

DATED

2013

- (1) TONBRIDGE & MALLING BOROUGH COUNCIL
- (2) TONBRIDGE & MALLING LEISURE TRUST

BUSINESS TRANSFER AGREEMENT
relating to the transfer of
leisure services

VERSION 5: 4 SEPTEMBER 2013

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BETWEEN:

- (1) **TONBRIDGE & MALLING BOROUGH COUNCIL** whose principal office is at Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ (the "**Council**").
- (2) **TONBRIDGE & MALLING LEISURE TRUST** a charitable company limited by guarantee registered on 15 March 2013 whose registered company number is 08447331 and whose registered office is at 1-5 Martin Square, Larkfield, Aylesford, Kent ME20 6QL (the "**Trust**").

WHEREAS:

- (A) The Council provides or procures the provision of a range of services for the residents of and visitors to the administrative area of Tonbridge & Malling including leisure services.
- (B) The Trust's primary purpose is to provide or assist in the provision of facilities for recreational and leisure time activities and to promote healthy active lifestyles.
- (C) The Council and the Trust have identified a number of joint objectives to increase participation in recreational and leisure time activities and to promote healthy active lifestyles.
- (D) The Council and the Trust have entered into an arrangement to achieve these common objectives.
- (E) As part of these arrangements, the Trust will manage the Council's leisure facilities and bookings for sports pitches in Tonbridge.
- (F) The Council and the Trust, acting at arm's length and with the Trust taking appropriate independent advice, have agreed certain outputs for the leisure services.
- (G) The Council, having duly considered the Business Plan presented to it by the Trust, has agreed pursuant to its powers set out in Section 19 of the Local Government (Miscellaneous Provisions) Act 1976, Section 1 of the Localism Act 2011 and all other enabling powers and regulations thereto to enter in to this Agreement with the Trust.
- (H) This Agreement identifies those elements of the Service to be transferred to the Trust to enable the Trust to manage and operate the Leisure Facilities and the terms and conditions of that transfer.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

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

"Accounting Records" means the Council's accounting records relating to the Services for the period up to the Completion Date;

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| "Administering Authority" | means Kent County Council; |
| "Administration Regulations" | means the Local Government Pension Scheme (Administration) Regulations 2008; |
| "Admission Agreement" | means an admission agreement entered into in accordance with regulations 5 or 6 of the Administration Regulations substantially in the form set out in Schedule 4; |
| "Admission Body" | means a community admission body for the purposes of regulation 5 of the Administration Regulations or a transferee admission body for the purposes of regulation 6 of the Administration Regulations; |
| "Assumed Contracts" | means all those contracts, engagements or orders entered into prior to the Completion Date by the Council in relation to the purchase of stock and the supply of services exclusively relating to the Services (and for the avoidance of doubt excluding the Retained Contracts) and which at the Completion Date remain to be performed in whole or in part including without limitation those as set out in Schedule 1; |
| "Benefit Regulations" | mean The Local Government Pension Scheme (Benefits, Membership and Contribution) Regulations 2007; |
| "Business Day" | means any day (except Saturday and Sunday and bank holidays); |
| "Business Information" | means the materials books data records and costing documents of the Council relating to the Services which exist at the date of this agreement and will be required by the Trust to deliver the Services but excluding the VAT Records, Accounting Records and Employee Records for the period prior to the Completion Date, the originals of which shall be retained by the Council. Copies of these records shall be made available to the Trust upon request; |
| "Cessation Date" | means any date on which the Trust or a Sub-Contractor ceases to be an Admission Body other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees; |
| "Compensation Regulations" | means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006; |

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| "Completion" | means completion of the obligations of the parties hereto in accordance with the provisions of Clause 3.1; |
| "Completion Date" | means 1 November 2013; |
| "Creditors" | means trade and other debts accrued charges and all other amounts owing by the Council in connection with the Services as at the Completion Date provided that such transactions have been authorised by the Council and are in the normal course of trading; |
| "Debts" | means the sums owed to the Council by the Debtors as at Completion Date; |
| "Debtors" | means the trade debtors of the Council relating to the Services as at the Completion Date; |
| "Eligible Employees" | means <ul style="list-style-type: none"> (a) the Transferring Employees who were active members of, or were eligible to become active members of, the LGPS on a Relevant Transfer Date; or (b) an employee who transfers to the Trust from the Council as part of an agreed transfer of Additional Services pursuant to the Management Agreement who was an active member or eligible to be an active member of the LGPS immediately prior to such transfer; or (c) a new employee of the Trust who the Trust invites to become a member of the LGPS; |

PROVIDED THAT:

- (i) the employee is not a member of another occupational pension scheme (within the meaning of Section 150(5) of the Finance Act 2004) other than where the accrual of benefits under the pension scheme would not affect the status of the Scheme as a registered pension scheme within the meaning of Chapter 2 of Part 4 of the Finance Act 2004; and
- (ii) the employee otherwise satisfies the requirements of the LGPS Regulations relating to eligibility for membership of the LGPS;

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| "Employee Records" | means the Council's employment records relating to the Service for the period up to the Completion Date; |
| "EIR" | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
| "FOIA" | means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation. |
| "Future Contractor" | means each and every subsequent service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Agreement; |
| "Information" | has the meaning given under Section 84 of the FOIA; |
| "Initial Contribution Rate" | means the percentage of Pensionable Pay of the Eligible Employees payable by the Trust to the LGPS Fund in its capacity as an Admission Body under the Administration Regulations as calculated as at the Completion Date by an actuary appointed by the Administering Authority; |
| "Intellectual Property Rights" | means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in design, knowhow, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration, which is created, brought into existence or acquired, by the Council for the purposes of delivering the services; |
| "Leases" | means the Leases in relation to the Leisure Facilities to be entered into by the parties of even date herewith; |
| "Leisure Facilities" | means the Council's leisure facilities including Larkfield Leisure Centre, Tonbridge Swimming Pool, Angel Centre, Poulton Wood Golf Centre and The Games Hut; |
| "LGPS" | means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972, as amended from time to time; |

