

DATED 2010

GOVERNING BODY OF [ADVANCED LEARNING CENTRE]

and

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

[]

SPORTS COMMUNITY USE AGREEMENT RELATING TO THE USE OF SCHOOL
PREMISES

A G R E E M E N T

A. C. Frosdick, LL.B., Dip.LG,
Borough Secretary,
Town Hall,
Barnsley,
S70 2TA.

THIS AGREEMENT is made the day of Two thousand and ten

BETWEEN:

1. The **Governing Body** of [Advanced Learning Centre] ("ALC") and
2. **Barnsley Metropolitan Borough Council** of the
Town Hall, Church Street, Barnsley, South Yorkshire, S70 2TA1 ("the Authority")
and
3. [A company] (Co. No.) whose registered office is situate at
("Contractor")

Individually a Party to this Agreement and collectively Parties

RECITALS

(A) The Authority in conjunction with the Governing Body has as its mission the

"working together to enrich lives through enjoyable sport and leisure choices for
all". Its strategic aims are to work towards, improving the quality of sporting and
physical activities provided within the Borough whilst engaging with local
communities, young people and other target groups to develop and encourage
health and well being throughout the Borough of Barnsley (this highlighted section
is taken directly from BPL's Strategic Plan 2007 to 2012) Is it right to be in here/could
this be legally challenged? In furtherance of their aims and objectives the Authority

and the Governors in conjunction with Sport England and the ALC wish to promote
community use of the sports facilities at the ALC, to encourage more people to

participate in and succeed in sport and to bring about a more active and successful sporting community.

(B) The Governing Body of the ALC as the body primarily responsible for the control of the use of the ALC premises during the “Core Hours” as defined within the Governors Agreement between the Governors and the Authority dated [] and annexed hereto at Schedule 7 wishes to enter into this Agreement along with the Authority in order to make the ALC’s sports facilities available (when their use is not required by the ALC) for use by the local community. Further, the Authority and the Governing Body wish to increase and improve the quality of sporting opportunities not only for the pupils of the school but also for the wider community groups.

(C) The Governors by virtue of S[] Education Act are entitled to enter into this Agreement.

IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

1.1 In this Agreement the following words and phrases shall unless the context otherwise requires have the following meanings:-

“**Advanced Learning Centre**” means the premises situate at []
delineated in red on the Plan at Schedule 5.

“Authorised ALC Officer” means the School Headteacher or such other person as the school may nominate in writing to the Parties to act on behalf of the Advanced Learning Centre.

“Authorised Authority Officer” means the [] or such other person as the Authority may nominate in writing to the Parties to the act on the Authority’s behalf.

“Authorised Contract Officer” means the Chief Executive or such other person as the Contractor may nominate in writing to the Parties to act on the Contractor’s behalf.

“Authorised Governing Body Officer” means the Chair of Governors or such other person as nominated in writing to the Parties to act on behalf of the Governing Body.

“BLEP” Barnsley Local Education Partnership Limited.

“Business Plan” as attached to the Schedule 4 herein

“Charging Rates” as identified within the Business Plan at Schedule 4.

“Commencement Date” means the date upon which this Agreement is executed.

“Community Use Period” being the period of time designated by the Parties within the Business Plan at Schedule 4 which the leisure facilities are open for use by the community.

“Continuous Improvement Strategy” as defined within Schedule 6.

“Core Hours” as defined within the Governor’s Agreement at Schedule 7.

“ECJ” European Court of Justice.

“Facilities Management” means the services provided by the Facilities Management Team

“Facilities Management Team” means the personnel from John Laing Infrastructure Limited or any third party notified to the Parties from time to time.

“Governor Related Party” as defined within the Governors’ Agreement.

“ICT Contractor” shall mean Bull TCL and Civica or any other subsequent contractor who may be appointed from time to time.

“Initial Term” means the period from the commencement date until the expiry of this Agreement.

“Key Performance Indicators” (KPIs) as defined within Schedule 6.

“Leisure Operations” means the provision of the sporting functions as defined within Schedule 1.

“Leisure Operation Start Date” means the date on which the leisure operation shall begin at Leisure Property.

“Leisure Suite” means the area of the ALC within which the leisure operations are provided as at Schedule 2.

“LEP” Local Education Partnership.

