

## SCHEDULE 14

### NNDR

#### 1. Eligibility For NNDR Relief

- 1.1 The Operator acknowledges and agrees that, subject to the following provisions of this schedule 14 (*NNDR*), the Operator shall or shall procure that the Leisure Operator shall be responsible for the payment of NNDR applicable to:
  - 1.1.1 the Facilities other than the Additional Facilities and the Investment Facilities the period from (and including) the Commencement Date until (and including) the Expiry Date or, if earlier, the Termination Date;
  - 1.1.2 the Additional Facilities, the period from (and including) Additional Facilities Service Commencement Date until (and including) the Expiry Date or, if earlier, the Termination Date; and
  - 1.1.3 the Investment Facilities, the periods:
    - 1.1.3.1 from (and including) the Commencement Date until (and including) the Investment Facility Closure Date; and
    - 1.1.3.2 from (and including) the Actual Completion Date until (and including) the Expiry Date or, if earlier, the Termination Date;
- 1.2 The parties acknowledge and agree that:
  - 1.2.1 the Operator has, prior to the Commencement Date, submitted to the Authority information relating to the contractual arrangements and the Services and corporate structure proposed by the Operator for the purposes of the Services to assist the Authority to assess the eligibility of the Operator and/or the Leisure Operator to claim NNDR Relief in connection with the Facilities on and from the Commencement Date, such information being as set out in the Operator's tender documents (the "**NNDR Pre-Application Information**"); and
  - 1.2.2 having relied upon the information contained in the NNDR Pre-Application Information, the Authority has indicated to the Operator that the contractual arrangements and Services and corporate structure proposed by the Operator would, on the date of such indication, entitle the Operator or the Leisure Operator to claim NNDR Relief in connection with the Facilities on and from the Commencement Date at a particular rate (the "**NNDR Pre-Application Rate**") the parties acknowledging that for the purposes of the NNDR Pre-Application Rate, NNDR Relief will include mandatory rate relief only and no NNDR Policy will apply in respect of discretionary rate relief.

#### 2. Initial Application For NNDR Relief

- 2.1 The Operator shall or shall procure that the Leisure Operator shall inform the Financial Services Department of the Authority in relation to the occupation of the Facilities by the Operator.

- 2.2 The Operator shall or shall procure that the Leisure Operator shall submit an application for NNDR Relief to the Financial Services Department of the Authority on or before the Commencement Date, Additional Facilities Service Commencement Date, Actual Completion Date or following the issue of the first NNDR demand note by the Authority in respect of the Facilities (whichever is the earlier). Such application will confirm whether the contractual arrangements and project and corporate structure vary from the NNDR Pre-Application Information.
- 2.3 Where, following the application referred to in paragraph 2.2 (Initial Application for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will entitle the Operator or Leisure Operator to claim NNDR Relief in connection with the Facilities at the NNDR Pre-Application Rate, then the Operator shall apply (and continue to apply) the full benefit of such NNDR Relief to the Services and the Operator warrants and confirms that in calculating the Annual Payment it has taken into account NNDR Relief at the NNDR Pre-Application Rate in respect of the Sites and/or the Facilities (as the case may be), as contemplated in row 78 of the 'Totals (Summary Existing 15yr)' tab of the LOBTA.
- 2.4 Where, following the application referred to in paragraph 2.2 (Initial Application for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will not entitle the Operator or Leisure Operator to claim NNDR Relief at the NNDR Pre-Application Rate and instead claim it at a different rate (including for the avoidance of doubt, a nil rate) (the **"Updated NNDR Rate"**) in connection with the Facilities so that the NNDR liability for the Services increases, then:
- 2.4.1 where:
- 2.4.1.1 the information on which such determination is made is consistent (in all relevant respects) with the information submitted in the NNDR Pre-Application Information; and
  - 2.4.1.2 the reason for such determination does not arise as a result of an NNDR Failure; and
  - 2.4.1.3 the reason for such determination does not arise as a result of a Change in Law which was foreseeable at the Commencement Date,
- then, subject to the following provisions of this schedule 14, the Authority shall be responsible for the payment of additional NNDR in respect of the Facilities and the Annual Payment shall be adjusted in accordance with clause 37 (*Financial adjustments*) so as to put the Operator in no better and no worse a position than it would have been in had the relevant determination not been made;
- 2.4.2 where:

- 2.4.2.1 the information on which such determination is made is inconsistent (in any relevant respect) with the information submitted in the NNDR Pre-Application Information; and/or
- 2.4.2.2 the reason for such determination arises as a result of an NNDR Failure; and/or
- 2.4.2.3 the reason for such determination arises because of a Change in Law which was foreseeable at the date of this schedule 14,

the Operator shall be responsible for meeting the additional costs of NNDR in respect of the Facilities.