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| "LGPS Fund" | means the Tonbridge & Malling Borough Council Pension Fund being a fund within the LGPS; |
| "Long Term Sick Leave" | means absence on sick leave for a continuous period of twelve weeks or more; |
| "Losses" | means all damage losses indebtedness claims actions cash expenses (including the cost of legal or professional services legal costs being an agent/client client paying basis) proceedings demands and charges whether arising under statute contract or at common law; |
| "Management Agreement" | means the management agreement entered into between the Council and the Trust on even date hereto relating to the minimum standards required in relation to the management of the Leisure Facilities; |
| "New Employees" | means employees of the Trust or a relevant Sub-Contractor (who are not Transferring Employees or Transferring Future Employees) who are recruited after the Completion Date and allocated to the performance of the Services or any material part thereof; |
| "Office Equipment" | means the desks, chairs, ICT equipment and other sundry items used to furnish the offices and reception areas of the existing Leisure Facilities; |
| "Pensionable Pay" | has the meaning set out in Regulation 4 of the Benefit Regulations; |
| "Registered Office" | means the Trust's Registered Office; |
| "Relevant Transfer Date" | means the date on which an Eligible Employee transfers to the Trust and/or one or more Sub-Contractor by virtue of a relevant transfer for the purposes of the Transfer Regulations (as defined in Clause 9.1); |
| "Request for Information" | shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply); |
| "Retained Contracts" | means the contracts and agreements relating to the Services but retained by the Council details of which are set out in Schedule 2; |
| "Schedule of Apportionments" | means the schedule prepared in accordance with Clause 4; |
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| "Services" | means the provision of leisure and community services by the Trust pursuant to the Management Agreement; |
| "Service Fee" | has the meaning as defined in the Management Agreement; |
| "Stock" | means the stock in trade at the Leisure Facilities owned by the Council or agreed to be bought by the Trust for the purposes of providing the Services including (without limitation) materials goods and other assets purchased for resale and stores together with packaging and promotional materials; |
| "Sub-Contractor" | means a person to whom the Trust sub-contracts any of its obligations under the Management Agreement; |
| "Support Agreement" | Services means the Support Services Agreement between the parties relating to the provision of services by the Council to the Trust entered into on an even date herewith; |
| "Transfer Regulations" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| "Transferring Employees" | means those employees of the Council whose contract of employment becomes, by virtue of the application of the Transfer Regulations in relation to what is done for the purposes of carrying out this Agreement, a contract of employment with the Trust and who are listed in Schedule 3 of this Agreement; |
| "VAT Records" | means the Council's records relating to the Services for VAT purposes as referred to in Section 49(1)(b) Value Added Tax Act 1994 for the period up to the Completion Date; |
| "Year" | means the period from 1 April to 31 March in each year. |

In this Agreement unless the contrary is specified:

- 1.1.1 the table of contents and headings in this Agreement are for convenience only and shall not affect its construction;
- 1.1.2 words denoting the singular shall include the plural and vice versa. Words denoting any gender include both genders;
- 1.1.3 references to Clauses sub-Clauses and schedules are to Clauses sub-Clauses and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant schedules to this Agreement unless otherwise stated;
- 1.1.4 any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all

instruments orders notices regulations directions bye-laws permissions and plans for the time being made issued or given there under or deriving validity there from and any reference to all statutory instruments orders regulations or other subordinate legislation made pursuant to that statutory provision;

- 1.1.5 an agreement or other document is a reference to that agreement or document as from time to time supplemented or amended;
- 1.1.6 "writing" shall be construed so as to include any communications effected by email, telex, cable, facsimile transmission or any comparable means, but excluding writing appearing only on the screen of a visual display unit or other similar device;
- 1.1.7 "month" shall mean the period of a calendar month and where there is no corresponding day in a following or preceding month the period shall end on the last day of that following or preceding month;
- 1.1.8 any references to a "day" shall mean a period of 24 hours running from midnight to midnight;
- 1.1.9 references to time of day shall be construed during the period of summer time to be British Summer Time and otherwise to Greenwich Mean Time;
- 1.1.10 any phrase introduced by the terms "including" "include" "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.1.11 any reference to a document being in the "agreed form" means a document in a form agreed by the parties and initialled by or on behalf of each of them for the purposes of identification.

1.2 in the event of any inconsistency between this Agreement and the Management Agreement, the conflict shall be resolved according to the following order of priority:

- (a) this Agreement
- (b) the Management Agreement.

2. TRANSFER OF THE SERVICES

2.1 In consideration of the Trust hereby agreeing to and entering into and performing this Agreement in accordance with its terms and providing the Services in accordance with the Management Agreement, the Council transfers:

- 2.1.1 the benefit (subject to the burden) of the Assumed Contracts which shall be transferred in accordance with the provisions of Clause 6;
- 2.1.2 the Transferring Employees;

2.1.3 the Stock which shall be sold subject to any title transfer and retention arrangements relating to its purchase;

2.2 It is expressly agreed and declared that the following are expressly excluded from the transfer hereby agreed:

2.2.1 the Debts;

2.2.2 all liabilities relating to the Services and outstanding at the Completion Date or accrued or referable to a period prior to the Completion Date;

2.2.3 the Retained Contracts;

2.2.4 any amount due or recoverable in respect of tax relating to the Services attributable to periods of transactions completed before Completion Date;

2.2.5 the Council's VAT Records, Accounting Records, and Employment Records for the period prior to the Completion Date;

2.2.6 the Council Equipment (as defined in the Management Agreement) which shall be loaned to the Trust pursuant to the terms of the Management Agreement;

2.2.7 the Leisure Facilities which will be leased in accordance with the terms of the Leases;

2.2.8 the Intellectual Property Rights which shall be dealt with in accordance with the Management Agreement.