“Opening Time” means the time when the building is open to the Parties to prepare for the Community Use Period and or other operational requirements.

“Requirements” may mean but it is not limited to use by the Parties to hold meetings, discussion forums to monitor performance to check facilities and to

carry out necessary repairs and installations as agreed between the Parties and the Facilities Management Team.

“Pricing Policy” as defined within the Business Plan at Schedule 4.

“Priority Groups” means persons falling within the following categories: -

Age 16 and under

Age 45 and over

Girls and Women

Lower Socio Economic Groups

Minority Groups

People with Disabilities

“Project Company” [SPV1 Limited[, [SPV2 Limited], [SPV3 Limited].

“Regulations” means all legislation, Health & Safety Regulations, Statutory Codes and Practices, Authority and Facilities Management Team Policies in force or coming into force from time to time.

“Reporting Periods” means monthly quarterly and annual reporting processes as required and determined between the Parties as outlined with the Business Plan as Schedule 4

“Sports Development Programme” as agreed between the Parties and highlighted within the Business Development Plan at Schedule 4.

“Sport England Requirements” means the implementation and continuing Authority and Governors’ obligation to ensure that each ALC serving individual communities operates its sporting provision in accordance with the principles set out herein.

“TEU” Treaty of the European Union.

“Term” means the period commencing on the commencement date and ending on the expiry of the initial term or any further period agreed in accordance with Clause 2.3.

“Users” shall mean all persons entering onto and egressing from the Leisure Suite and parts of the ALC from which they need to pass to go about their purpose.

1. **“INTERPRETATION”**

1.1 The Clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

1.2 Any Schedule to this Agreement shall have effect as if set out within the body of this Agreement.

1.3 Where the context requires the singular it shall also include the plural and vice versa and a reference to the male gender shall also include the female general and vice versa.

1.4 An obligation by the Parties not to do any matter or thing includes an obligation not to cause or to permit the doing of such act, matter or thing by anyone directly or indirectly under their control.

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1.5 Unless expressly stated to the contrary any reference to a specific statute or to statutes generally includes any statutory extension or modification, amendment or re-enactment of it or them and any regulations or Orders made under it or them.

2. **COMMENCEMENT AND DURATION OF THE CONTRACT**

The Term of the Agreement

- 2.1 The Contractor has been appointed by the Governing Body and the Authority to manage and operate the sports facilities of the ALC in accordance with the terms of this Agreement.
- 2.2 This Agreement shall commence on the date that it is signed by all the Parties and expire on the [anniversary thereof “the initial expiry date”]
- 2.3 The term of this Agreement may be extended “extended expiry date” in accordance with Clause 3.
- 2.4 This Agreement is subject to termination before the initial expiry date or the extended expiry date as defined within Clause 9.

3. OPTION TO EXTEND THIS AGREEMENT

- 3.1 The Term of this Agreement may be extended for an additional period of 12 months after the initial expiry date in accordance with Clause 3.2 but only if the extension is not considered to be a material change in contract and such decision shall be at the Authority’s sole discretion .
- 3.2 No less than 12 months before the initial expiry dates the Parties shall meet to review:-
 - 3.2(a) The performance of the Agreement in accordance with the original contract requirements and in particular the achievements by the Contractor of the delivery of the aims and objectives of the Contract.
 - 3.2(b) the bench marking and the attainment and maintenance of the targets set within the Business Plan including testing how the

continual improvement and key performance indicators have been achieved throughout the Contract period.

3.2(c) The needs of the population within the community.

3.2(d) Whether it would be beneficial to the community to extend the initial expiry date including the assessment of value for money principles.

3.2(e) How the Business Plan should develop for the next 12 month period.

3.3. If the Governors and the Authority agree that it would be beneficial to extend the initial expiry date then they shall issue a joint written notice extending the initial expiry date. If the Parties do not agree that such an extension is appropriate the Agreement shall terminate on the date of the initial expiry.

3.4 The Contractor shall not be entitled to any compensation from either the Governors or the Authority for termination of the Contract based upon the achievement of the initial expiry date or the extended expiry date.

3.5 In any event the Contract may only be extended if the Authority is satisfied that such an extension will not put any Party in breach of TEU principles and current ECJ case law.

