



Royal Borough of Greenwich

The Management and Operation of Hervey Road Playing Field
as a Sports Venue
Ref: SPS 1036

Service Level Agreement

DATED 29 April 2019

ROYAL BOROUGH OF GREENWICH (1)

And

BLACKHEATH RUGBY LIMITED (2)

SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made on day-of 29 April 2019

BETWEEN

- (1) Royal Borough of Greenwich of Town Hall, Wellington Street, Woolwich, London, SE18 6PW (the "Council"); and
- (2) Blackheath Rugby Limited Well Hall Road Kidbrooke Lane Eltham SE9 6TE (The "Provider").

RECITALS:

- (A) Further to the completion of the Works on Hervey Road Playing Field, the Council and the Provider have agreed to enter into this Service Level Agreement to govern the use of the Playing Fields for the provision of sports facilities.
- (B) The Council has entered into a Lease of even date with the Provider, for the Playing Fields pursuant to a peppercorn rent.
- (C) Pursuant to a condition of the Lease, the Provider undertakes to comply with the Council's Requirements under this Agreement in operating and managing the Playing Fields.

OPERATIVE PROVISIONS:

1 Definitions and Interpretations

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"Agreement" means this agreement between the Provider and the Council consisting of these clauses and attached Schedules.

"Commencement Date" means the ~~[to be co-terminus with the commencement of the lease]~~ 29 April 2019

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Council Requirements, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and

sensitive personal data within the meaning of the Data Protection Act 2018.

“Contract Manager” means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such person as may be nominated by the Contract Manager to act on its behalf.

“Council Requirements” means the Council’s minimum requirements for sports facilities at the Playing Fields as described in Schedule 1 or as otherwise varied by the Parties in accordance with clause 21.

“Default” means any breach of the obligations of the Provider (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Provider, its employees or agents in connection with or in relation to the subject matter of the Agreement and in respect of which the Provider is liable to the Council, subject at all times to clause 20 (Force Majeure). Default shall include default by the Provider in relation to repayment of any loan granted by the Council (including the “Loan Agreement”). (See also clause 18.2.3.15 hereof).

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Greenwich Resident” means a person residing within the Royal Borough of Greenwich.

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law,

or directives or requirements of any Regulatory Body of which the Provider/Playing Fields are bound to comply.

"Lease" means the lease for the Playing Fields entered into on even date of this Agreement for a peppercorn rent.

"Licence of Works" means the agreement between the Council and Provider for the purposes of carrying out the Works at the Playing Fields.

"Loan Agreement" means the agreement dated ^{19 May 2017} ~~XXXXX~~ between the Council and Provider for the provision of a loan.

"Month" means calendar month.

"Party" means a party to the Agreement and "Parties" shall be construed accordingly.

"Playing Fields" means the Hervey Road Playing Fields, Hervey Road, Kid Brooke, London, and SE3

"Works" means the works carried out by the Provider under the Grant Agreement and Licence of Works.

"Provider Representative" means the individual authorised to act on behalf of the Provider for the purposes of the Agreement or such person as may be nominated by the Provider Representative to act on its behalf.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Council, the Provider or the Playing Fields and "Regulatory Body" shall be construed accordingly.

"Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

"Schedule" means a schedule attached to the Agreement.

“Service User” means any person who receives or who may receive the Services which the Provider shall provide under this Agreement.

“Services” means the services to be delivered to Service Users in accordance with the Council’s Requirements.

“Site” means the Hervey Road Playing Fields, Hervey Road, Kidbrooke, London, and SE3 as outlined in the lease.

“Staff” mean all persons employed by the Provider to perform the Agreement together with the Provider’s servants or agents engaged in the performance of the Agreement.

“Stakeholder” means (to include but not be limited to) the Council, the Friends of Hervey Road Playing Fields, Schools, Clubs, Greenwich Parent Voice, National Governing Bodies of Sport and other bodies with an interest in the development of Hervey Road Playing Field.

“Tender” means the tender relating to the development and operation of the Playing Fields annexed as Schedule 3.

“Term” means the period or duration of the Agreement in accordance with clause 3.1. Or such shorter period where this Agreement is terminated earlier in accordance with its terms.

“Working Day” means a day from 9am to 5pm (other than a Saturday, Sunday or bank holiday) on which banks are open for domestic business in the City of London.