2.3 Save to the extent expressly provided herein and save as provided by law the Trust does not assume hereunder any obligation in respect of any liability of the Council in relation to the Services or otherwise.

3. COMPLETION

3.1 Completion shall take place on the Completion Date when the following shall take place:

3.1.1 the Council shall deliver all the Office Equipment capable of passing by delivery;

3.1.2 the Council shall deliver the Business Information;

3.1.3 the parties shall execute the Management Agreement;

3.1.4 the parties shall execute the Leases;

3.1.5 the parties shall execute the Support Services Agreement

3.1.6 the Trust shall execute the Admission Agreement and provide the Council with a copy thereof if not a party to the Admission Agreement.

3.2 For the purposes of this Clause 3 the Trust shall accept delivery of the Business Information by its being left at the premises of the Council and the Council shall at the cost and expense of the Trust and on prior reasonable notice make available to the Trust for inspection whether in situ or by way of loan any original or copy data held by it in relation to the Business Information.

3.3 Prior to the Completion Date, the parties shall undertake a joint stock take of all Stock at the Leisure Facilities for audit and accounting purposes. The Council shall transfer the Stock at cost to the Trust. The Stock shall be valued on the basis of its purchase price. The Trust shall pay for the Stock within three months of the Commencement Date.

4. APPORTIONMENTS

4.1 The parties shall co-operate and provide all assistance reasonably required to deal with apportionments.

4.2 Without prejudice to the generality of clause 4.1:

4.2.1 all charges and outgoings relating to those items paid or payable in respect of the Services including without limitation rents rates water and other periodic outgoings gas electricity and telephone charges and liabilities in respect of salaries wages and other remuneration national insurance income tax deductible under PAYE pension and other statutory contributions which relate to a period commencing before or on and ending after the Completion Date shall be apportioned on a time basis (save that the charges and outgoings specifically referable to the extent of use of any property or rights shall be apportioned according to the extent of such use) so that such part of such charges and outgoings as is attributable to the period ending on the Completion Date shall be borne by the Council and each part of such charges and outgoings as is attributable to the period commencing on the day immediately after the Completion Date shall be borne by the Trust; and

4.2.2 such part of any discounts rebates and other sums received or receivable in respect of the Services which relates to a period commencing before and ending on the Completion Date shall be for the benefit of the Council and such part of any discounts rebates and other sums receivable in respect of the Services which relates to a period commencing on the day immediately after the Completion Date shall be for the benefit of the Trust and to the extent that they relate to a period commencing on or before and ending after the Completion Date shall be apportioned on a time basis (save that all receipts and receivables specifically referable to the extent of the use of any property or rights shall be apportioned according to the extent of such use) so that such part of such receipts and receivables as are attributable to the period ending on the Completion Date shall be for the benefit of the Council and such part of such receipts and receivables as are attributable to the period commencing on the date immediately after the Completion Date shall be for the benefit of the Trust.

- 4.3 The Council shall prepare a Schedule of Apportionment of items referred to in Clauses 4.2.1 and 4.2.2 within three months of the Completion Date.
- 4.4 The parties shall act in good faith to agree the Schedule of Apportionments.
- 4.5 Within 30 days of agreeing the Schedule of Apportionment, the net amount payable by one party to the other in accordance with this Clause shall be paid by that party to the other.
- 4.6 In the event of default of agreement between the parties as to the Schedule of Apportionment the matter shall be referred by way of joint application by the parties to an independent accountant nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales.
- 4.7 In addition to any apportionments:
- 4.7.1 where any product or service is to be provided by the Trust under any contract after the Completion Date but any payment (whether by way of deposit prepayment or otherwise) in respect of the price or cost of it has been received by the Council before the Completion Date and this shall include but not be limited to any pre-paid and unexpired memberships the Council shall pay an amount equal to the amount of that payment which related to the period after the Completion Date (excluding any amount in respect of VAT for which the Council is required to account) to the Trust and shall hold such sum in trust for the Trust until it is paid;
- 4.7.2 where any product or service is to be provided to the Trust under any contract after Completion Date but any payment (whether by way of deposit prepayment or otherwise) in respect of the price or cost of it has been made by the Council before the Completion Date the Trust shall pay an amount equal to the amount of that payment (excluding any amount in respect of VAT) to the Council and shall hold such sum in Trust for the Council until it is paid;
- 4.7.3 all money or other items belonging to the Trust which are received by the Council on or after the Completion Date in connection with the Services shall be held in Trust for the Trust and shall be paid promptly to the Trust; and
- 4.7.4 all money or other items belonging to the Council which are received by the Trust on or after the Completion Date in connection with the Services shall be held in Trust for the Council and shall be paid promptly to the Council.

5. DEBTS AND OTHER LIABILITIES

- 5.1 The Council shall be responsible for all debts and liabilities of the Council resulting from any act, default, transaction or circumstance of the Council its employees or agents in relation to the carrying on of the Services occurring on or before the Completion Date. The Council shall indemnify the Trust against any Losses suffered or incurred by the Trust arising from an act or

default of the Council prior to the Completion Date save where the same shall have arisen in whole or in part as a result of any act or omission of the Trust before the Completion Date.

5.2 Except for those liabilities and obligations expressly retained by the Council under this Agreement, the Trust shall be responsible for all debts and liabilities of the Trust resulting from any act default transaction or circumstance of the Trust its employees or agents in relation to the carrying on of the Services occurring on or after the Completion Date. The Trust shall indemnify the Council fully at all times from and against all Losses suffered or incurred by the Council in connection therewith save where the same shall have arisen in whole or in part as a result of any act or omission of the Council before the Completion Date.

5.3 The Council acting reasonably may request the Trust to provide such information, assistance, co-operation, advice and action (excluding any contributory costs) as may reasonably be required by the Council to enable the Council expeditiously and advantageously to deal with, resolve and determine any outstanding litigation complaints proceedings ongoing at the Completion Date at no cost to the Council.

