during the design development and value engineering process and prior to the commencement of any Investment Facility Works, be given the opportunity to provide comments on the development of the Investment Facility, including in relation to the final facility mix, design, layout and finishes;
 - 14.1.3.2 the Authority shall have due regard to any such comments, including any suggestions relating to the optimisation of the development proposals prior to the commencement of the Investment Facility Works, together with draft Investment Facility Tabs (reflecting the possible design options), save that the Authority shall not be obliged to implement any changes that would (in the Authority's sole discretion) result in the Authority incurring additional material expenditure;
 - 14.1.3.3 the Operator shall however, be entitled to make suggestions relating to the optimisation of the development proposals prior to the commencement of the Investment Facility Works to the extent that it first agrees with the Authority (including the process of funding, whether by way of escrow or otherwise) to fund any additional material expenditure;
 - 14.1.3.4 in the event that the Operator has had an opportunity to raise comments in accordance with this clause 14.1.3, then regardless as to whether any such comments have so been raised, it shall be deemed to have satisfied itself that it will be capable of achieving the performance of the Services (as well as achieving any income projections as stated in any draft Investment Facility Tabs) without detriment to the standards and in the manner required pursuant to this Agreement.

14.2 Investment Facility Design Fix

14.2.1 As soon as reasonably practicable and within twenty (20) Business Days following notification from the Authority that the Investment Facility has completed RIBA Stage 3, the Operator shall:

14.2.1.1 provide updated Investment Facility Tabs, together with a commentary explaining any material changes in the Investment Facility Assumptions, and the resulting changes in the underlying timing assumptions contained in the LOBTA;

14.2.1.2 the revised and amended Investment Facility Tabs shall incorporate any changes and amendments to the Investment Facility Assumptions as agreed by the Parties as well as inclusion of any additional detail derived from the design (such as the relevant BREEAM standard to be achieved), any revised utilities assumptions relating to both the proposed consumption and tariff to be applied to the proposed Investment Facility, any material changes to operational costs (including resourcing plans), insurance and security responsibilities;

14.2.1.3 provide updated Service Delivery Proposals, together with a commentary on any material changes to the same; and

14.2.1.4 provide any proposed delay payments applicable to any delay, on a week by week basis, to the completion of the relevant Facility beyond the relevant Target Completion Date;

14.2.2 The Operator will be invited to submit such revisions to the LOBTA as are reasonable such that the Operator shall be in a no better and no worse position pursuant to clause 37 (Financial Adjustments).

14.2.3 Limb (b) of the definition of an Investment Facility Event shall for the avoidance of doubt be treated as a Relevant Event save that the Authority shall be entitled at any time to issue an Authority Change Notice to which the provisions of Part 1 (Authority Changes) of Schedule 22 (*Change Protocol*) shall apply.

14.2.4 For the avoidance of doubt, all risks inherent in the prevailing local, regional and national markets for the operation of leisure facilities such as the Investment Facilities shall be borne by the Operator.

14.3 Investment Facility Closure Arrangements

14.3.1 In the event that the Authority proposes to undertake Investment Facility Works at an Investment Facility it shall:

14.3.1.1 where relevant, no less than one calendar year prior to the planned commencement of the proposed Investment Facility Works confirm to the Operator:

- (a) any arrangements for the planned closure of the relevant Investment Facility and the Planned Closure Date; or
 - (b) any arrangements for the partial closure of the relevant Investment Facility and the Planned Partial Closure Date;
- 14.3.1.2 no later than one hundred and twenty (120) Business Days prior to the commencement of the proposed Investment Facility Works, confirm to the Operator whether any changes are needed to the Planned Closure Date or the Planned Partial Closure Date (as the case may be). If the Authority does propose any earlier or later date to the Planned Closure Date or the Planned Partial Closure Date such revised date shall thereafter be the Planned Closure Date or the Planned Partial Closure Date; and
- 14.3.1.3 no later than twenty (20) Business Days prior to the commencement of the proposed Investment Facility Works, confirm to the Operator whether any changes are needed to the Planned Closure Date or the Planned Partial Closure Date (as the case may be).
- 14.3.2 Where the Authority has notified the Operator of:
 - 14.3.2.1 a Planned Closure Date and such Planned Closure Date (as may be updated in accordance with clause 14.3.1.2) is materially different from the Closure Date Assumption upon which the LOBTA is based; or
 - 14.3.2.2 a Planned Partial Closure Date (as may be updated in accordance with clause 14.3.1.2) is materially different from the Closure Date Assumption upon which the LOBTA is based,