1.2 In the Agreement except where the context otherwise requires:

- (a) The terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) Words importing the masculine include the feminine and the neuter;

- (d) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (g) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- (h) Headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2 Aims and Objectives



2.1 The primary aims of this Agreement are to:

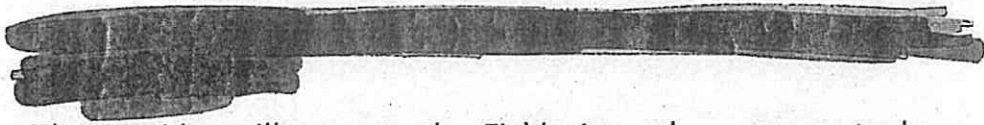
- (a) Bring back in to use the Playing Fields to deliver and make available sports facilities at the Playing Fields for use by the general public;
- (b) Form a strategic partnership between the Council and the Provider to achieve the aims below in line with the tender and Council requirements;
 - i. To increase the number of adults and children who participate in sport and physical activity at least once per week
 - ii. To enhance the opportunities for adults and children with disabilities to participate in play and sport
 - iii. To ensure that stakeholders are engaged with the operation and future developments of the site

3 Term

- 3.1 Subject to clause 3.2, this Agreement shall take effect on the Commencement Date and shall continue 30 years unless terminated in accordance with clause 7 or 18.
- 3.2 Notwithstanding anything to the contrary herein, this Agreement is intended to remain in force during the term of the Lease (and any extension or replacement thereof) only and upon the termination or expiration of the Lease (howsoever caused) shall this Agreement shall be deemed to be terminated forthwith.

4 The Council Requirements and Obligations

- 4.1 In consideration of the Council providing a Lease to the Provider at a peppercorn rent, the Provider shall deliver the Council Requirements and operate the Playing Fields in accordance with the Tender during the Term with due skill and care.
- 4.2 The Provider shall open the Playing Fields to the Service Users on a date to be agreed with the Council
- 4.3 The Provider shall agree with the Council the opening times of the playing field and facilities on an annual basis. Initial opening times shall be as specified in Schedule 1.
- 4.4 The Provider will also establish an advisory governance structure for local stakeholders and users including 1 local councillor, who will be able to give feedback on planned activities on the playing fields. This will be set up within 6 months of official opening.
- 4.5 The Provider to seek Council approval, the approval of which shall be in the Council's absolute discretion, for an upper limit on evening events at the pavilion, where a number in excess of the limit set in Schedule 1 is requested by the Provider.
- 4.6 The provider will negotiate and agree fees and charges for services with the Council on an annual basis as set out in Schedule 1.
- 4.7 The provider shall repay the Loan 




- 4.8 The Provider will operate the Fields in such a way as to be financially sustainable for the term of the Lease
- 4.9 In order to assist with the financial sustainability, the provider is permitted to provide a school engagement programme with the necessary safeguarding policies and procedures. This must be balanced with general community use hire and also free public access, which maybe limited during the winter months due to limited daylight hours. Public hire and public access will be greater in the summer months, and substantial during summer holidays
- 4.10 During school use, the sessions can be closed due to the safeguarding policy and procedures adhered to by the school. Certain club sessions can also be closed but limited and agreed with the council. The remaining of the time can be available for hire and public access.
- 4.11 In relation to public access, agreement where possible for the field to be open and closed by local volunteers, when the club are not operating.
- 4.12 The provider will adhere to conditions set in the Planning decision dated 6th December 2016 relating to hours of operation of the pavilion and floodlights as set out in Schedule 1.
- 4.13 The provider will work in partnership with the Council to ensure that the National Playing Fields Association's guidance prohibiting dog walking on Playing Fields and near playgrounds is enforced.
- 4.14 The provider will seek prior permission from the Council for any changes to its constitution or to the constitution or charitable status of any associated charitable trusts which it may set up to assist it in operating the Playing Fields
- 4.15 The provider shall seek permission from the Council for any change to the pitch layout, once the provisional plan has been submitted or the number of pitches marked out on the Playing Fields.

4.16 The Council shall be entitled to inspect and examine the performance at the Playing Fields at any time during the hours of 9am to 5pm or during normal opening hours. Generally, this will be upon giving reasonable written notice to the Provider but unannounced inspections are also permitted.