6. ASSUMED CONTRACTS

6.1 Following Completion and subject to the provisions of Clause 6.2 with effect from the Completion Date:

6.1.1 the Council will use reasonable endeavours to assign or hold to the order or procure the assignment to the order of the Trust all those of the Assumed Contracts which do not require the consent of the contracting party to the assignment to the Trust and the Trust will carry out and perform for its own account all of the Council's obligations under each of the Assumed Contracts in accordance with the terms of the Assumed Contract;

6.1.2 the Trust shall indemnify and keep indemnified the Council from and against all Losses suffered or incurred by the Council arising out of any act or omission by the Trust after the Completion Date in respect of its obligations under the terms of Clause 6.1.1;

6.1.3 the Council shall indemnify and keep indemnified the Trust from and against all Losses suffered or incurred by the Trust arising out of an act or omission by the Council prior to the Completion Date in relation to any Assumed Contract assigned to the Trust pursuant to the terms of Clause 6.1.1.

6.2 The following provisions shall apply to each Assumed Contract in respect of which no such assignment is permitted without the consent of a third party or requires novation or cannot be effectively assigned and shall be applied until the Assumed Contract is either assigned or novated:

6.2.1 nothing in this Agreement shall constitute an assignment or an attempted assignment of such Assumed Contract if the assignment or attempted assignment would constitute a breach of the Assumed Contract;

- 6.2.2 the Council shall with effect from the Completion Date hold the benefit of such Assumed Contract in trust for the Trust absolutely and the Trust shall as between the Council and the Trust be entitled to exercise all rights there under and receive all such benefits;
 - 6.2.3 the Council shall make available to the Trust all rights against third parties (including the other contracting party) to which the Trust would have been entitled had the Assumed Contract in question been assigned or novated to the Trust with effect from the Completion Date and for the avoidance of doubt shall provide access to all relevant books documents and other information in relation to the Assumed Contracts as the Trust may reasonably require from time to time insofar as this does not constitute a breach of the Assumed Contract;
 - 6.2.4 the Trust shall (whether or not as the agent as the sub-contractor of the Council or in any other capacity reasonably open to it) perform all the obligations of the Council under the Assumed Contract to the extent that such performance does not constitute a breach of the Assumed Contract;
 - 6.2.5 the Trust shall indemnify and keep indemnified the Council from and against all Losses incurred by the Council arising out of or things done by the Trust after the Completion Date in the performance of its obligations under this Clause 6.2;
 - 6.2.6 the Council shall indemnify and keep indemnified the Trust from and against all Losses suffered or incurred by the Trust arising from an act or omission by the Council in relation to a contract described in this Clause 6.2 prior to the Completion Date.
- 6.3 If in the case of any Assumed Contract which requires consent to assign or which requires novation such consent or novation is refused or otherwise not obtained on terms satisfactory to the Trust (in its absolute discretion) within one hundred and twenty (120) Business Days of the Completion Date the relevant Assumed Contract shall be deemed to be a Retained Contract and/or may be terminated by the Council.

7. RETAINED CONTRACTS

- 7.1 The Council shall remain the contracting party to the Retained Contracts set out in Schedule 2 (Retained Contracts).
- 7.2 The Parties acknowledge that the Trust will continue to benefit from the Retained Contracts.
- 7.3 The Council shall apportion a percentage of the annual cost of the Retained Contract to the Trust. The apportionment of costs shall be based on the Trust's use and/or benefit of the Retained Contracts. Any dispute relating to the amount of the apportionment shall be referred to the Dispute Procedure.

- 7.4 The costs of the Retained Contracts shall be dealt with by an adjustment to the Service Fee payable by the Council to the Trust or, if otherwise agreed between the Parties, a direct payment by the Trust to the Council. The costs shall be subject to VAT.
- 7.5 In the event that the Trust is making a direct payment to the Council for the costs of these Retained Contracts, the Council shall specify the payment terms and the Trust shall comply with any such payment terms.
- 7.6 The parties shall review the Retained Contracts generally as part of the Annual Service Plan Review Process to ensure that the Retained Contracts continue to represent value for money for both parties.

8. FURTHER ASSURANCE

Upon and after Completion the Council and the Trust shall do and execute all other necessary acts deeds documents and things and deliver such additional documents within their power effectively to transfer the Services to the Trust and to give effect to and carry out all of the provisions of this Agreement.

9. TRANSFER OF EMPLOYEES

- 9.1 The parties acknowledge and agree that the Transfer Regulations shall apply at the Completion Date in respect of the transfer of the Services ("Undertaking").
- 9.2 Except as provided for in Clause 9.4 below the Council undertakes to the Trust as at the date of this Agreement until Completion Date:
- 9.2.1 to pay all emoluments and outgoings relating to the Transferring Employees, including, without limitation, all wages and salaries, sick pay maternity pay, pension contributions, bonuses, commission and any liability to taxation (including income tax and national insurance contributions deducted or deductible from such amounts under the PAYE system) and any other amounts arising or in respect of any period on or before the Completion Date;
 - 9.2.2 to perform all the Council's obligations under or in connection with the contracts of employment of the Transferring Employees arising or in respect of any period on or before the Completion Date and to meet any costs arising from an act or omission of the Council prior to the Completion Date giving rise to a grievance by a Transferring Employee which has not been resolved prior to the Completion Date;
 - 9.2.3 subject to receiving all requisite information from the Trust as required by the Transfer Regulations to inform and consult appropriate representatives of the Transferring Employees and otherwise comply in all respects with Regulations 13 and 13A of the Transfer Regulations;

9.2.4 that it has used reasonable endeavours to provide complete and accurate information regarding the identity, number, age, sex, length of service, job title, grade, pension contributions and terms and conditions of employment of and other matters affecting each of the Transferring Employees (“the Workforce Information”). If after the Completion Date the costs of remunerating the Transferring Employees are materially increased on account of any inaccuracies in or omissions from the Workforce Information provided by the Council, then there shall be a corresponding adjustment to the Service Fee payable by the Council to the Trust or the Trust to the Council (as applicable) pursuant to the Management Agreement.