4. **TRANSITION AND HANDOVER ON EXPIRY/TERMINATION**

4.1 The Parties shall co-operate with each other (and/or other such replacement provider) to ensure a smooth transition and handover of service on the expiry or earlier termination of the Agreement and in either case for a reasonable period thereafter;

4.2 For the purposes of this Agreement the meaning of the term co-operate shall include:-

- 4.2(a) Liaising with the Governors, Barnsley Local Education Partnership including such ICT contractors as appropriate, and the Facilities Management Team and any replacement provider and providing reasonable assistance and advice concerning the transfer of the services to the Governors, Local Authority and/or replacement provider.
- 4.2(b) Allowing the Authority, Barnsley Local Education Partnership, the Facilities Management Team, Governors and the replacement provider access to the premises (at all reasonable times and upon reasonable notice) which shall not impede ongoing services provision.
- 4.2(c) Providing to the Authority, Governors and/or replacement provider all and any information which is reasonably required for the efficient transfer of responsibility of the service , for the avoidance of doubt all information which is commercially sensitive to the Contractor or any of its associated companies shall not be provided; and for the purposes of this Clause commercially sensitive shall mean information which would, if disclosed to a competitor or other Contractor give that Competitor a competitive advantage over the Contract and thereby prejudice the business of the Contract;

4.2(d) Doing all necessary Acts (including entering into Contracts) to ensure that the replacement provider or the Governors and the Authority obtain all of the Licences and rights associated with the continuing performance of the services.

5. **AUTHORITY OBLIGATIONS**

The Authority agrees:

- 5.1 To grant a Licence to the Contractors to enter into the ALC and use the designated premises. The terms of the Licence to be agreed prior to entry into this Agreement and signed by the Parties on the same date as the coming into force of this Agreement.
- 5.2 To ensure that the terms of the Facilities Management Contract between itself and the Facilities Management Team dated July 2006 ¹are met to the standards set out within that Agreement.
- 5.3 To liaise with the Facilities Management Team ICT Contractor and the Barnsley Local Education Partnership to put forward any proposals for changes to the facilities as agreed in writing between the Governors, the Authority and the Contractor and to work with all parties to ensure that the ALC is used to its full potential for the benefit of its community.

¹ July 2009 Phase 1 Schools

- 5.4 To use its reasonable endeavours to recover any applicable loss in accordance with the terms of the payment mechanism appropriate to the Facilities Management, Contract, Payment Mechanism.
- 5.5 Not to cause or permit anything to be done which will put the Contractor or the Governors in breach of either the terms of this Agreement or any such other Agreement associated herewith.

6. **OBLIGATIONS OF GOVERNORS:-**

The Governors Agree:

- 6.1 To grant a Licence in conjunction with the Authority to the Contractors to access the ALC to carry out and provide the Service as contained within this Agreement on behalf of the Parties.
- 6.2 Not to hinder the Contractor in the performance of his obligations under the terms of this Agreement and to assist in progressing any communications between the Facilities Management Team, the ALC and the Authority for obtaining any approvals necessary to develop the Business opportunities as provided within the Business Plan set out at Schedule 4.
- 6.3 That they have the right to withhold their consent to any proposals put forward by the Contractor in relation to changes of the Business Plan and any changes to the ALC such consent should not be unreasonably withheld and in

any case must be communicated to the Contractor in writing within 30 days of the proposal being made.

6.4 Not to permit any Governor Related Party to damage or cause damage to any of the equipment or property belonging to the Contractor in the event that any such damage is cause then the Governors shall indemnify the Contractor in relation to such damage:-

6.5 Governors shall ensure that the Contractor has in place all necessary insurance to comply with the terms of the Governor's Agreement entered into between the Authority and Governors dated [] at all times.

7. **CONTRACTORS OBLIGATIONS**

7.1 The Contractor Agrees

7.2 It shall perform its duties in accordance with the terms of this Contract having full regard to the obligations contained within the agreed Business Plan at Schedule 4.

7.3 The duties shall be performed with the utmost regard to the users of the Leisure Facilities and to the aims and objectives of this Agreement and the Continual Improvement Plan and Key Performance Indicators at Schedule 6.

7.4 The Contractor shall operate on an open book basis and shall give access to all documents, books and accounts which relate directly or otherwise to the provision of the services and the performance of the Agreement at the Leisure Facilities and within the Leisure Suite.