the Operator will be invited to submit such revisions to the LOBTA as are reasonable such that the Operator shall be in a no better and no worse position pursuant to clause 37 (Financial Adjustments) (an "**Investment Facility Date Change**"). For the avoidance of doubt "materially different" in this clause 14.3.2 shall be interpreted as any date which is ten (10) Business Days or more away from the Closure Date Assumption;
- 14.3.3 Where the Authority notifies the Operator that a Planned Closure Date is a Planned Partial Closure Date or a Planned Partial Closure Date is a Planned Closure Date the Authority may require the Operator to submit such revisions to the LOBTA or the Operator will be entitled to submit such revisions to the LOBTA, in each case as are reasonable, such that the Operator shall be in a no better and no worse position pursuant to clause 37 (Financial Adjustments) (an "**Investment Facility Closure Change**");
- 14.3.4 Any Investment Facility Date Change or Investment Facility Closure Change shall be treated as a Relevant Event save that the Authority shall be entitled to

submit an Authority Change Notice in which case the provisions of Part 1 (Authority Changes) of schedule 21 (*Change Protocol*) shall apply;

- 14.3.5 For the avoidance of doubt where the Investment Facility is closed for the purposes of completing any Investment Facility Works the Operator shall be responsible for ensuring that it completes any reorganisation of its staffing arrangements in advance of the closure and/or completes any redundancy process for staff that are not able to be redeployed at other Facilities.

14.4 **Additional Investment Facility Changes**

- 14.4.1 In the event that there are any material changes in the design or specification of the Investment Facility proposed or required to be made by or on behalf of the Authority or the Building Contractor or any of its sub-contractors or professional consultants or any planning conditions or other third party agreements apply or are proposed to apply with which the Operator will be required to comply (the "**Additional Investment Facility Changes**") the following shall apply:

- 14.4.1.1 the provisions of clauses 14.4.1 to 14.4.1.6 inclusive are intended to establish an iterative consultation process whereby the Operator participates with the Authority in relation to the comment and/or approval of Additional Investment Facility Changes;
- 14.4.1.2 the Authority shall promptly submit full details of any Additional Investment Facility Changes to the Operator and details of the periods within which the Authority is required to respond to or to instruct the Building Contractor, such periods to be reasonable having regard to the nature and extent of the Additional Investment Facility Changes (the "**Required Periods**");
- 14.4.1.3 the parties shall discuss the Additional Investment Facility Changes and the Operator shall provide any comments it may have to the Authority in due time to enable the Authority to respond to or instruct the Building Contractor within the relevant Required Periods;
- 14.4.1.4 if the Operator or Authority considers that any Additional Investment Facility Change is likely to result in or give rise to any change in the Services or any part of them, any material additional cost or reduction in costs (as the case may be) in providing the Services or any part of them, any impact on use of the Investment Facility by Users and consequent impact on User revenue or which is likely to result in or give rise to a material change in the risk profile of the Operator in respect of the operation of the Investment Facility or otherwise under this Agreement, the Operator shall promptly notify the Authority of the same and subject to clause 14.4.1.5, such Additional Investment Facility Change shall be deemed to be an Authority Change Notice and subject to clause

14.4.2 below the provisions of schedule 21 (*Change Protocol*) shall apply;

14.4.1.5 if the Operator does not provide any comments as referred to in clause 14.4.1.3 above or provide any notification as referred to in clause 14.4.1.4 above, the Operator shall be deemed to have accepted the Additional Investment Facility Change and that it will not be treated as an Authority Change; and

14.4.1.6 it is acknowledged by the parties that where pursuant to clause 14.4.1.4 the Change Protocol applies, the periods within which (as the case may be) the Estimate or Authority's approval are to be given may not be expeditious enough to enable the Authority to respond to or instruct the Building Contractor within the relevant Required Periods and the parties shall, adopting a cooperative manner and partnering spirit, expedite the procedure and periods for the submission of proposals, estimates, information and approvals as is practicable with a view to achieving those Required Periods,

provided that in the event that a dispute arises in respect of Additional Investment Facility Change, nothing in this clause 14.4 (Additional Investment Facility Changes) shall prevent either party from referring such dispute to the Dispute Resolution Procedure.

14.4.2 No comments or approval (or failure to comment or approve) by or on behalf of the Operator on or in relation to any Additional Investment Facility Change shall in any way diminish or affect the obligations and liabilities of the Building Contractor under the Building Contract or otherwise at law in respect of the design and construction of the Investment Facility.

14.5 Delay to Completion of the Investment Facility

14.5.1 Where:

14.5.1.1 the Certificate of Practical Completion has not been issued on or before a date which is less than five (5) Business Days after Target Completion Date (other than where such delay has arisen due to any act or omission of the Operator);

14.5.1.2 the Operator has incurred costs to colleagues or a third party (who is not an affiliate) on the assumption that it was planning to undertake the Services at the Investment Facility from the Target Completion Date; and

14.5.1.3 where the Operator is unable to mitigate or defer such costs,

a Relevant Event shall be deemed to apply and the Operator shall be entitled to recover from the Authority such reasonable costs referred to in

clause 14.5.1.2 directly resulting from the delay, together with any reasonable abortive and/or unavoidable losses.