9.3 The Trust undertakes to the Council:

9.3.1 to pay all emoluments and outgoings relating to the Transferring Employees (including all wages and salaries sick pay maternity pay pension contributions accrued holiday entitlement bonuses commission any liability to taxation (including income tax and national insurance contributions deducted or deductible from such amounts under the PAYE system) and any other amounts arising or in respect of any period after the Completion Date;

9.3.2 to perform all the Trust's obligations under or in connection with the contracts of employment of the Transferring Employees on or after the Completion Date;

9.3.3 to provide the Council with all information necessary for it to inform and consult appropriate representatives of the Transferring Employees and otherwise comply in all respects with Regulation 13 of the Transfer Regulations.

9.4 Save where caused by an act or omission of the Council, the Trust shall indemnify and keep indemnified the Council from and against all Losses, costs, awards or other liabilities suffered or incurred by the Council in connection with any failure by the Trust to comply with the provisions of Clause 9.3.

9.5 Save where caused by an act or omission of the Trust, the Council shall indemnify and keep indemnified the Trust from and against all Losses suffered or incurred by the Trust in connection with:

9.5.1 any failure by the Council to comply with the provisions of Clauses 9.2.1 to 9.2.4;

9.5.2 any claim or other legal recourse by any Transferring Employee relating to any fact or matter concerning or arising from employment with or termination of employment by the Council prior to the Completion Date;

9.5.3 any claim or other legal recourse by any trade union or staff association or employee representatives arising from or connected with the failure by the Council to comply with its legal obligations under the Transfer Regulations arising before the Completion Date in relation to all or any of the Transferring Employees;

9.5.4 any act or omission of the Council in relation to any of the Transferring Employees prior to the Completion Date;

9.5.5 any claim or other legal recourse by any Transferring Employee which relates to or arises in consequence of any actual or deemed termination of his contract of employment by the Transferring Employee prior to Completion by reason of the change of identity of his employer occurring under the Transfer Regulations being a significant change and to his detriment.

9.6 The Trust shall be under an obligation to take all reasonable steps to mitigate any claims referred to in Clause 9.5 and, if requested, the Council shall have the right to conduct the claims.

9.7 The Council shall indemnify and keep indemnified the Trust from and against all Losses suffered or incurred by the Trust arising from an act or omission by the Council prior to the Completion Date arising out of a failure by the Council to consult the Transferring Employees in accordance with the Transfer Regulations and in relation to any costs, claims or liabilities arising from any individual who was regarded by the Council as a worker and not a Transferring Employee who successfully claims in an Employment Tribunal or Court that they should have been treated as a Transferring Employee. Such Losses shall include any costs incurred by the Trust in employing the individual and/or any redundancy costs incurred by the Trust if the Trust acting reasonably cannot continue to employ the individual.

9.8 Each party shall notify the other on becoming aware of any claim which is likely to give rise to any liability to indemnify the other under this Clause 9 and shall give each other such information, assistance, co-operation, advice and action as either may reasonably require:

9.8.1 to comply with the Transfer Regulations in relation to the Transferring Employees; and

9.8.2 in resolving any claim by any Transferring Employee resulting from or in connection with this Agreement.

10. PENSIONS

10.1 Trust to Become an Admission Body

Where the Trust employs any Eligible Employees from a Relevant Transfer Date the Trust shall use reasonable endeavours to procure that it shall become an Admission Body. The Trust shall before the Relevant Transfer Date execute an Admission Agreement which will have effect from and including the Relevant Transfer Date.

10.2 Admission Agreement

10.2.1 The Council shall, before the Relevant Transfer Date, execute the Admission Agreement referred to in Clause 10.1 and will use its best endeavours to procure

that the Administering Authority executes each such Admission Agreement before the Relevant Transfer Date.

- 10.2.2 The Admission Agreement shall be an open scheme for at least two years following the Completion Date (i.e. up to 31 October 2015). Thereafter, subject to Clause 10.3.3, the Trust shall, at its absolute discretion, be entitled to close the LGPS.

10.3 **Guarantee Agreement**

- 10.3.1 The Council shall act as guarantor in relation to the LGPS in relation to those employees falling into limbs (a) and (b) of the definition of Eligible Employees only.
- 10.3.2 For the avoidance of doubt, the Council shall not act as guarantor in relation to any individuals employed by the Trust after the Commencement Date as identified in limb (c) of the definition of Eligible Employees.
- 10.3.3 Having regard to the contingent liability of the Council acting as guarantor in relation to the LGPS, the parties shall, acting reasonably and in good faith, review on a continuous basis the LGPS arrangements and explore options for managing this contingent liability.
- 10.3.4 Without prejudice to the above, the Trust shall not close the LGPS without prior consultation with the Council.

10.4 **Trust's Undertakings**

The Trust undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

- 10.4.1 all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Trust for the administration of the LGPS, shall be supplied to them as expeditiously as possible;
- 10.4.2 it shall not without the consent in writing of the Council (which shall only be given subject to the payment by the Trust or the relevant Sub-Contractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- 10.4.3 it shall not take or omit to take any action which would materially affect the benefits under the LGPS of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided

that the Trust and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

10.5 **Pension Issues on Expiry or Termination**

The Trust shall:

- 10.5.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Trust in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- 10.5.2 promptly provide to the Council such documents and information mentioned in Clause 10.5.1 which the Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement; and
- 10.5.3 co-operate with the reasonable requests of the Council or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Trusts in the provision of the Services on the expiry or termination of this Agreement.