4.17 The Provider shall at all times deliver the Services and Council Requirements in accordance with the Law, including but not limited to child welfare and vulnerable adults.

4.18 The Provider shall carry out Disclosure and Barring Service (DBS) checks for Staff as required or deemed necessary in the delivery of the Services.

4.19 The Provider shall not in the performance of the Council Requirements undertake any action or conduct itself in such manner as might, in the reasonable opinion of the Council Representative, damage the good name and reputation of the Council. In the event that the Provider becomes aware of any complaint or of any actual or potential breach of this requirement (whether or not a complaint has been received) it shall promptly notify the Council's Contract Manager of the incident/circumstances and provide such further information as the Contract Manager may reasonably require to allow it to investigate the incident, what is being done to resolve it and prevent it reoccurring. If the Council receives any complaint or considers that the Provider or the Playing Fields may, through act or omission, be likely to damage the good name and reputation of the Council or is not otherwise complying with the terms of this Agreement then it shall notify the Provider who shall investigate, provide observations to the Council and take such action as reasonably required to resolve the issue and minimise any damage.

4.20 The Council will provide reasonable such support and assistance to the Provider as it may reasonably request.

5 Financial Management

- 5.1 The Playing Fields shall be operated by the Provider as set out in this Agreement and in accordance with the Tender and Council Requirements.
- 5.2 With effect from the Commencement Date, the Provider shall be responsible for all costs incurred in the running of the Playing Fields and the Provider shall bear all financial risks associated with the Playing Fields, subject to any provision to the contrary in the Lease.
- 5.3 The Provider shall ensure that separate accounting records and arrangements are made for the Playing Fields.
- 5.4 Unaudited accounts should be produced by the Provider for the Playing Fields from the Commencement Date commencing April or September, to be agreed. The annual accounts will be independently audited. Such accounts shall, without limitation, consist of:
 - (a) Income attributable to the Playing Fields linked to the number of Service Users using the Playing Fields; and
 - (b) The costs of the Playing Fields both direct and indirect. Any 'overhead' or management costs of the Provider which are attributed to the Playing Field's accounts shall be such as are fair and reasonable in the circumstances.
- 5.5 The Provider shall supply to the Council on reasonable notice access to and copies of supporting information relating to these accounts including but not limited to invoices, remittances, funding information and grant claims and an explanation of the calculations behind the accounts. The annual accounts shall be presented to meetings of the Council and Provider where appropriate.
- 5.6 The Provider shall ensure accounting shall be open, shared, and transparent with the council and shall be in accordance with the Law and generally applicable accounting rules. The accounts will remain commercially sensitive.
- 5.7 Further to the accounts produced in accordance with clause 5.4, any surplus made on a yearly basis from the Commencement

Date will be reinvested into the service in such a manner as the parties jointly agree.

- 5.8 Any losses shall be borne by the Provider.
- 5.9 The Provider shall every 3 years from the Commencement Date, prepare a 3-year plan on how the long term maintenance and condition of the Playing Fields will be addressed in terms of management and cost over a period of not less than 5 years from the Commencement Date. This must include a demonstration of how the costs will be met.
- 5.10 The provider is not responsible for the maintenance of the boundary vegetation i.e. trees and will be the responsibility of the Royal Borough of Greenwich.

6 Complaints in Services

- 6.1 The Provider shall operate a complaints policy which shall be consistent with the Council's own complaints policies and procedures and will be reviewed as and when required.

6 Defaults

- 7.1 In the event a Default occurs, the Council shall notify the Provider within a reasonable period, but in any event within 10 Working Days after becoming aware of the occurrence of the Default:
 - (a) the action required to remedy the Default;
 - (b) time period for which the Default shall be remedied by; and
 - (c) the effect the Default has or continues to have on the Council's Requirements and the Services.
- 7.2 On receipt of the notice referred to in clause 7.1 the Provider shall remedy, make good or mitigate the Default within such reasonable time period specified by the Council having regard to the nature of the Default. Such costs referred to in clause 7.1 shall be borne by the Provider.