14.6 **Actual Completion of the Investment Facility**

- 14.6.1 The Authority shall, as soon as it becomes aware that a Target Completion Date will not be achieved and in any event not less than fifteen (15) Business Days' prior to the Target Completion Date, give notice of the anticipated date of practical completion of the Investment Facility to the Operator and the Authority shall allow the Operator to attend any inspection meetings and to comment on any matters in respect of practical completion of the Investment Facility and the extent of any snagging matters (being minor defects, deficiencies or omissions which do not prevent the issue of the Certificate of Practical Completion) to be rectified following the issue of the Certificate of Practical Completion and the Authority shall have due regard to any such comments. The Authority shall use reasonable endeavours to give the notice referred to in this clause 14.6 sooner than fifteen (15) Business Days before the anticipated date of practical completion.
- 14.6.2 Upon the date immediately following the date of issue of the Certificate of Practical Completion, the Authority will allow the Operator access to the Investment Facility for the purposes of commencing the agreed fit out of the Investment Facility (the "**Fit-Out Commencement Date**") and the provisions of clause 7 (*Nature of Land Interests*) and Schedule 15 (*Head Lease*) shall apply for the purposes of any interim licence to conduct the fit out, as well as agreeing and completing the new lease.
- 14.6.3 Unless the parties otherwise agree, the Actual Completion Date will not be earlier than the date falling four (4) weeks from the date of the Fit-Out Commencement Date.
- 14.6.4 In addition to clause 14.5.1, if the Certificate of Practical Completion in relation to the Investment Facility is not issued on or before a date which is less than five (5) Business Days after Target Completion Date (other than where such delay has been caused by the Operator):
- 14.6.4.1 such delay shall be deemed to be a Relevant Event;
 - 14.6.4.2 where relevant, the Operator shall continue to operate the existing Facilities throughout the Investment Facility Delay Period and the LOBTA shall be adjusted so as to extend throughout the Investment Facility Delay Period provided that where appropriate any payment will continue to be subject to an increase arising from the application of the indexation mechanism in Schedule 5 (*Payment and Performance Monitoring System*);
 - 14.6.4.3 such delay shall not be deemed to be an Authority Default.
- 14.6.5 If the Actual Completion Date occurs prior to the Target Completion Date this shall be deemed to be an Authority Change and the provisions of Part 1

(*Authority Changes*) of schedule 21 (*Change Protocol*) shall apply and the LOBTA shall be adjusted in accordance with clause 37 (*Financial Adjustments*).

- 14.6.6 The Authority shall procure that any snagging matters or Defects referred to in clause 9.2 to be rectified by the Building Contractor shall be completed and shall procure that the Building Contractor shall clear all rubbish, materials, scaffolding, temporary structures and equipment from the Investment Facility. For the avoidance of doubt the Operator shall not have any responsibility for the carrying out and completion of any snagging matter or Defect referred to in clause 9.2 for which the Building Contractor is responsible.

14.7 Mobilisation and Transition

- 14.7.1 The Operator shall no less than three (3) months prior to the Target Completion Date provide to the Authority updated details of the proposed fixtures and fittings, decorations, equipment and other items to be utilised within the relevant Investment Facility, together with any changes to the relevant FF&E schedule arising from any changes in the Investment Facility Assumptions.
- 14.7.2 The Parties as soon as reasonably practicable following receipt of the update pursuant to clause 14.7.1 (and in any event prior to the proposed Fit-Out Commencement Date) agree the relevant FF&E schedule and/or such changes as are necessary (acting reasonably) to the arrangements for the conducting and completing the fit out of the relevant Facility.
- 14.7.3 The Operator shall following the relevant Fit-Out Commencement Date:
- 14.7.3.1 fit out the Investment Facility in accordance with the FF&E schedule, ensuring the fit out works are executed in a good and workmanlike manner, using good quality materials and in accordance with the specifications and drawings; and
 - 14.7.3.2 carry out any Transition Tasks as detailed in Method Statement 3 (Authority Planned Facility Investments) as updated in accordance with clause 14.2.