10.6 **Management of liabilities accrued prior to the Relevant Transfer Date**

- 10.6.1 The Council shall use all reasonable endeavours to procure that, when the Trust enters into an Admission Agreement pursuant to this Agreement, the Trust shall be credited by the Administering Authority with a notional fund within the LGPS at the Relevant Transfer Date (which, for the avoidance of doubt, shall not constitute an admission agreement fund for the purposes of Regulation 32 of the Administration Regulations) of the amount required to meet the cost of providing one hundred percent (100%) of the benefits accrued for and in respect of the Eligible Employees prior to the Relevant Transfer Date (the "Notional Fund").
- 10.6.2 The amount of the Notional Fund shall be determined by an actuary appointed by the Administering Authority using the ongoing actuarial methods and assumptions used in the actuarial valuation of the Tonbridge & Malling Borough Council Pension Fund (the "Fund") last undertaken prior to the Relevant Transfer Date (the "Last Valuation") and shall be based on the Pensionable Pay of the Eligible Employees' immediately prior to the Relevant Transfer Date.

10.7 **Management of liabilities accrued after the Relevant Transfer Date**

- 10.7.1 Except as provided under Clause 10.7.2, if at any time during the term of the Admission Agreement (which shall be commensurate to the term of the Management Agreement), the Administering Authority requires the Trust to pay

any contributions to the LGPS in respect of the Eligible Employees in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate (the "Excess Amount") shall be paid by the Trust and shall be reimbursed in accordance with Clause 10.7.4.

10.7.2 The Trust shall be responsible for and shall not be reimbursed under Clause 10.7.4 for any sums reasonably and properly payable to the LGPS in respect of the Eligible Employees during the term of this Agreement or on termination of the Admission Agreement and/or this Agreement relating to the following:

10.7.2.1 any breach of the Admission Agreement by the Trust and/or the Sub-contractor;

10.7.2.2 the costs of early retirement or other benefits arising on redundancy or in the interests of business efficiency (as defined in Regulation 19 of the Benefit Regulations);

10.7.2.3 the costs of early retirement benefits made with the Trust's consent;

10.7.2.4 any payment of benefits in accordance with Regulations 20 or 31 of the Benefit Regulations on grounds of ill-health or infirmity of mind or body except where the sums payable to the LGPS are payable in respect of an Eligible Employee who: (a) is on Long Term Sick Leave at the Relevant Transfer Date; and (b) retires in connection with the sickness for which he was on Long Term Sick Leave at the Relevant Transfer Date;

10.7.2.5 the costs of enhanced or unreduced benefits arising under an employer discretion exercised by the Trust (including any award by the Trust or Sub-Contractor of additional membership or pension);

10.7.2.6 increases in the Eligible Employees' remuneration, to the extent that those increases exceed the greater of:

(i) the salary increases allowed for in the actuarial assumptions adopted from time to time for the purposes of determining the contribution rate due from the Trust to the LGPS; and

(ii) in respect of any Eligible Employee to whom such an increase applies, the pay scale and allowance rate prescribed from time to time by the National Joint Council for Local Government Services.

10.7.3 Subject to clause 10.7.2, where the Administering Authority obtains an actuarial valuation under the Administration Regulations on the Trust's ceasing to be an Admission Body and the Trust is required to pay any revised contribution or payment to the LGPS Fund in respect of any Management deficit which relates to

the Eligible Employees (the "Exit Contribution"), such contribution or payment shall be paid by the Trust and the Trust shall be reimbursed in accordance with Clause 10.7.4.

10.7.4 Where an Excess Amount or Exit Contribution is paid by the Trust, the Trust shall forthwith as the liability arises, invoice the Council for payment of an amount equal to the Excess Amount or Exit Contribution and the Council shall make payment to the Trust of that amount within 28 days of receipt of an invoice PROVIDED that the amount which the Council shall be required to pay to reimburse the Trust for any Excess Amount or Exit Contribution shall be reduced by such amount as estimated by the actuary appointed by the Administering Authority (in a manner consistent with the Administration Regulations), to be attributable to any of the matters for which Trust is responsible under Clause 10.7.2.

10.7.5 [The Council shall not be liable for the Exit Contribution where the Trust determines to close the LGPS during the Service Period.]

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Council hereby grants to the Trust a non transferable, exclusive, royalty free licence to use for the duration of the Management Agreement only and only for the purposes directly relating to the Services and/or the Facilities only any Intellectual Property Rights relating to the Services and/or Facilities which are or become vested in the Council and only to the extent that the Council is permitted to do so.

11.2 The Trust shall indemnify the Council at all times from and against any losses arising as a result of any claims or proceedings brought against the Council which arises out of an infringement of any Intellectual Property Rights by the Trust.

11.3 Any Intellectual Property Rights created or developed by the Trust after the Commencement Date shall be dealt with in accordance with the Management Agreement.

12. VALUE ADDED TAX

12.1 The parties intend that the provisions of Section 49 of the Value Added Tax Act 1994 and Article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the transfer of the Services and that accordingly no VAT shall be charged by the Council on Completion in respect of the transfer of the Services.

12.2 The Trust declares that it is duly registered for VAT purposes and that it will upon and immediately after Completion use the assets transferred hereunder to carry on the same kind of business as that carried on by the Council in relation to such assets before Completion.

13. BOOKS AND RECORDS

13.1 Subject to Clause 13.2 of this Clause the Council shall retain possession of all books of account and all other documents and records relating to the Services in the period prior to Completion including the VAT Records purchase and sales invoices bought and sales ledger records of correspondence and software and data stored by computer or similar equipment; provided that the Trust on giving reasonable notice may have access thereto at all reasonable times during business hours for a period of six years after the Completion Date; and the Council shall make such books and records available for the inspection of and use by the Trust its servants and agents and such other persons as may be authorised by the Trust who may at their own expense take such copies and extracts there from as the Trust may require.

13.2 The Trust shall retain the original files and records relating to the Employees and to the extent the Council has any such files and records the Council shall deliver the same to the Trust on Completion Date. The Council shall be permitted access to the original files and records and if required and at the Council's own expense be permitted to take such copies and extracts there from as the Council may require.

14. DISPUTE RESOLUTION

Any dispute or difference arising out of or in connection with this Agreement shall be handled under the Dispute Procedure set out in the Management Agreement.