### 3. Subsequent Applications For Nndr Relief

- 3.1 Following the Operator's or Leisure Operator's initial application for NNDR Relief pursuant to paragraph 2.2 (Initial Application for NNDR Relief), the Operator shall or shall procure that the Leisure Operator shall submit an application for NNDR Relief to the Financial Services Department of the Authority whenever thereafter so required by the relevant rules and procedures of the Authority (acting in its capacity as Billing Authority). Such applications will confirm whether the contractual arrangements and project and corporate structure vary from the NNDR Pre-Application Information.
- 3.2 Where, following an application referred to in paragraph 3.1 (Subsequent Applications for NNDR Relief), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will entitle the Operator or Leisure Operator to claim NNDR Relief in connection with the Facilities at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable), then the Operator shall apply (and continue to apply) the full benefit of such NNDR Relief to the Services and the Operator will warrant and confirm that in calculating the Annual Payment it has taken into account NNDR Relief at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable) in respect of the Sites and/or the Facilities (as the case may be), as contemplated in row 78 78 of the 'Totals (Summary Existing 15yr)' tab of the LOBTA.
- 3.3 Where, following an application referred to in paragraph 3.1 (*Subsequent Applications for NNDR Relief*), the Authority (acting in its capacity as Billing Authority) determines that the contractual arrangements contemplated by this Agreement (and (where applicable) the Sub-Contracts) will not entitle the Operator or Leisure Operator to claim NNDR Relief at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable) and instead claim it at a different rate in connection with the Facilities so that the NNDR liability for the Services increases, then:
  - 3.3.1 where:
    - 3.3.1.1 the information on which such determination is made is consistent (in all relevant respects) with the information submitted in the NNDR Pre-Application Information;

3.3.1.2 the reason for such determination does not arise as a result of an NNDR Failure; and

3.3.1.3 the reason for such determination does not arise as a result of a Change in Law which was foreseeable at the Commencement Date,

then, subject to the following provisions of this schedule 14, the Authority shall be responsible for the payment of additional NNDR in respect of the Facilities and the Annual Payment shall be adjusted in accordance with clause 37 (*Financial adjustments*) so as to put the Operator in no better and no worse a position than it would have been in had the relevant determination not been made;

3.3.2 where:

3.3.2.1 the information on which such determination is made is inconsistent (in any relevant respect) with the information submitted in the NNDR Pre-Application Information; and/or

3.3.2.2 the reason for such determination arises as a result of an NNDR Failure; and/or

3.3.2.3 the reason for such determination arose because of a Change in Law which was foreseeable at the Commencement Date,

then, subject to the following provisions of this schedule 14, the Operator shall be responsible for meeting the additional costs of NNDR in respect of the Facilities.

3.4 For the avoidance of doubt, references in this paragraph 3 to "Updated NNDR Rate" shall include both any updated rate pursuant to paragraph 2.4 and also any subsequent updates pursuant to this paragraph 3.

#### **4. Alternative Structures**

4.1 Where the Operator or Leisure Operator is refused NNDR Relief at the NNDR Pre-Application Rate or the Updated NNDR Rate (as applicable) or has reason to believe that the Operator or Leisure Operator will or is likely to lose all or any NNDR Relief (whether as a result of a Change in Law or a change in the NNDR Relief Policy or otherwise), it shall notify the Authority as soon as reasonably practicable with full details of the implications of this and shall keep the Authority informed of any developments in relation to such occurrence or likely occurrence and the following provisions shall apply.

4.2 The parties shall, within 10 Business Days of the Operator's notification under paragraph 4.1 (Alternative Structures), meet to discuss the implications of the lack or loss of NNDR Relief and how the impact of the lack or loss of NNDR Relief can be mitigated. If either party identifies a way in which the whole or any part of the NNDR Relief can be lawfully obtained by the Operator and/or Leisure, the Operator shall or

shall procure that the Leisure Operator use its reasonable endeavours to obtain such NNDR Relief or assist the Authority in obtaining such NNDR Relief.

- 4.3 If the Authority so requests, the Operator shall, from the date of such request, investigate what alternative lawful contract structures and/or forms of entity (which are acceptable to the Operator, acting reasonably) may be available to minimise NNDR applicable to the Facilities and within one month of such request present its findings to the Authority in a report (the "**NNDR Report**"), provided that, except in the case of an NNDR Failure or a Change in Law which was foreseeable at the Commencement Date, the Authority shall reimburse the Operator's reasonable expenses in taking the steps required under this paragraph 4.3.
- 4.4 Upon presentation by the Operator of the NNDR Report to the Authority in accordance with paragraph 4.3 (*Alternative Structures*), the Authority shall assess the details of the NNDR Report and shall within one month of such presentation notify the Operator that it:
- 4.4.1 agrees the alternative structure and/or form of entity proposed in the NNDR Report; or
  - 4.4.2 does not agree the alternative structure and/or form of entity proposed in the NNDR Report; or
  - 4.4.3 requires further information as is reasonable to make an assessment in respect of the NNDR Report, in which case the Operator shall issue such information as soon as reasonably practicable; or
  - 4.4.4 intends to obtain (at the Authority's cost) the opinion of a barrister or third party and, in such circumstances, the Authority will use its reasonable endeavours to not delay obtaining such opinion.

Where paragraph 4.4.2 or paragraph 4.4.3 applies, the Authority shall within 20 Business Days or receipt of such further information or opinion (as the case may be) assess such additional information and/or opinion and shall notify the Operator of its decision pursuant to paragraph 4.4.1 or 4.4.1 (*Alternative Structures*) (as applicable).

- 4.5 Where the Authority accepts the alternative structure and/or form of entity proposed in the NNDR Report pursuant to paragraph 4.4.1 (*Alternative Structures*), with such revisions as may be agreed to by the parties (acting reasonably) the Operator shall proceed to implement such alternative structure and/or form of entity in accordance with Legislation and as agreed with the Authority, both parties acting reasonably. Such implementation shall be treated as an Authority Change, except where the reason for such change arises as a result of an NNDR Failure or a Change in Law which was foreseeable at the Commencement Date, in which case it shall be treated as an Operator Change.

**5. Reductions In NNDR Liability**

Where during the Contract Period, the Authority, subsequently becomes entitled to grant (and does so grant) the Operator additional NNDR Relief in respect of the Facilities and/or where the total amount of NNDR payable in respect of the Facilities decreases for any other reason, then the Annual Payment shall be adjusted in accordance with clause 37 (*Financial adjustments*) by the same amount as the amount of relief from NNDR granted and/or the reduction in NNDR liability.

**6. NNDR Failure**

Where NNDR Relief is not granted or is lost, or where the percentage of NNDR Relief is changed from or different to that assumed in the LOBTA, so as to mean that additional NNDR is payable by the Operator or Leisure Operator, or where an alternative structure and/or form of entity is implemented pursuant to paragraph 4 (*Alternative Structures*), due in each case to any NNDR Failure or a Change in Law which was foreseeable at the Commencement Date, the Annual Payment shall not be adjusted in respect of the NNDR Relief not being granted or being lost and the increase in NNDR applicable to the Facilities shall as a result of such lack of or loss of relief be for the account of the Operator.

**7. NNDR Challenges And Appeals**

7.1 If the Authority shall require (acting reasonably) the Operator shall or shall procure that the Leisure Operator shall challenge or appeal any decision of the Billing Authority in respect of NNDR in relation to any of the Facilities or otherwise seek any rebates, revaluations or other lawful methods of reducing the NNDR payable (other than by way of the Operator or Leisure Operator applying for NNDR Relief in the normal course of events pursuant to paragraphs 2 and 3 of this schedule 14, to which paragraphs 1 to 6 shall apply), in which case the Operator shall agree its proposals in advance with the Authority (both parties acting reasonably) and shall use its reasonable endeavours to succeed in any such challenge, appeal, rebate, revaluation or reduction. The Authority shall bear all reasonable and proper third party costs and disbursements properly incurred by the Operator or Leisure Operator provided the Authority gives prior written approval for such costs and disbursements.

7.2 If the amount of the NNDR is varied (including for the avoidance of doubt retrospectively) as a result of any challenge, appeal or other action taken pursuant to paragraph 7, then the Annual Payment shall be adjusted in accordance with clause 37 (*Financial adjustments*) so as to put the Operator in no better and no worse a position than if the relevant variation had not been made.

**8. Costs**

Where a party is entitled to be reimbursed its reasonable costs pursuant to this schedule 14, it shall issue an invoice in respect of such costs to the other party with such information that may be reasonably required to verify such costs. Subject to clause 36.5 (*Disputed Amounts*), the relevant party shall pay the amount of any such invoice submitted to it within 20 Business Days of its receipt.