14.8 Utilities

- 14.8.1 In respect of the Investment Facilities, the parties shall agree, prior to or on the Actual Completion Date of each relevant Investment Facility, what the Investment Facility Base Utility Cost shall be for each of the Benchmarked Utilities.
- 14.8.2 Following each 12 month period:
- 14.8.2.1 immediately following the Actual Completion Date; and
 - 14.8.2.2 the first anniversary thereof

(each an "**Annual Post Investment Consumption Period**"), the Operator shall provide to the Authority within thirty (30) Business Days the Investment Facility Actual Utility Cost. In the event that the Investment Facility Actual Utility Cost over the Annual Post Investment Consumption Period (discounting any inflation applicable over the Annual Post Investment Consumption Period) is higher or lower than the Investment Facility Base Utility Cost then where:

14.8.2.3 the reason for the difference is the tariff applied to the consumption levels,

(a) the Authority shall be entitled to the whole of the difference where it is lower; and

(b) the Operator shall be entitled to the whole of the difference where it is higher; or

14.8.2.4 the reason for the difference is the consumption level, the parties shall share the difference between the two figures equally, based on the assumed tariff.

14.8.3 Where there is a material difference between the Investment Actual Utility Cost over second year of the Annual Post Investment Consumption Period and the Investment Base Utility Cost, the Authority may, by notice, require the Operator to include a suitable explanation of any material difference between the actual Utility levels and the Target Consumption Level for that Investment Facility

14.8.4 Within twenty (20) Business Days following expiry of the second Annual Post Investment Consumption Period of each Investment Facility, the parties shall review the Actual Consumption levels at the relevant Investment Facility during both Annual Post Investment Consumption Periods, and the Actual Consumption level during the second Annual Post Investment Consumption Period shall be deemed to be the new Target Consumption Level for the purpose of subsequent Cost Benchmarking Procedures pursuant to Schedule 16 (Benchmarking) and the Operator shall update the LOBTA with the new Target Consumption Level for the relevant Investment Facility.

14.8.5 If any payments are due from one party to the other pursuant to this clause 14.8, the party due the payment shall raise an invoice for the amount due, which (if undisputed) shall be payable by the other party within 30 days of the date of the invoice.

15. Condition of the Facilities

15.1 Maintenance

The Operator shall ensure on a continuing basis that at all times its maintenance and operating procedures set out in the Service Delivery Proposals are and remain sufficient to ensure that:

- 15.1.1 the Facilities meet the requirements of this Agreement and the Services Specification;
- 15.1.2 the Facilities are kept in good structural and decorative order (subject to fair wear and tear) in accordance with this Agreement, the Services Specification and the Service Delivery Proposals;
- 15.1.3 the Operator can deliver the Services in accordance with this Agreement and the Services Specification; and
- 15.1.4 the Facilities are handed back to the Authority on the Expiry Date in a condition complying with Handback Requirements.

15.2 **Surveys**

- 15.2.1 If the Authority reasonably believes that the Operator is in breach of its obligations under clause 15.1 (*Maintenance*) then it may carry out or procure the carrying out of a survey of the Facilities to assess whether the Facilities have been and are being maintained by the Operator in accordance with its obligations under clause 15.1 (*Maintenance*). This right may not be exercised more than once a year.
- 15.2.2 The Authority shall notify the Operator in writing a minimum of 10 Business Days in advance of the date it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Operator for the survey to be carried out on a different date if such request is made at least five Business Days prior to the notified date and the Operator (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Operator's ability to provide the Services.
- 15.2.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Operator. The cost of the survey, except where clause 15.2.4 (*Surveys*) applies, shall be borne by the Authority. The Operator shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.
- 15.2.4 If a survey shows that the Operator has not complied or is not complying with its obligations under clause 15 (*Condition of the Facilities*), the Authority shall:
 - 15.2.4.1 notify the Operator of the standard that the condition of the Facilities should be in to comply with its obligations under clause 15.1 (*Maintenance*) and this Agreement generally;
 - 15.2.4.2 specify a reasonable period within which the Operator must carry out such rectification and/or maintenance work; and
 - 15.2.4.3 if the survey shows a material non-compliance by the Operator with its obligations under clause 15 (*Condition of the Facilities*), be entitled to be reimbursed by the Operator for the cost of the survey

and any administrative costs incurred by the Authority in relation to the survey other than where the costs of the rectification and/or maintenance work are less than the costs of the survey in which case the cost of the survey shall be shared equally between the Authority and the Operator.

15.2.5 The Operator shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

15.2.6 In the event of any failure by the Operator to comply with clause 15.2.5 (*Surveys*) or if the Authority is or becomes aware of a breach by the Operator of its obligations under clause 15.2.5 (*Surveys*) then the Authority shall be entitled to exercise its right of access and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred in so doing from the Operator as a debt.

15.3 **Programmed Maintenance**

The Operator shall undertake Programmed Maintenance of the Facilities in accordance with a Schedule of Programmed Maintenance which has been approved or not commented on by the Authority under the Review Procedure.

15.4 **Schedule of Programmed Maintenance**

15.4.1 The Operator shall implement the initial Schedule of Programmed Maintenance in the Agreed Form for each Existing Facility for the period from the Commencement Date to the expiry of the first Contract Year and for the period from the Additional Facilities Service Commencement Date to the expiry of that Contract Year.