15. FORCE MAJEURE

15.1 No failure or omission by any party to carry out or observe any of the stipulations or conditions of this Agreement shall except in relation to obligations to make payments hereunder and except as herein expressly provided to the contrary give rise to any claim against the party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of that party including but not limited to national emergency war prohibitive governmental regulations or any other cause beyond the reasonable control of the parties renders performance of this Agreement impossible (a "Force Majeure Event").

15.2 Each party agrees to notify the other as soon as reasonably practicable upon becoming aware of a Force Majeure Event and the parties shall then work together in such a manner as is reasonable in the circumstances to deal with the Force Majeure Event and shall use all reasonable endeavours to mitigate any adverse effects on the provision of the Services and any Losses arising from the Force Majeure Event and continue to perform their obligations under this Agreement notwithstanding the Force Majeure Event.

15.3 In the event that a party is unable to fulfil its obligations in a Force Majeure Event the obligations hereunder of such party shall be suspended including payments relating to that Force Majeure Event. The party whose obligations have been suspended as aforesaid shall give notice of such suspension as soon as reasonably possible to the other party stating the date and extent of such suspension and cause thereof. Any party whose obligations have

been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party.

15.4 Subject to any other provision within this agreement providing otherwise each party shall bear its own costs in rectifying a Force Majeure Event and neither party shall be entitled to bring a claim for a breach of this Agreement or incur any liability to the other party for any Losses or damages arising from a Force Majeure Event.

15.5 Where a Force Majeure Event has a material effect on the provision of all or any significant part of the Services for more than six months then either party shall be entitled to terminate this Agreement in relation to the part of the Services and/or Leisure Facilities affected by giving not less than three months prior written notice to the other.

16. WAIVER

16.1 No delay omission or forbearance by either party hereunder to exercise or enforce any right power or remedy arising under or in connection with this Agreement shall operate as a waiver of that or any other right power or remedy and any single or partial exercise or enforcement thereof shall not preclude any other or further exercise or enforcement thereof or the exercise or enforcement of any right power or other remedy.

16.2 A waiver of a breach of or default under any of the terms of this Agreement does not constitute a waiver of any other breach or default and shall not affect any other terms of this Agreement.

16.3 A waiver of a breach of or default under any of the terms of this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation in respect of that breach or continued default.

16.4 The rights powers and remedies provided in this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any right power or remedy provided by law or by any other agreement or document.

17. SEVERABILITY

17.1 If at any time any provision of this agreement is or becomes illegal invalid or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair the legality validity or enforceability in that jurisdiction of any other provision of this agreement.

17.2 Without prejudice to Clause 17.1 should any competent authority or court indicate that this agreement will only be exempt from or fall outside the scope of any applicable laws or regulations if it is amended in certain respects or any provision of this agreement be discovered or declared (whether formally or informally) by any competent authority or court to be legally void or unenforceable in whole or in part then the parties shall meet with a view to reaching agreement upon amendments that are acceptable to the competent authority or court and most nearly achieve the object of the objectionable allegedly void or unenforceable provision and upon such other amendments as may be appropriate having regard to the

changed nature of the agreement provided always that if the parties cannot agree upon such amendments within twenty eight (28) Business Days of the application of this Clause 17.2 then Clause 17.3 below shall apply.

17.3 Instruction of Counsel

17.3.1 Where this Clause applies the parties shall instruct counsel of an appropriate level of qualification being not less than five years call to settle the required amendments such counsel to be appointed by agreement between the parties and in default of agreement by the Chair from time to time of the Bar Council or his nominated officer upon the application of either party following notice to the other requiring it to concur in such appointment.

17.3.2 The cost of counsel appointed pursuant to this Clause shall be borne as between the parties as the appointed counsel shall determine or in default of determination in equal shares between the parties.

17.3.3 The parties shall do and execute such documents and things as may be necessary to ensure that such amendments as may be determined pursuant to this Clause are incorporated into this Agreement will full effect.

18. ENTIRE AGREEMENT

18.1 This Agreement together with the Management Agreement, Leases, Support Services Agreement and Admission Agreement constitute the entire agreement between the parties with respect to its subject matter. It supersedes all previous agreements and understandings between the parties and each party acknowledges that in entering into this Agreement it does not do so on the basis of or in reliance upon any representations (save for fraudulent misrepresentations) promises undertakings warranties or other statements (whether written or oral) of any nature whatsoever except as expressly provided in this Agreement and in the Leases and the Licence and accordingly all conditions warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

18.2 In particular but without prejudice to the generality of Clause 18.1 both the Council and the Trust irrevocably and unconditionally waive any rights they may have to claim damages and/or to rescind this Agreement for any misrepresentation not contained in this Agreement (whether negligent or otherwise) or for breach of any warranty not contained in this Agreement unless such misrepresentation or warranty was made fraudulently.

19. TERMINATION

This Agreement together with the Support Services Agreement Leases Licences Collections Agreement and Admission Agreement shall terminate upon termination of the Management Agreement.

20. ASSIGNMENT

- 20.1 Subject to Clause 22.2 no party to this Agreement may assign or transfer its rights or obligations under this Agreement
- 20.2 The Trust may assign or transfer certain rights or obligations under this Agreement to a wholly owned trading subsidiary of the Trust with the prior written consent of the Council.

21. CONFIDENTIALITY

21.1 Each party undertakes to the other to keep secret and confidential all information which is confidential in nature (whether written, pictorial, in machine readable form or oral) and in whatever form received during the continuance of this Agreement or obtained as a result of entering into or performing this Agreement concerning the business or affairs of the other party including without limitation (except for the purpose of sharing with the Agent):

- 21.1.1 those sections of this Agreement identified as confidential by reference to Part 1 Schedule 5;
- 21.1.2 information concerning the trade secrets, customers, suppliers or business associations of the other party;
- 21.1.3 information concerning the financial, operational, technical or commercial affairs of the other party;

all of which shall be the “Confidential Information”.

21.2 Each party undertakes to the other not to use the Confidential Information of the other party except for the purposes of this Agreement and shall not disclose the same to any person and except to the extent that such information:

- 21.2.1 is required to be disclosed by the law of any relevant jurisdiction;
- 21.2.2 is trivial or obvious;
- 21.2.3 is already in the public domain at the time of disclosure or thereafter shall fall into the public domain other than as a result of breach of this Clause 21;
- 21.2.4 is in the disclosing party's possession (as evidenced by written records) otherwise than as a result of a breach of this Clause 21;
- 21.2.5 becomes known to the disclosing party from a source other than another party to this Agreement otherwise than as a result of a breach of this Clause 21; or
- 21.2.6 was disclosed after the express prior written approval of the party to whom such information belongs.

22. FREEDOM OF INFORMATION

22.1 The Trust acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council to enable the Council to comply with their Information disclosure obligations.

22.2 The Trust shall:

22.2.1 inform anyone who lodges an Request for Information direct with the Trust that the Trust is not subject to the FOIA and the request should be made direct to the Council;

22.2.2 notwithstanding clause 22.2.1, transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information; and

22.2.3 where the Information requested is held by the Trust on behalf of the Council, provide the Council with a copy of all Information in its possession or power in the form that the Council, acting reasonably, requires within five (5) Working Days (or such other period as the parties may agree) of the Council's request.

22.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

22.4 In no event shall the Trust respond directly to a Request for Information unless expressly authorised to do so by the Council.

22.5 The Trust acknowledges that (notwithstanding the provisions of Clause 22.2) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "FOIA Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Trust:

22.5.1 in certain circumstances without consulting the Trust; or

22.5.2 following consultation with the Trust and having taken their views into account;

provided always that where Clause 22.2 applies the Council shall, in accordance with any recommendations of the FOIA Code, take reasonable steps, where appropriate, to give the Trust advanced notice, or failing that, to draw the disclosure to the Trust's attention after any such disclosure.

22.6 The Trust shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

22.7 The Trust acknowledges that the Commercially Sensitive Information listed in Part 2 of Schedule 5 is of indicative value only and that the Council may be obliged to disclose it in accordance with Clause 22.5.

23. RIGHTS OF THIRD PARTIES

23.1 No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, save that Eligible Employees will have the right to enforce clause 10.

23.2 For the avoidance of doubt nothing contained in this Clause shall affect any right or remedy of any third party which exists or is available other than under the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

24.1 The parties to this Agreement may only serve notice on the other party by either delivering it by hand to the other party or sending it by first class recorded delivery post addressed to the other party at the address shown in this Clause or such other address as the parties may notify each other from time to time. Every notice to the Council shall be made for the attention of the Chief Executive at the Council's principal office and every notice to the Trust shall be made for the attention of the Chief Executive at the Trust's registered office hereinbefore written.

24.2 Every notice will be treated as served at the end of the day that it is delivered if it is delivered by hand or two (2) Business Days after despatch if it is sent by first class recorded delivery post.

24.3 In proving that service has been effected it is sufficient to show that in the case of delivery by hand that it has been signed for by the other party or its employee agent or duly authorised representative or in the case of delivery by post that the letter was properly addressed pre-paid and posted .

24.4 For the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

25. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement and no action taken by the parties under this Agreement shall create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between the parties.

26. AMENDMENTS

No amendments to this Agreement shall be binding unless agreed to by the parties and evidenced in writing and signed by the authorised representative of each party.

27. DATA PROTECTION [NB: TO BE FURTHER REVIEWED]

- 27.1 Each party shall comply with all appropriate data protection legislation and principles including but not limited to the Data Protection Act 1998 ("DPA" as amended) in relation to Personal Data (as defined in the DPA 1998) controlled or processed by it or transferred to it or obtained under this Agreement or in relation to the Services.
- 27.2 Except to the extent required or permitted by law any Personal Data provided to the parties in relation to this Agreement shall only be used for the purposes of the Agreement or in relation to the Services unless the Trust takes such steps as are required under the DPA to enable the Personal Data to be used for a different purpose.
- 27.3 The Council shall continue to act as Data Controller in relation to any databases relating to the Users and/or Members of the Facilities and/or Services.
- 27.4 The Trust shall act as data processor in relation to such databases.
- 27.5 The Trust shall be required to maintain the databases on behalf of the Council and shall only be permitted to process the data for the purposes of providing the Services pursuant to the Management Agreement.
- 27.6 The Trust shall be required to deliver up to the Council the databases at the expiry of the Management Agreement (howsoever caused).
- 27.7 The Trust shall indemnify the Council against any claims Losses costs expenses liabilities demands actions proceedings and damages which the Council may suffer as a result of or arising out of any breach of the DPA by the Trust.

28. GOVERNING LAW AND JURISDICTION

This Agreement is governed by and shall be construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising from this agreement or its subject matter.

IN WITNESS WHEREOF the parties hereto have executed and delivered this document as a Deed the day and year first before written:

THE COMMON SEAL of
TONBRIDGE & MALLING BOROUGH COUNCIL
was duly affixed to this Agreement in the presence of :

.....
Authorised signatory

.....
Print name

EXECUTED AS A DEED by
THE TONBRIDGE & MALLING LEISURE TRUST
Acting by two directors

.....
Director

.....
Print name

.....
Director

.....
Print name

SCHEDULE 1
CONTRACTS ASSIGNED TO THE TRUST

SCHEDULE 2
CONTRACTS RETAINED BY THE COUNCIL

**SCHEDULE 3
EMPLOYEES**

SCHEDULE 4
ADMISSION AGREEMENT

SCHEDULE 5

**PART 1
CONFIDENTIAL INFORMATION**

| Clause | Subject |
|--------|---------|
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**PART 2
COMMERCIALLY SENSITIVE INFORMATION**

| Clause | Subject |
|--------|---------|
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