- 7.3 The Provider shall in addition attend a meeting with the Contract Manager to discuss the Default and the steps being taken or taken to remedy the Defect.
- 7.4 If the Parties are unable to agree upon a course of action to resolve the Default, the matter shall be referred to dispute resolution in accordance with clause 16.
- 7.5 The Council retains the right to terminate the Agreement by giving the Provider a minimum of one month's notice in writing if a material Default has occurred and
- (a) the Council has served a notice in respect of such Default on the Provider in accordance with clause 7.1; and
 - (b) Such Default has not been remedied in accordance with clause
- 7.6 In the event that 7.5 shall occur the Lease shall terminate forthwith.

8 Remedies Cumulative

- 8.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

9 Monitoring

- 9.1 The Council will review the delivery of the Services on an annual basis through the provision of data set out in Schedule 2, and will meet as and when required or on the request of either party.
- 9.2 Within 6 months of opening the council and the provider will agree performance measures, targets and priorities for the forthcoming year on an annual basis or as and when required. A report of Service changes proposed including, but not limited to, an evaluation of any statistics or information required to be kept.

- 9.3 The Council and the provider will carry out an annual review of the service delivery and performance measures, targets and priorities and those set, if applicable, by the external funders, both to evaluate performance and to inform activities for the following year.
- 9.4 The Provider shall prepare a report within 1 month of each anniversary of the Commencement Date containing all of the information necessary in order to enable the Council and the provider to carry out the above review.
- 9.5 The Council shall, in conducting that review, comment on the performance of the Services and make recommendations on the performance of the Services going forward.
- 9.6 The Council shall distribute the results of its review to the Parties within 1 month of completing it.
- 9.7 The Council may ask such questions of the Provider as it considers appropriate to properly inform its review and the Provider will fully cooperate in providing answers.

10 Discrimination

- 10.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

11 Health and Safety

- 11.1 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement which causes any personal injury, breach of the peace or damage to the Playing Fields.
- 11.2 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders,

regulations and codes of practice relating to health and safety, which may apply in the performance of the Agreement.

- 11.3 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

12 Data Protection Act

- 12.1 Each party shall ensure that any information supplied to the other party shall comply with the requirements of all legislation in force from time to time including but not limited to the Data Protection Act 2018, (as replaced, modified or re-enacted from time to time) ("DPA") and the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR")
- 12.2 All persons who are or become a data processor (the "Data Processor") on behalf of the Authority shall comply with all relevant legislation especially the DPA and GDPR and shall indemnify the Authority for and against any actions which arising from breach of such legislation.
- 12.3 The Data Processor shall ensure that all information held by the Data Processor in connection with the provision of the Service/s relating to any individual are stored and handled in a secure and confidential manner, in accordance and compliance with the Data Processor's duties under the DPA and/or the GDPR.
- 12.4 The Data Processor shall ensure that all its relevant employees are aware and comply with applicable obligations under the DPA and/or GDPR. The Data Processor shall further ensure all staff receives regular training and keep abreast of all developments.
- 12.5 The Data Processor shall have in place throughout the Contract Period an Information Security Management Procedure and shall ensure that all relevant employees are made aware of and trained in regards to the Procedure.
- 12.6 The Data Processor shall within twenty-four (24) hours, notify the Authority of any information security breach and/or any breach of the Data Processor's obligations pursuant to the DPA

and/or the GDPR, together with the steps the Data Processor shall take to rectify the breach and to avoid any future such breaches occurring.

12.7 To the extent that the Data Processor is required to process (as defined in the DPA and in Articles 28, 29 and 32 of the GDPR) Personal Data (as defined in the DPA and/or the GDPR as applicable) on behalf of the Authority for the purposes of performing its obligations under this Contract the Data Processor shall:

12.7.1 process such Personal Data only in accordance with instructions from the Authority;

12.7.2 process such Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under this Contract;

12.7.3 in accordance with Principle 7 of the DPA and Article 32 of the GDPR, implement appropriate technical and organisational security measures to

12.7.4 protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed; and

12.7.5 ensure a level of security appropriate to the risk is applied taking into account the harm which might result from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed. The security measures shall include, but not be limited to;

(a) the pseudonymisation and encryption of the Personal Data;

(b) the ability to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services;

(c) the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident ; and

(d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

12.8 not transfer any Personal Data outside of the European Economic Area without the prior written approval of the Authority;

12.9 return the Personal Data to the Authority on the expiry or earlier termination of this Contract;

12.10 obtain prior written consent from the Authority in order to transfer, copy, share or otherwise disclose in any manner Personal Data, Sensitive Personal Data (as defined in the DPA and/or GDPR as applicable) or information of the Authority arising in respect of this Contract to any other person, including but not limited to any Sub-Contractor or agent of the Data Processor;

12.11 make available to the Authority information processed under this Contract regarding a Data Subject (as defined in the DPA and/or GDPR as applicable) upon request by that Data Subject for a copy of their personal information ("Subject Access Request"). The Data Processor shall comply with the Subject Access Request within the statutory timeframe as identified in the DPA and/or GDPR (as applicable).