- 7.5 The Governors and the Authority shall keep confidential all commercial sensitive information as identified by the Contractor except where such disclosure is required by professionals representing either the Authority or the Governors to advice in terms of audit, Business Planning or Legal Matters.
- 7.6 The Contractor accepts that the Authority is subject to the terms of the Freedom of Information Act and the Environmental Regulations in terms of disclosure of the information into the public domain.
- 7.7 Where any such requests or requests for disclosure of information is received by the Authority, that it shall work with the Authority to identify any information it deems to be exempt from disclosure in accordance with this Freedom of Information Act, and provide full and detailed rationale for the application of such exemptions including reasons which take into consideration the Public Interest Test as defined within the aforementioned Acts.
- 7.8 If the Authority discloses any information in accordance with the Freedom of Information Act or any other such legislative requirements neither the Authority nor the Governors shall be deemed to be in breach of any term of this Agreement and the Contractor shall not be entitled to recover any costs damages or otherwise from either the Authority or the Governors.

7.9 The Contractor shall at all times have and keep in place all necessary insurances, licences to carry out the business within this Agreement and shall provide for inspection such policies of insurance and licences as necessary to the Governors, Authority and the Facilities Management Team as requested. The levels of insurance should be sufficient to cover all risks associated with the performance of the duties within the terms of the Agreement and the Business Plan and in any event agreed with the Authority and Facilities Management Team prior to taking them out. The Facilities Management Team, JLIS and [SPV1], [SPV2], [SPV3] shall be entitled in all matters relating to insurance or such other matters contained within this Agreement which directly involve them be entitled in accordance with the Contracts (Rights of Third Parties) Act 1999 be expressly entitled to enforce or pursue any right or remedy which would have been entitled to him or action against the Contractor as if he was a named party to this Contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly). If approval of the level if not received within 15 working days of a request being made from either party then the Contractor shall be entitled to use his own discretion provided he has carried out and completed an appropriate risk assessment with his insurers which should be kept on record and supplied to the Authority and Facilities Management Team upon request.

7.10 The Contractor has received a copy of the relevant Facilities Management Agreements and Project Company, LEP Project Agreements as entered into by

the [SPV1], [SPV2], [SPV3] BLEP and, the Authority for the provision of FM Services and acknowledges the terms therein. The Contractor shall not undertake any action or omission that would put the parties to the aforementioned Agreements in breach of such and shall in the event of such a breach immediately indemnify the Authority, the SPV1, JLIS, BLEP (Facilities Management Team) for any loss or damage caused. The Contractor shall not do anything which might invalidate any insurance maintained by the Advanced Learning Centre or the Facilities Management Team in respect of the leisure facilities or which might increase the level of the premiums to be paid by the Facilities Management Team, and/or the Authority.

- 7.11 Only use the leisure facilities for the purposes of performing the duties and obligations as set out herein and within the Business Plan and not to use the leisure property or allow the leisure property to be used for any other activities which are or could be dangerous, offensive illegal or immoral or which may or may become a nuisance to other ALC users, the ALC or the owner occupier of any neighbouring property.
- 7.12 The Contractor confirms that in carrying out and performing his duties in accordance with the Business Plan he has diligently carried out such investigations as may be necessary to ensure he is not causing or permitting to be caused any breach of covenant or restriction which may be contained with any deeds relating to the land upon which the ALC is situate. If the

Contractor breaches any such covenant then he shall indemnify the Governors, the Authority against any costs arising out of such breach.

7.13 The Contractors shall employ sufficient persons to carry out and perform the obligations and the duties contained herein; such personnel should have the appropriate level of qualification to undertake the duties expected.

7.14 The Contractor shall be responsible for all costs associated with such employment including salary, national insurance contributions, appropriate pension schemes and other associated expense. Any such employed person or sub contracted personnel shall not become nor should they hold themselves out as being an employee of Barnsley Metropolitan Borough Council or any of its partnering organisations. The Contractor shall ensure that any person employed or otherwise engaged to perform any duties in accordance with this Contract requiring access, entrance into and upon the ALC premises shall be checked in accordance with the Authority's policy on CRB checking and if such convictions are shown as a result of those checks the Contractor shall be obliged to immediately notify the Governors and the Authority who shall determine whether any such person is able to take up employment within the ALC. The Authority's decision in this respect will be the final position.