15.4.2 Not later than two months prior to the commencement of each subsequent Contract Year the Operator shall submit to the Authority's Representative in accordance with schedule 7 (*Review Procedure*) a Schedule of Programmed Maintenance for that Contract Year.

15.4.3 Each Schedule of Programmed Maintenance shall contain the following information (the "**Programmed Maintenance Information**"):

15.4.3.1 details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of work (including any proposed closures of the Facilities or any element therein);

15.4.3.2 details of any effect of the Programmed Maintenance on the delivery of any of the Services; and

15.4.3.3 a proposed Lifecycle Replacement Schedule, including details of when Lifecycle Assets are proposed to be replaced;

- 15.4.4 Not later than 20 Business Days prior to the commencement of any Contract Month, the Operator may submit to the Authority's Representative in accordance with paragraph 1 of schedule 7 (*Review Procedure*) a revision to the Schedule of Programmed Maintenance for the Contract Year in which the relevant Contract Month falls showing the effect of the proposed changes to the Programmed Maintenance Information. If the Authority's Representative does not raise comments on such proposed revision in accordance with schedule 8 (*Prohibited Materials*), the Schedule of Programmed Maintenance as revised shall become the Schedule of Programmed Maintenance in respect of that Contract Year.
- 15.4.5 Where the Authority's Representative raises comments in respect of any Programmed Maintenance periods and/or hours of work shown in a Schedule of Programmed Maintenance in accordance with paragraph 1 schedule 7 (*Review Procedure*), he shall indicate whether, and if so when, the Programmed Maintenance can be re-scheduled and the Operator shall amend the relevant Schedule of Programmed Maintenance accordingly.
- 15.4.6 The Operator shall not carry out any Programmed Maintenance save in accordance with a Schedule of Programmed Maintenance to which no objection has been made under paragraph 1 of schedule 7 (*Review Procedure*) or, where comment has been raised in respect of the Programmed Maintenance periods and/or time, the Schedule of Programme Maintenance has been amended pursuant to this clause 13 (*Use of the Facilities*).
- 15.4.7 Notwithstanding that there has been no objection to a Schedule of Programmed Maintenance, the Authority's Representative may, at any time, require the Operator to accelerate or defer any Programmed Maintenance by giving written notice to the Operator, (unless otherwise agreed) not less than 40 Business Days prior to the scheduled date for carrying out such Programmed Maintenance (where applicable, as accelerated), which notice shall set out the time and/or periods at or during which the Authority requires the Programmed Maintenance to be performed. The Operator shall, within 10 Business Days, notify the Authority of the amount of any additional reasonable costs which it will incur as a direct consequence of such acceleration or deferment (the "**Estimated Increased Maintenance Costs**") and an estimate of any Revenue it will lose, calculated by reference to schedule 23 (*Loss of Revenue*). The Authority shall, within a further period of 10 Business Days following receipt by the Authority of notification of the amount of the Estimated Increased Maintenance Costs and estimated Loss of Revenue, at its option, either confirm or withdraw its request to accelerate or defer the Schedule of Programmed Maintenance. If the Authority does not respond within this 10 Business Day period, the request shall be deemed to have been confirmed. The Authority shall reimburse the Operator:
- 15.4.7.1 the direct and reasonable costs actually incurred by the Operator as a consequence of such acceleration or deferment up to, but not

exceeding, the amount of the Estimated Increased Maintenance Costs; and

15.4.7.2 the Revenue actually lost by the Operator as a consequence of such acceleration or deferment, calculated by reference to schedule 20 (*Loss of Revenue*), up to but not exceeding the amount of estimated Loss of Revenue.

15.4.8 Where Programmed Maintenance scheduled to be carried out in accordance with the Schedule of Programmed Maintenance has been deferred by the Authority's Representative under this clause 15.4 (*Schedule of Programmed Maintenance*), the Operator shall not be treated as having failed to perform the Services on account of the condition of the Facilities or any part of them from the time the Programmed Maintenance was scheduled to have been completed until the time the deferred Programmed Maintenance was scheduled to have been completed, but not afterwards, provided always, to avoid doubt, that the Operator shall not be relieved from the consequences of any failure to maintain the Facilities in respect of any period prior to the period for performing the particular work according to the Schedule of Programmed Maintenance.

15.4.9 The Operator shall deliver to the Authority's Representative not less than two months prior to the Commencement Date or (as applicable) the Additional Facilities Service Commencement Date and two months prior to the commencement of each subsequent Contract Year the latest version of the Five Year Maintenance Plan.