12.12 The Data Processor shall immediately notify the Authority if the Data Processor receives:

- a) a request from any person whose Personal Data it holds to access his Personal Data; or
- b) a complaint or request relating to the Authority's obligations under the DPA and/or the GDPR.

12.13 The Data Processor shall assist and co-operate with the Authority in relation to any

12.14 complaint or request received, including, but not limited to:

12.14.1 providing full details of the complaint or request;

12.14.2 complying with the request within the time limits set out in the DPA and/or GDPR (as applicable) and in accordance with the instructions of the Authority; and

12.14.3 promptly providing the Authority with any Personal Data and other information requested by him.

12.15 The Data Processor shall have in place systems that comply with the DPA and/or GDPR (as applicable), specifically in terms of data storage, use, handling, disclosure, retention and destruction of the Authority's data. Further the Data Processor shall carry out the processing of the Authority's data strictly in accordance with this Contract and only under the express instructions of the Authority.

12.16 The Data Processor shall ensure and warrants to the Authority that the terms of any sub-contract made in relation to this Contract shall ensure that the Sub-Contractor shall comply with the same obligations as imposed on the Data Processor pursuant to this Clause 8 (Data Protection).

12.17 The Data Processor shall ensure that it does not knowingly or negligently fail to do something that places the Authority in breach of its obligations under the DPA and/or the GDPR (as applicable). The Data Processor shall indemnify and keep indemnified the Authority against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever

in respect of any breach by the Data Processor of this Clause 8 (Data Protection) or any more general breach by the Data Processor of its obligations under the DPA and/or the GDPR (as applicable).

12.18 The Data Processor will allow the Authority to conduct audits of the Data Processors, information or processes relating to the Data Processor's compliance with its obligations under the DPA and/or GDPR (as applicable).

13 Confidentiality

13.1 Each Party:

- (a) Shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) Shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

13.2 Neither Party shall use any Confidential Information it receives from the other otherwise than for the purposes of the Agreement.

13.3 The provisions of clauses 13.1 and 13.2 shall not apply to any Confidential Information received by one Party from the other:

- (a) Which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) Which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

- (c) Which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) Is independently developed without access to the Confidential Information; or
- (e) Which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 14.

13.4 Nothing in this clause shall prevent either Party disclosing any Confidential Information for the purpose of:

- (a) The examination and certification of their respective accounts; or
- (b) Any examination pursuant to the Local Audit and Accountability Act 2014 Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Provider/Council has used its resources; or
- (c) Disclosing any Confidential Information obtained from the other Party to any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
- (d) To any person engaged in the performance of the Services for any purpose relating to or ancillary to the Agreement provided that in disclosing information under sub-paragraph 13.4.(c) the disclosing Party discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

14 Freedom of Information

14.1 The Provider acknowledges that Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with these information disclosure requirements.

15 Publicity and Media

- 15.1 Without prejudice to the Parties' obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to the timing and form of the announcement or publicity.
- 15.2 Neither Party shall use the other Party's name or brand in any promotion or marketing or announcement of orders without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 15.3 The Provider shall acknowledge the Council's and external funders support and involvement in the Playing Fields as agreed by the Council and external funders.
- 15.4 The Provider shall ensure that there is no promotion, advertising, sponsorship, merchandising or sale of tobacco based products, by the Provider at or in connection with the Playing Fields at any time during the Term and shall use its reasonable endeavours to procure that no sale of tobacco based products is conducted by any other person at the Playing Fields.
- 15.5 The name of the Playing Fields shall be 'London Marathon Playing Field, Hervey Road'. This has now had to change to 'Hervey Road Playing Fields.' This is as a result of emergency services response.

16 Dispute Resolution

- 16.1 If there is a dispute between either Party concerning the interpretation or operation of this Agreement then either one of the Parties may notify the other that it wishes the dispute to be referred to a meeting of senior managers of each of the Parties to resolve, negotiating on the basis of good faith.
- 16.2 If after 21 days (or such longer period as the Parties may agree) of the date of the notice referred to in clause 16.1 the dispute has not been resolved, then either one of the Parties may notify the other that it wishes to attempt to settle the dispute by mediation or in accordance with the Playing Fields for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.
- 16.3 If the Parties do not agree on the mediator, then either one of the Parties may request CEDR to appoint one.
- 16.4 The Parties must:
- (a) Use their best endeavours to ensure that the mediation starts within 20 Working Days of service of notice referred to in clause 16.2; and
 - (b) Pay the mediator's fee in equal shares.
- 16.5 Any agreement reached between the Parties as a result of mediation shall be binding on them, as set out in the Model Procedure. If the dispute has not been settled by mediation within 10 Working Days of the mediation starting, then either Party may commence proceedings.
- 16.6 Neither Party shall be precluded by anything in this clause 16 from taking such steps in relation to court proceedings as they may deem necessary or desirable to protect their respective positions.
- 16.7 The use of the dispute resolution procedures set out in this clause shall not prevent the Council from exercising the rights of termination set out in clause 18 where it has the right to do so should it consider that necessary.

16.8 All notifications under this clause 16 must be made in accordance with clause 24 (Notices).

17 Liability and Insurance

17.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

17.2 The Royal Borough of Greenwich will cover the public liability of the use of the facility by schools and any organised additional sessions; until the facility is formally handed over to the provider.

17.3 The Provider shall effect and maintain with a reputable insurance company throughout the Term- the following policies of insurance which will be put in place prior to the public opening of the facility with

(a) Employer's liability insurance for not less than £5 million for each occurrence or series of occurrences arising from a single event. This includes, all staff, bar and office and also ground staff and volunteers

(b) Contents insurance for the pavilion, covering all areas

17.4 Without prejudice to clause 17.3 the Provider will liaise with the Council on the necessary aspects of insurance cover and jointly the Council and the Provider shall put the necessary policies and procedures in place.

17.5 The Provider shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

17.6 Royal Borough of Greenwich will cover the Public Liability of the field under its current policy, where public access is available,

closed sessions for schools, the play area, and even if the rugby club or hirers are playing/ training.

18. Termination

18.1 The Council has the right to terminate this Agreement:

- (a) By providing written notice to the Provider of not less than 3 months.; or
- (b) In accordance with clause 7.5.

18.2 If any one or more of the following occurs the Council may terminate the Agreement in writing immediately: –

- (a) The Provider or any of its Staff (whether with or without the Provider 's knowledge) directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - i. Induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
 - iii. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or
 - iv. committing any offence under the Bribery Act 2010;
- (b) the Provider or any of its employees shall:
 - i. have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - ii. have given any reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
- (c) the Provider:
 - i. committing an act of fraud or bankruptcy; or

- ii. suffering any step to be taken by any person for or with a view to the winding up of the Provider; or
- iii. going into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or re-construction); or
- iv. suffering an order to be made for a moratorium on any of its indebtedness; or
- v. passing a resolution to reduce, redeem or purchase its share capital or (if applicable) convening a meeting as required by Section 656 of the Companies Act 2006; or
- vi. stopping, suspending or threatening to stop or suspend payment to any of its creditors; or
- vii. taking or attempting to take proceedings with a view to re-adjustment, re-scheduling or deferment of any indebtedness owed to its creditors; or
- viii. becoming insolvent or unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (but with the omission of the words "to the satisfaction of the Court" in Sections 123(1) and 123(2) thereof); or
- ix. proposing or convening a meeting of or entering or proposing to enter into any kind of general assignment, arrangement or composition with or for the benefit of its creditors (including, without limitation, making a proposal under Parts I or VIII (as the case may be) of the Insolvency Act 1986); or
- x. applying for or consenting to or convening a meeting for the purpose of approving an application for or consenting to the appointment of a receiver, trustee, liquidator, administrator, administrative receiver or similar officer of itself or of all or substantial part of its assets or suffering any such receiver, trustee, liquidator, administrator, administrative receiver or similar officer being appointed or any steps being taken which are intended to lead to such an appointment; or

- xi. suffering an encumbrancer to take possession or to exercise or attempt to exercise any power of sale over any of the Provider's property; or
- xii. having substantial distress attachment execution or other legal process levied, enforced, sued or threatened upon any of its property; or
- xiii. having any substantial judgment or order made against it which remains unsatisfied for more than 7 days; or
- xiv. suffering any defaults (or having any payment or any other obligation accelerated) under any trust deed, loan agreement, debenture or other agreement or obligation whatsoever or howsoever incurred relating to borrowing or financing (including without limitation, conditional sale or factoring agreements or any other arrangements whatsoever which facilitate or are designed to facilitate the provision of finance or working capital to the Provider) under any guarantee or any other kind of contingent liability entered into or undertaken by the Provider; or
- xv. shall default on any loan made by the Council to the Provider, whereupon the Council shall also be entitled in its absolute discretion to terminate the Lease;
- xvi. any change occurring in the control of the Provider; or
- xvii. The Lease is terminated in accordance with its provisions.

18.3 Where the Council terminates this agreement the Council shall also be entitled in its absolute discretion to terminate the Lease.

18.4 The provisions of clause 19 shall apply following termination.

19. Effect of Termination

19.1 In the event the Agreement is terminated the Lease shall forthwith terminate.

19.2 At the end of the Term (and howsoever arising) the Parties shall forthwith deliver to the other upon request all the other Party's property (including but not limited to materials, documents,

reports, information) relating to the Agreement in its possession or under its control and in default of compliance with this clause, either Party may recover possession of its property and both of the Parties grants a licence to the other or its appointed agents to enter (for the purposes of such recovery) any premises of the other Party where any such items may be held.

20 Force Majeure

20.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for 3 months, the Party not affected may terminate this Agreement by giving 14 days' written notice to other Party.

21 Variation procedure

21.1 Any variation of this Agreement must be agreed by both Parties before it can be adopted, and will be formalised by obtaining signatures of both Parties.

22 Assignment and Sub-contracting

22.1 This Agreement is personal to the Provider and the Provider shall not, except insofar as is necessary in the provision of the Services, sub-contract any part or whole of the Agreement without the Council's consent.

22.2 The Provider shall not assign its interests under this Agreement to any successor body which takes over that Party's functions.

23 Entire Agreement

23.1 The Agreement, the Agreement for Lease, the Lease and the Licence for Alterations referred to in the Agreement for Lease constitute the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

24 Notices

24.1 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in this clause 24.1. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

24.2 For the purposes of clause 24.1, the address of each Party shall be:

For the Provider: Blackheath Rugby Limited

Address: The Rectory Field, Charlton Road, Blackheath, London, SE3 8SR,
Company Number 03556245, whose registered office is Club @ Well Hall,
Kidbrooke Lane, London SE9 6TE

For the attention of: Russell Ticehurst, Chairman

Tel: 020 8850 0210

E-mail: Russell.ticehurst@blackheathrugby.co.uk

For the Council: Royal Borough of Greenwich

Address: Town Hall, Wellington Street, London, SE18 6PW

For the attention of: Tim Hetherington, Head of Sport, Leisure
and Libraries and Adventure Playgrounds

Tel: 020 8921 8290

E-mail: tim.hetherington@royalgreenwich.gov.uk

Either Party may change its address for service by serving a
notice in accordance with this clause.

25 Contracts (Rights of Third Parties) Act 1999

- 25.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent or representative of either the Provider or the Council), or any Service User shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

26 Governing Law

- 26.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

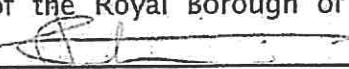
27 No Agency or Partnership

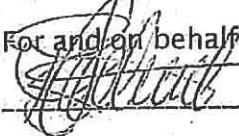
- 27.1 The Provider shall not in any way whatsoever:
- (a) be, act or hold itself out as an agent of the Council; nor
 - (b) make any representations or give any warranties to third parties on behalf or in respect of the Council; nor
 - (c) bind or hold itself out as having authority or power to bind the Council; nor
 - (d) incur liability on behalf of the Council.