- 7.15 To ensure that it practices safe recruitment in line with the agreed national and local policies and procedures in checking the suitability of staff who volunteered to work with children, young people, vulnerable adults and members of the public.
- 7.16 The Contractor shall ensure that any member of its staff or volunteers involved in the provision of the service of the leisure facilities at the leisure property is questioned pro-actively and on a regular basis as to whether he or she has any convictions, and that results of and appropriate findings are notified to the ALC and to the Authority immediately.
- 7.17 The Contractor shall be responsible for all costs associated with the administration of the business and shall agree with the Facilities Management Team and ICT Contractor any costs for use of equipment and facilities which are shared and this is not limited to use of telephone, reception, photocopying, ICT, equipment use, printing, utilities, toilet facilities and kitchen use as appropriate and necessary for the due performance of this Agreement.
- 7.18 The Contractor shall also be responsible for advertising and promoting the Community Use of the facilities on a pro-active basis and shall implement as part of the Business Plan a strategy to facilitate the achievement of the agreed

Continuous Improvement Plan and Key performance Indicators. The Contractor shall be responsible for all costs associated therewith.

- 7.19 The Contractor take all necessary steps to ensure the health, safety and welfare of all persons involved in the leisure facilities and at its own costs comply with all health and safety requirements in relation to any features of the leisure facilities which are special or unique to the leisure property.
- 7.20 The Contractor shall not to make any alterations, or attachment or additions to the leisure property without having first obtained the written approval from the Authority, the Governors and the Facilities Management Team. The Authority and the Governors will consider any requirement for alterations to the Leisure Facilities which the Contractor may propose. The Contractor shall provide such requests to the Authority and the Governors in writing this should include all necessary details of costs and works to be carried out including a rationale for the requirement for change. In any event the Facilities Management Team under the terms of their contract dated [] will also liaise with the Authority in this respect and therefore the Contractor must ensure that no work is carried out until all written procedures have been fulfilled by all parties.
- 7.21 Whilst carrying out the Leisure Operation, at the Leisure Property the Contractor shall comply with the ALCs and the Authority's policies relating

to the conduct of staff, health and safety, security arrangements and Data Protection legislation.

7.22 The Contractor shall inform the Governors of the ALC and the Authority in writing of any material change or proposed material change to the Business Plan prior to any such change taking place. If it is not reasonably practical to provide such notice prior to the change then the Contractor shall ensure that such notification is made as soon as reasonably practical thereafter.

7.23 If requested by any or all of the following, the ALC, the Authority, Barnsley Local Education Partnership and the Facilities Management Team, the Contractor shall from time to time attend meetings with the school or its representatives for the purposes of the named [] school to conduct periodical reviews of the operational performance of the Contractor, including performances against any targets set and reviews of such other obligations under this Agreement. Such meetings shall be held at reasonable times and no more frequently than quarterly unless the parties have agreed otherwise. The personnel attending such meetings on behalf of the Contractor shall be of an appropriate seniority and responsibility to answer any questions put to the Contractor and make any necessary comments and decisions.

- 7.24 The Contractor shall prepare and present reports at such meetings in respect of all aspects of its performance under the terms of this Agreement. A full set of minutes shall be provided by the Contractor following each meeting.
- 7.25 The Contractor shall not sub contract any of its duties or obligations under this Agreement without prior written consent of the ALC and the Authority.
- 7.26 The Contractor acknowledges that the ALC is part of the Authority's Building Schools for the Future Project and will corporate with the ALC and Barnsley Partnership for Learning and the Facilities Management Team during occupation and the operation of the leisure facilities at the ALC premises.
- 7.27 In addition to all other insurances and licences required in accordance with this Agreement the Authority shall require the contractor as a minimum to take out and maintain for during the term, third party and public liability insurance with a minimum limit of indemnity of £10m in respect of each and every claim.
- 7.28 Employers Liability Insurance to comply with all statutory requirements with a minimum limit of indemnity of £50m in respect of each and every claim.
- 7.28 Such policies of insurance shall be provided to the Authority upon request.