15.5 **Unprogrammed Maintenance Works**

15.5.1 If during the Minimum Opening Hours, the need arises for Maintenance Works which are not scheduled to be carried out as part of Programmed Maintenance ("**Unprogrammed Maintenance Works**"), the Operator may carry out such Unprogrammed Maintenance Works provided that the Operator shall notify the Authority's Representative as soon as reasonably possible (and in any event, within two (2) Business Days of the occurrence) of the extent of the necessary Unprogrammed Maintenance Works and the reasons for them. The Operator shall take all reasonable steps to minimise the duration of such Unprogrammed Maintenance Works.

15.5.2 For the avoidance of doubt, there shall be no restrictions on the performance of Unprogrammed Maintenance Works carried out outside of the Minimum Opening Hours.

15.5.3 Nothing in clause 15.5.1 (*Unprogrammed Maintenance Works*) or 15.5.2 (*Unprogrammed Maintenance Works*) shall prevent the allocation of Performance Adjustment Points and/or Performance Adjustment Payments in accordance with this Agreement.

15.6 Programmed Replacement – Lifecycle Assets

- 15.6.1 The Operator shall or shall procure the replacement of Lifecycle Assets in accordance with the Lifecycle Profile, the Five Year Maintenance Plan and the relevant Schedule of Programmed Maintenance (or if Lifecycle Assets require replacing earlier than anticipated in the Lifecycle Profile, the Five Year Maintenance Plan or relevant Schedule of Programmed Maintenance, at the time required by applying Good Industry Practice).
- 15.6.2 No later than 40 Business Days before each occasion on which any of the Lifecycle Assets are due for replacement (as identified in the Lifecycle Replacement Schedule), where the Operator does not believe it is necessary to undertake such replacement, the Operator shall submit to the Authority (under the Review Procedure) a written statement detailing:
- 15.6.2.1 the replacement(s) which the Lifecycle Replacement Schedule records as being due; and
 - 15.6.2.2 why the Operator does not believe it is necessary to undertake such replacement having regard to the condition of the relevant part and the Operator's obligations under this Agreement.
- 15.6.3 If the Authority approves in accordance with the Review Procedure (or it is determined in accordance with the Dispute Resolution Procedure) that the replacement should be deferred, the Operator shall amend the Lifecycle Replacement Schedule to reflect such deferral.
- 15.6.4 Without prejudice to clause 15.6.3 (*Programmed Replacement – Lifecycle Assets*) the Operator shall replace any items listed in the Lifecycle Replacement Schedule with parts of at least equivalent standard to those at the Commencement Date so that as a minimum any replacement part should have an equivalent or greater anticipated lifespan at the same quality as the original part.
- 15.6.5 In the event that the Operator fails to either:
- 15.6.5.1 replace any Operator Lifecycle Assets by the date that it is due for replacement (as identified in the Lifecycle Replacement Schedule), or earlier applying Good Industry Practice; or
 - 15.6.5.2 comply with clause 15.6.1 (*Programmed Replacement – Lifecycle Assets*),
- and such failure is not remedied within one month of receipt of written notice of such failure from the Authority, the Authority may remedy such failure itself and recover the cost from the Operator.
- 15.6.6 For the avoidance of doubt, the Operator is responsible for all costs of replacing the Lifecycle Assets.

15.7 Lifecycle Records

The Operator shall upon written request permit the Authority access to all the Operator's records, receipts, invoices, reports, drawings, technical specifications and performance logs relating to any Lifecycle Asset, so as to enable the Authority to obtain an accurate assessment of the figures quoted and Programmed Maintenance undertaken. The Operator shall provide all reasonable co-operation and assistance to the Authority to allow it access to such documents and information and shall in a bona fide manner respond promptly to all reasonable requests for further documents and information made by the Authority in respect of any Lifecycle Asset and the condition of the same, provided always that such access shall not in any way obstruct, hinder or prevent the Operator in the provision of the Services. The Operator shall maintain all documents and information relating to any Lifecycle Asset.

16. Further requirements

16.1 Fire Folder

The parties shall each act reasonably and in good faith to procure that an up to date fire folder is maintained for each Facility in accordance with government guidance referring to the Regulatory Reform (Fire Safety) Order 2005. In particular the Operator shall:

- 16.1.1 provide information relating to the operation of the fire alarm system and emergency lighting and sprinkler system;
- 16.1.2 maintain maintenance/test records for the fire alarm systems and emergency lighting and sprinkler system; and
- 16.1.3 prepare risk assessments for emergency events including fires;
- 16.1.4 co-operate with the Authority during practice evacuations;
- 16.1.5 prepare and communicate the evacuation procedures including instruction to staff and visitors at the Facilities on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;
- 16.1.6 prepare notices/signs reinforcing the evacuation procedures; and
- 16.1.7 take all reasonable steps to ensure and maintain discipline of the occupants of the Facilities to prevent fires and deliberate and/or accidental activation of the system.