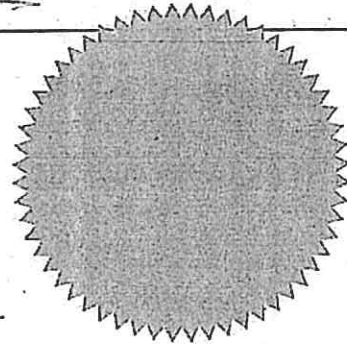
27.2 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between neither the Parties nor any landlord and tenant relationship.

IN WITNESS whereof the Agreement has been executed by each of the Parties in accordance with their respective constitutions.

Signed by

For and on behalf of the Royal Borough of Greenwich Director /
Authorised signatory 

Signed by
For and on behalf of Provider

Director/ Secretary





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SCHEDULE 1
THE COUNCIL REQUIREMENTS

- No facilities should be developed without formal written agreement from the Council's Authorised officer.
- Funding applications to any external bodies should not be submitted without formal written agreement from the Council's Authorised officer.
- The right to allocate an officer to any project team that is formulated to progress a capital project.
- Within 6 months of opening the council and the provider will agree performance measures, targets and priorities for the forthcoming year on an annual basis or as and when required in the sports development plan.
- The right to receive an annual progress report on the operation delivery against the agreed sports development plan.
- The Council to approve an upper limit on the annual number of evening events to be held at the pavilion on an annual basis. Initial agreement for 25 events per year, to be reviewed
- Within 6 months of opening, the [REDACTED] advisory governance structure is formulated for Council approval that provides representation for local stakeholders

and users, a minimum of 1 local Councillor. Meetings should not be less than twice yearly.

- The right to receive accurate annual progress reports in the first year of the agreement and six monthly reports thereafter or change by agreement.
- Fees and charges for services to be mutually agreed with the council. Any changes to be agreed with the council and increases to be in line with CPI.
- Opening hours of the grass playing pitches are subject to agreement by the Council if different to the following opening hours: Initial agreement to be for a minimum of 9 a.m. to 5 p.m. opening where light permits it in the winter months and opening from 7 a.m. to 9 p.m. in the summer months and 8.00 a.m. – 8.00 p.m. on Sunday with the option of moving to earlier and longer opening hours in the summer months with the prior approval of the Council
- As part of the annual review of opening hours, undertaken in the first 3 years, consideration will be given to extending opening hours further in line with the clubs expanding provision on the playing fields
- Loan repayment to 

- Discounts on services shall be offered to local residents and Greenwich One Card holders in agreement with the Council.

- Receive an annually updated five-year business plan, after first 12 months of operation, within 3 months of this period, detailing future developments and planned upgrades.
- The Provider will operate the Fields in such a way as to be financially sustainable for the term of the Lease. Any surplus or loss to be reported to the Council on an annual basis.
- The provider will adhere to conditions set in the Planning decision dated 6th December 2016 relating to hours of operation of the pavilion and floodlights. The pavilion opening hours are to be between 8.00 a.m. and 11.00 p.m. Monday to Sunday. The hours of operation of the floodlights to be 7.00 a.m. – 9.00 p.m. Monday to Saturday and 8.00 a.m. – 8.00 p.m. on Sunday.
- The provider will ring-fence all surplus income generated from the operation of the site for the provision of community sport and recreational activity at the Hervey Road Playing Fields, or for reinvestment into and improvement of the facilities located at the Fields. The detail of such reinvestment is to be agreed with the Council on an annual basis.
- The provider or any of its associated organisations will seek permission from the Council for any changes to its constitution or to its charitable status

SCHEDULE TWO

Monitoring requirements

A Report on the delivery of the requirements set out in the Agreement will be made at annual intervals via agreed monitoring and with reporting channels to be agreed between the provider and the Council.

The information provided shall include but shall not be limited to the following set out:

- A. Sports delivered at the Playing Fields under all funding streams;
- B. Non- traditional sporting activity activities , if applicable
- C. Detailed information on the Schools engagement programme including, which Schools, and curriculum activities undertaken
- D. Details of any other community engagement work undertaken including but not limited to the advisory governance structure referred to in 4.4
- E. Numbers of Service Users and percentage of these who are:
 1. Greenwich Residents, with breakdown by postcode;
 2. Gender;
 3. Ethnicity; and
 4. Disability
 5. Age banding to be agreed