8. **LIABILITY**

8.1 The Contractor hereby acknowledges that neither the ALC, Barnsley Metropolitan Borough Council or Barnsley Partnership for Learning or the Facilities Management Team will be responsible for any of the actions of the Contractor. The Contractor will provide an update of the Leisure Operation at the Leisure Facilities at its own costs and risks without recourse to either the ALC, the Authority the Facilities Management Team or Barnsley Partnership for Learning. The Contractor will accordingly hold the ALC, the Authority, Barnsley Partnership for Learning and the Facilities Management Team fully protected and indemnified in respect of all losses, liability costs, charges, expenses, action proceedings, claims or demands incurred by or made upon the ALC in connection with any death, personal injury, loss or damage suffered by any third party using or effected by the Leisure Operation cause or contributed to by the Contractor, their employees, agents, contractors or sub contractors without prejudice to the right of the contractor to claim an indemnity or contribution from the ALC, the Authority, the Facilities Management Team and Barnsley Partnership for Learning where the same has been caused by or contributed to by any neglect, default or breach of Contract by the ALC, the Authority, the Facilities Management Team, Barnsley Partnership for Learning, or any agent, employee or sub contractor of the ALC.

9. Termination

- 9.1 Either party shall be entitled to terminate this Agreement by notice in writing to the other during the Term and without liability for compensation or damages in the event that the other party fails to comply with any of its obligations and conditions on its part to be observed and performed under this Agreement and the failure remains (if capable of being remedied) unremedied for 14 days after being called to the others attention.
- 9.2 Either party shall be entitled to terminate this Agreement on three months notice in writing to the other party at any time after the Initial Term.
- 9.3 The ALC may terminate the Agreement in the event that
- (i) The Contractor threatens to cease to carry out its business, becomes insolvent, or has an administration order made against it makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt.
 - (ii) The Contractor purports to assign the burden or benefit or charge the benefit of this Agreement in contravention of Clause [10.3]
 - (iii) The Contractor has offered or given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing or doing forbearing or forborne to do any action in relation to the obtaining of

this Agreement or if the like act shall have been done by any person employed by the Contractor or acting on the Contractor's behalf.

9.4 Any termination of this Agreement shall be without prejudice to any rights or remedies that may have accrued to other parties.

9.5 Upon termination of this Agreement the Contractor shall within 14 days remove all assets belonging to the Contractor (including customer data bases) and make good at its own cost any damage caused on removal of the assets.

10. **GENERAL PROVISIONS**

10.1 All information, notices and other matter which are required to be provided, shall be made available or delivered pursuant to this Agreement to the ALC's Authorised Officer the Contractor's Authorised Officer and the Authority's Authorised Officer.

10.2 In the event a dispute arises out of or in connection with this Agreement then such dispute shall be referred to each Authorised Officer. Should the respective persons fail to resolve the dispute then all the disputes or differences which shall at any time arise between the Parties whether during the Term or afterwards touching or concerning this Agreement or its construction or effects, or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or

arising out of the subject matter of this Agreement shall be referred to a single Arbitrator to be agreed upon by the parties or in default of the Agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being.

10.3 Notice under this Agreement shall be deemed, given when delivered by hand, when transmitted on receipt of a print out confirming the transmission which sent by electronic mail or fax, or five days after mailing if sent by mail, postage paid and addressed to the Other Party at the address at the head of this Agreement. If one of the parties changes its address for notification purposes then it shall give the other party written notice of the new address and date on which it shall become effective.

10.4 The Contractor shall not be entitled to assign, dispose of or deal with any of its rights and obligations under this Agreement.

10.5 The Contractor shall at all times ensure that he complies with the Equalities Act 2010 and where impact assessments are required to be carried out the Contractor must comply directly with that requirement.

10.6 Each party shall hold in full confidence all documents, materials and other information whether technical or commercial and shall not except with the

other party's written consent, (save for the documents which are within normal public domain), publish or disclose to any third party. Subject however to Clause () of this Agreement in accordance with the Freedom of Information Act 2000 the Environmental Information Regulation 2004 the Data Protection Act any other applicable codes governing access to information.

10.7 All Parties shall be released from their respective obligations in the event of national emergency, war, prohibited governmental regulation, advice from Police or competent authority or if any other cause beyond reasonable control of the parties or either of them render the performance of this Agreement impossible.

10.8 Any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as it is the intention of the parties without legality or secondly strategically.