16.2 Operating Manual

- 16.2.1 The Operator shall throughout the Contract Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services (the "**Operating Manual**").
- 16.2.2 The Operator shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Operator has

complied with its obligation to maintain and update the Operating Manual under clause 16.2.1 (*Operating Manual*).

16.3 Hazardous Substances

16.3.1 The Operator shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at the Sites and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.

16.3.2 The Operator shall maintain a COSHH register in relation to each Facility and shall ensure that a copy of each register is held at the relevant Facility, at the Operator's registered office and that a copy is given to the Authority. The Authority shall notify the Operator of any items which it or any Authority Related Party is using or storing at any of the Sites and which requires to be included in such register.

16.4 CDM Regulations

16.4.1 Responsibility for Design

As between the Operator and the Authority, the Operator shall be entirely responsible for the safety of any design which forms part of the Services and for the adequacy, stability and safety of all site operations and methods of construction.

16.4.2 The Operator as Client

In accordance with the CDM Regulations, the Authority and the Operator have elected that the Operator shall be, and shall be treated as the only client in respect of the Services pursuant to Regulation 4(8) of the CDM Regulations. The Operator shall not, prior to the completion of the Services, seek in any way to withdraw, terminate or derogate from such election.

16.4.3 Duties under the CDM Regulations

The Operator shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations requirements and duties arising under the CDM Regulations in connection with the Services (other than those that remain with the Authority pursuant to Regulation 4(8) of the CDM Regulations). The Operator shall ensure that any Health and Safety File is revised as often as may be appropriate to incorporate any relevant new information in relation to the Services during the Contract Period.

16.4.4 Authority to Co-operate and Provide Information

Upon the Operator's reasonable request the Authority shall provide to the Operator such information and documents as may be in the Authority's possession or which the Authority may reasonably obtain which may be required by the Operator to fulfil its duties as client for the purposes of the CDM Regulations.

16.4.5 Notwithstanding the election made under clause 16.4.2 (*The Operator as Client*) the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 4(8) of the CDM Regulations, to remain with the Authority, notably those duties under Regulations 4(4), 8(4) and 8(6).

17. Representatives

17.1 Representatives of the Authority

17.1.1 The Authority's Representative shall be the Director of Parks, Leisure and Libraries or such other person appointed pursuant to this clause 17 (*Representatives*). The Authority's Representative shall exercise the functions and powers of the Authority in relation to this Agreement which are identified in this Agreement as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Agreement as may be notified to the Operator from time to time.

17.1.2 The Authority's Representative shall be entitled at any time, by notice to the Operator, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Authority's Representative and all references to the Authority's Representative in this Agreement (apart from this clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

17.1.3 The Authority may by notice to the Operator change the Authority's Representative. The Authority shall (as far as practicable) consult with the Operator prior to the appointment of any replacement for the Authority's Representative, taking account of the need for liaison and continuity in respect of this Agreement. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Operator in the execution of its obligations under this Agreement).

17.1.4 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.

17.1.5 Save where notified in writing by the Authority before such act or instruction, the Operator and Operator's Representative shall be entitled to treat any act or instruction of the Authority's Representative in connection with this Agreement as being expressly authorised by the Authority and the Operator and the Operator's Representative shall not be required to determine whether authority has in fact been given.

17.2 Representative of the Operator

17.2.1 The Operator's Representative shall be [REDACTED] or such other person appointed pursuant to this clause 17 (*Representatives*). The Operator's Representative shall have full authority to act on behalf of the Operator for all purposes of this Agreement. Except as previously notified in writing before such act by the Operator to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Operator's Representative in connection with this Agreement as being expressly authorised by the Operator and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.

17.2.2 The Operator may by notice to the Authority, change the Operator's Representative. Where the Operator wishes to do so it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of this Agreement. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

17.3 Appointment of Representatives

At any time the Authority may appoint more than one Authority's Representative and the Operator may appoint more than one Operator's Representative provided in each case the appointor provides written confirmation to the Operator or Authority as appropriate of the extent of its Representative's authority.

18. Emergencies

18.1 If an Emergency arises which cannot be dealt with by performance of the Services, the Authority may instruct the Operator to use its best endeavours to procure that such additional or alternative services are undertaken by the Operator as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Facility resumes as soon as is reasonably practicable provided that the Operator shall not be obliged to provide any service which it is neither qualified nor competent to provide.

18.2 The properly incurred costs of the Operator of any additional or alternative services provided to the Authority under clause 18.1 (*Emergencies*) and/or any Loss of Revenue (if any) arising as a direct result of the Operator providing any additional or alternative services shall be borne by the Authority (unless the Emergency was caused by the Operator, in which case such costs and/or Loss of Revenue shall be borne by the

Operator). The Operator shall be entitled to issue an invoice in respect of any such properly incurred costs and/or Loss of Revenue which are to be borne by the Authority, and subject to clause 36 (*Payment*), the Authority shall pay such invoice within 20 Business Days of receipt of such invoice.