10.9 Each party acknowledges that this Agreement contains the whole Agreement between the parties and that it has not relied upon on any oral or written

representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

- 10.10 This Agreement supersedes any prior Agreement between the parties whether written or oral and any such prior Agreement is cancelled as at the commencement date but without prejudice to any rights which have already accrued to either of the parties.
- 10.11 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any rights under the Agreement shall restrict or prejudice the exercise of any other rights granted by this Agreement or otherwise available to it.
- 10.12 The failure by either party to enforce at any time for any period any one or more of the Terms or Conditions under this Agreement shall not be a waiver of them or of the rights at any time subsequently to enforce all Terms and Conditions of this Agreement.
- 10.13 No variation of any provision of this Agreement shall be effective unless in writing and refers specifically to this Agreement and is duly executed by each party.

10.14 This Agreement shall be governed by English Law. The Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Agreement and any matter arising from it.

10.15 Nothing in the Agreement is intended to confer any benefit upon any person who is not party to it. The Contract (Rights of Third Parties) Act 1999 is expressly excluded in this Agreement.

10.16 Nothing in this Agreement is intended to create a partnership or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, acting name of, or on behalf, or to otherwise bind the other party.

EXECUTED as a DEED by the parties hereto the day and year first above written

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council)

was hereunto affixed in the)

presence of:-)

Borough Secretary/ Authorised Signatory

THE COMMON SEAL of)

«compnam1»)

was hereunto affixed in the)

presence of:-)

Director

Director/Secretary

SCHEDULE 1 - LEISURE OPERATIONS

The List contained herein is not exhaustive or intended to be limiting -

- Racket Games - Tennis, Badminton, Squash, Table Tennis
- Ball Games - Football 5 a-side
Football Local league
Rugby
Netball
Basketball
Volleyball
Hockey
Cricket
Rounders
- Karate, Judo, Tai Chi, Yoga, Pilates, Tae Kwan Do
- Gym, Aerobics, Step Classes, other exercise classes, ie Skipping, Boxercise,
LBT
- Dance, Zumba
- Archery, Field and Track
- Running Clubs
- Health and Fitness Suite - Weight Training
Cardio Vascular

and consideration to be given to Seminars on ranges of topics from Health and Fitness, Improvement in the Community, Raising Awareness and Coaching and Leadership courses, Yoga Training Courses.

SCHEDULE 2 - LEISURE PROPERTY

[Plan edged red for each ALC location showing areas of access and egress and other areas which will need to be used - toilets, kitchens, etc.]

SCHEDULE 4 – BUSINESS PLAN

Charging Rates

The Authority requires the Contractor to operate the Community Use Sports

Function predominantly as a “Pay as you Play” Pay as you Play is excellent in terms

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of encouraging community recreation , however concern over the word

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‘predominantly’ – this may not be enough – the contractor is likely to want to block

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book as much as possible to keep costs to a minimum function at such reasonably

competitive rates as necessary to perform the service provision within the Contract.

The Authority also requires the Contractor to support the Community and the

Authority in adhering to any Concessionary Rates and or policies which may be in

place or as amended from time to time by either Governors or the Authority.

stipulate operating the Council’s ‘Passport to Leisure’ scheme regarding

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concessionary rates. Ultimately the facilities is an access for all and should operate

on that basis.

Profits

The Governors of [] ALC would expect to receive a [negotiated] % of profit share

on all profit after deduction of overheads and 10% mark up to accommodate

business operation, renewables, expenses.

Community Use Period

[To be taken from Governors’ Agreement].

If additional time is required this must be negotiated between all parties and any cost increase to the Authority through the Unitary Charge must be paid for by the Contractor/Governors from the profit sharing mechanism herein.

Sports Development Plan and other Reporting Requirements

The Sports Development Plan should show links with the PE Curriculum and the development of pupil use of the facilities in conjunction with the pro-active marketing strategy within the catchment area to extend membership by attracting new users and broadening the knowledge of the community.

SCHEDULE 5 - EQUIPMENT

Equipment to be provided by Contractor.

Equipment to be provided by ALC.

Condition survey and Agreement on Life cycle and maintenance costs.

SCHEDULE 6

- Key Performance Indicators
- Continual Improvement Targets

PE and Gym classes within School.

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Are the details of the opening times for community use stated in a separate document, including evenings, weekends and school holiday use? What will the policy/closedown agreement be during special events e.g. exams?

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SCHEDULE 7 - GOVERNORS' AGREEMENT