19. **Authority step-in**

19.1 **Right to Step-In**

If the Authority reasonably believes that it needs to take action in connection with the Services:

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

19.1.2 to discharge a statutory duty; and/or

19.1.3 because an Emergency has arisen,

then the Authority shall be entitled to take action in accordance with clauses 19.2 (*Notice to the Operator*) to 19.5 (*Step-In on Operator Breach*).

19.2 **Notice to the Operator**

If clause 19.1 (*Right to Step-In*) applies and the Authority wishes to take action, the Authority shall notify the Operator in writing of the following:

19.2.1 the action it wishes to take;

19.2.2 the reason for such action;

19.2.3 the date it wishes to commence such action;

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

19.2.5 to the extent practicable, the effect on the Operator and its obligation to provide the Services during the period such action is being taken.

19.3 **Action by Authority**

19.3.1 Following service of such notice, the Authority shall take such action as notified under clause 19.2 (*Notice to the Operator*) and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Operator shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Operator with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

19.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Operator, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Operator against all Direct Losses where it fails to do so.

19.4 Step-In without Operator Breach

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

19.4.1 the Operator shall be relieved from its obligations to provide such part of the Services; and

19.4.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Payment shall not be adjusted and, provided the Operator provides the Authority with reasonable assistance in connection with the Required Action, the Authority shall:

19.4.2.1 account to the Operator for all, if any, revenue received by the Authority in respect of the Services affected by the Required Action and compensate the Operator for any resulting net Loss of Revenue that arises as a direct result of the Authority taking the Required Action (so that the Operator is in a no worse position in respect of the amount of revenue and Loss of Revenue received or paid);

19.4.2.2 compensate the Operator for its net additional costs (having regard to any savings realised as a result of the Operator being relieved from its obligations to provide the relevant part of the Services) reasonably and properly incurred in providing reasonable assistance in respect of the Required Action.

19.5 Step-In on Operator Breach

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

19.5.1 the Operator shall be relieved of its obligations to provide such part of the Services; and

19.5.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Payment shall:

19.5.2.1 where it is a Surplus Annual Payment, not be adjusted; or

19.5.2.2 where it is a Deficit Annual Payment, be adjusted by deducting the Authority's costs of operation in taking the Required Action; and

provided the Operator provides the Authority with reasonable assistance in connection with the Required Action, the Authority shall be entitled to retain all revenue received by the Authority in respect of the Services affected by the Required Action, under deduction of the Authority's costs of operation in taking the Required Action. To the extent that such costs are in excess of the revenue received by the Authority in respect of the Services affected by the Required

Action, the Operator shall be liable to reimburse the Authority on demand in respect of such excess, within 20 Business Days of written demand.

PART 4 – PERFORMANCE, REPORTING AND RECORDS

20. Performance monitoring

20.1 Without prejudice to the operation of schedule 5 (*Payment and Performance Monitoring System*), the Authority and the Operator will commit themselves to the achievement of continuous, measurable and measured improvement in the delivery of the Services by complying with the obligations set out in paragraph 5 (*Performance management and reporting*) of the Specification.

20.2 Authority Monitoring

20.2.1 The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during the Contract Period for any purpose, including in order to ensure that the Services are being provided in accordance with this Agreement and for the purposes of schedule 24 (Social Value Performance Management Framework). The Operator will use its reasonable endeavours to assist the Authority in such an exercise. The Authority shall be entitled to notify the Operator of the outcome of the performance monitoring exercise, and the Operator shall have due regard to the Authority's comments in relation to the future provision of the Services.

20.2.2 Without prejudice to the Authority's rights under clause 40 (*Termination on Operator Default*) and to any other express rights under this Agreement, where the Operator has been found to:

20.2.2.1 be fraudulent in the submission of monitoring reports or reports pursuant to clause 36.2 (*Report and Invoice*); or

20.2.2.2 have submitted at least two materially erroneous monitoring reports or reports pursuant to clause 36.2 (*Report and Invoice*), within a six month period,

the Authority may by notice to the Operator increase the level of its monitoring of the Operator, and/or (at the Authority's option), of the Operator's monitoring of its own performance of its obligations under this Agreement in respect of the relevant Service or Services the subject of such fraudulent or erroneous reporting until such time as the Operator shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Agreement.

20.2.3 For the purposes of clause 20.2.2 (*Authority Monitoring*), the Authority acknowledges that if the Operator has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority as required by clause 20.2.2 (*Authority Monitoring*) but: