

DATED \_\_\_\_\_ 2013

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

**SUPPORT SERVICES AGREEMENT**  
relating to the provision of various support  
services by the Council to the Trust

**VERSION 6: 4 SEPTEMBER 2013**

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**THIS AGREEMENT** is made the

2013

**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 and community 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) To assist the Trust in the delivery of the services the Council has agreed to provide ongoing support to the Trust in relation to certain administrative, professional and technical service functions.
- (I) This Agreement describes the services to be provided by the Council to the Trust and the terms on which the services are to be provided.

**NOW IT IS HEREBY AGREED** as follows:-

1. **DEFINITIONS**

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

<b>"Business Day"</b>	means any day (except Saturday, Sunday and bank holidays);
<b>"Commencement Date"</b>	means 1 November 2013;
<b>"Dispute Procedure"</b>	means the dispute resolution procedure set out in Schedule 3;
<b>"Extended Service Periods"</b>	means an extension to the Initial Service Period as agreed between the parties in accordance with Clause 4;
<b>"Initial Service Period"</b>	means the period from 1 November 2013 to 31 March 2015;
<b>"Leisure Facilities"</b>	means the Council's leisure facilities including Larkfield Leisure Centre, Tonbridge Swimming Pool, Angel Centre, Poult Wood Golf Centre and The Games Hut;
<b>"Management Agreement"</b>	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;
<b>"Service Charges"</b>	means the charges for each Service as set out in the relevant Service Specification;
<b>"Services"</b>	means the services to be provided by the Council to the Trust in accordance with this Agreement as listed in Schedule 1;
<b>"Service Period"</b>	means the Initial Service Period and any Extended Service agreed between the parties for the provision of the Services by the Council to the Trust;
<b>"Service Specifications"</b>	means the details of the services to be provided by the Council to the Trust as set out in Schedule 2;

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 or 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.

## **2. SERVICES TO BE PROVIDED BY THE COUNCIL**

- 2.1 The Council has agreed to provide each of the Services to the Trust for the Initial Service Period.
- 2.2 Save where there is a prima facie conflict of interest and subject to any necessary consents from relevant professional bodies where applicable, the Services shall be provided in accordance with the Service Specifications.
- 2.3 In the provision of the Services, the Council shall use personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allocated and the performance which they are required to achieve and who shall perform those tasks in a workmanlike and professional manner.

## **3. PAYMENT BY THE TRUST AND VAT**

- 3.1 In consideration for provision of the Services by the Council, the Trust shall, unless otherwise agreed in writing between the parties, pay to the Council the Service Charges for the duration of the Service Period.
- 3.2 The Service Charges shall be payable quarterly in arrears.
- 3.3 The Service Charges are expressed exclusive of VAT which shall be payable in addition.
- 3.4 The Service Charges shall be adjusted each year on the anniversary of the Commencement Date in line with CPI starting from 1 April 2015 with reference to the CPI as at the November prior to the start of the financial year.
- 3.5 In the event of failure by the Trust to pay any sum due under this Agreement within twenty (20) Business Days of resolving all queries in relation to any invoice in accordance with Clause 3.3, the Trust shall further pay to the Council interest on

any such sum at the rate of 3% above the base lending rate from time to time of the Bank of England.

#### 4. **EXTENSION OR TERMINATION BY THE TRUST AT THE EXPIRY OF THE INITIAL SERVICE PERIOD**

- 4.1 The Services shall be provided for the Initial Service Period.
- 4.2 If the Trust wishes to extend or terminate all or any of the Services at the expiry of the Initial Service Period then the following provisions shall apply:
- 4.2.1 the Trust shall notify the Council at the earliest opportunity and in any event by no later than six (6) months prior to the expiry of the Initial Service Period of its intention to:
- 4.2.1.1 extend all or any of the Services;
- 4.2.1.2 terminate all or any of the Services;
- 4.2.2 upon receipt of the notice from the Trust, the parties shall meet to discuss (where applicable) exit and handover arrangements for any Services to be terminated, the length of the Extended Service Period, any changes to the Service Specification relating to the Services and the Service Charges for the relevant Services for the Extended Service Period.
- 4.3 If agreement is reached regarding the Extended Service Period, the Extended Service Period shall commence immediately upon the expiry of the Initial Service Period with any appropriate adjustments to the Service Specification and Service Charges.
- 4.4 If agreement cannot be reached for a Service to be extended before the expiration of the Initial Service Period for that particular Service, or if the Trust has served a notice to terminate at the end of the Initial Service Period, this Agreement shall automatically terminate in relation to that Service at the expiration of the Initial Service Period.
- 4.5 The parties shall co-operate to ensure an orderly exit and handover in relation to the termination of any Service.

#### 5. **EARLY TERMINATION BY EITHER PARTY FOR DEFAULT**

- 5.1 Notwithstanding anything else contained herein any of the Services may be terminated:
- 5.1.1 By the Council forthwith upon giving notice in writing to the Trust if:
- 5.1.1.1 the Trust ceases to carry on business or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- 5.1.1.2 the Trust fails to pay the Council for the Services provided an amount equivalent to six (6) months payments save where the payment is subject to a Dispute Procedure following written demand from the Council.
- 5.1.2 By the Trust upon giving notice in writing to the Council pursuant to Clause 5.1.3 in the event that the Council commits a material or persistent breach of any term of this Agreement including the KPIs set out in Service Specifications save where caused by an act or omission of the Trust.

- 5.1.3 The notice given pursuant to Clause 5.1.2 above, shall specify how and precisely to what extent Services have not been delivered in accordance with this Agreement and:
- 5.1.3.1 as soon as reasonably possible and in any event within ten (10) Business Days of the receipt of a notice given under Clause 5.1.2, the Council shall prepare and submit to the Trust for its approval an action plan to remedy the breaches specified in the notice;
  - 5.1.3.2 an action plan prepared under Clause 5.1.3.1 shall specify a timetable for remedying each of the breaches complained of;
  - 5.1.3.3 within ten (10) Business Days of its receipt of an action plan the Trust may approve the plan or, in default of such approval the Dispute Procedure shall apply.
- 5.1.4 If the Council rectifies the Council default within the time period agreed within the action plan, the termination notice shall be deemed to be revoked and this Agreement shall continue. If the Council fails to rectify the default within the time period agreed within the action plan, the Trust may terminate this Agreement forthwith upon giving written notice and the Council shall meet any additional costs reasonably and properly incurred by the Trust in procuring alternative support services.
- 5.2 Any termination of any of the Services shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
6. **AUTOMATIC TERMINATION**
- 6.1 This Agreement shall automatically terminate in the event that the Management Agreement terminates for whatever reason.
7. **LIMITATIONS OF CLAIMS AND LIABILITIES**
- 7.1 The Council shall be liable for and shall indemnify the Trust against any demands, liability, damages, losses, costs, claims or proceedings whatsoever arising directly or indirectly out of or in connection with the provision of the Services by the Council pursuant to the terms of this Agreement save where the same shall have been caused in whole or in part as a result of any act or omission of the Trust.
- 7.2 The Trust shall be liable for and shall indemnify the Council against any demands, liability, damages, losses, costs, claims or proceedings whatsoever arising directly or indirectly out of or in connection with the receipt of the Services by the Trust pursuant to the terms of this Agreement save where the same shall have been caused in whole or in part as a result of any act or omission of the Council.
8. **CLAUSE HEADINGS**
- The clause headings herein are included for ease of reference only and do not form part of this Agreement.
9. **NOTICES**
- 9.1 The parties to this Agreement may only serve notice on the other party by either delivering it by hand to the other party, sending it by first class recorded delivery post or facsimile transmission 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.

- 9.2 Every notice will be treated as served at the end of the day that it is delivered if it is delivered by hand, two (2) Business Days after despatch if it is sent by first class recorded delivery post, or, if it is faxed, at 10.00am on the next working day following despatch.
- 9.3 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, in the case of delivery by post that the letter was properly addressed, pre-paid and posted, and in the case of a facsimile transmission, that the original facsimile transmission report showed that the transmission had been successful and that the recipient number had been dialled correctly.
- 9.4 For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by email.

## 10. **FORCE MAJEURE**

- 10.1 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").
- 10.2 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.
- 10.3 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. 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.
- 10.4 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.
- 10.5 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 affected by giving not less than three months prior written notice to the other.

## 11. **WAIVER**

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.

## 12. **SEVERABILITY**

- 12.1 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.
- 12.2 Without prejudice to Clause 12 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 sixty (60) Business Days of the application of this Clause 12.2 then Clause 12.3 below shall apply.
- 12.3 Instruction of Counsel:
- 12.3.1 Where this Clause applies the parties shall instruct counsel of 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.
- 12.3.2 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.

- 12.3.3 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.

13. **ENTIRE AGREEMENT**

- 13.1 This Agreement together with the Management Agreement, Business Transfer Agreement, Admission Agreement and Lease and all agreements entered, or to be entered into, pursuant to the terms of this Agreement or entered into between the parties in writing and expressly referring to this Agreement, constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement supersedes all previous discussions, agreements and understandings between the parties and their agents (or any of them) and all previous representations and expressions of opinion by any party (or its agent) to any other party or its agent 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, promises, undertakings, warranties or other statements (whether written or oral) in relation to the subject matter except as expressly provided in this Agreement and accordingly all conditions, warranties or other terms implied by statute or common law are, save as to fraud, hereby excluded to the fullest extent permitted by law. In the event of any conflict between this Agreement and the Management Agreement, the Management Agreement shall prevail.

14. **ASSIGNMENT**

- 14.1 Save as provided for in Clause 14.2, the Trust shall not be permitted to assign this Agreement other than with the express written consent of the Council.
- 14.2 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.

15. **CONFIDENTIALITY**

- 15.1 Each party undertakes to the other to keep secret and confidential all information of a confidential 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:
- 15.1.1 those sections of this Agreement identified as confidential by reference to Part 1 of Schedule 4;
  - 15.1.2 information concerning the trade secrets, customers, suppliers or business associations of the other party; and
  - 15.1.3 information concerning the financial, operational, technical or commercial affairs of the other party;
  - 15.1.4 all of which shall be the "Confidential Information".
- 15.2 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 (without the prior written consent of the other party) disclose the same to any person save to the extent necessary for the performance of this Agreement and except to the extent that such information:

- 15.2.1 is required to be disclosed by the law of any relevant jurisdiction;
- 15.2.2 is trivial or obvious;
- 15.2.3 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;
- 15.2.4 is in the disclosing party's possession (as evidenced by written records) otherwise than as a result of a breach of this Clause;
- 15.2.5 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; or
- 15.2.6 was disclosed after the express prior written approval of the party to whom such information belongs;

and in any event subject to the disclosing party having notified the other party to this Agreement in writing prior to making such disclosure.

- 15.3 Notwithstanding anything contained elsewhere in this Agreement, the provisions of this Clause 15 shall survive the termination or expiry of this Agreement.

## 16. FREEDOM OF INFORMATION

- 16.1 The Trust acknowledges that the Council is subject to the requirements of the FOI Act and the EIR and shall assist and cooperate with the Council to enable the Council to comply with their Information disclosure obligations.
- 16.2 The Trust shall:
  - 16.2.1 inform anyone who lodges an FOI Request direct with the Trust that the Trust is not subject to the FOIA and that the request should be made direct to the Council; and
  - 16.2.2 notwithstanding 16.2.1, 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
  - 16.2.3 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.
- 16.3 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 FOI Act or the EIR.
- 16.4 In no event shall the Trust respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 16.5 The Trust acknowledges that (notwithstanding the provisions of Clause 16.2) 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 FOI Act, or the EIR to disclose information concerning the Trust:

16.5.1 in certain circumstances without consulting the Trust; or

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

provided always that where Clause 16.2 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.

16.6 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.

16.7 The Trust acknowledges that the Commercially Sensitive Information listed in Part 2 of Schedule 4 is of indicative value only and that the Council may be obliged to disclose it in accordance with Clause 16.5.

## 17. **RIGHTS OF THIRD PARTIES**

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 provision of this Agreement.

## 18. **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.

## 19. **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.

## 20. **DISPUTE RESOLUTION**

Any disputes or differences arising between the parties hereto as to their respective rights duties or obligations or to any other matter or thing in any way arising out of or in connection with the subject matter hereof shall be referred in accordance with the dispute resolution provisions set out in the Management Agreement.

## 21. **GOVERNING LAW AND JURISDICTION**

This Agreement is governed by and is to be construed in all respects in accordance with the Laws of England. Subject to Clause 20 the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**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  
**TONBRIDGE & MALLING LEISURE TRUST**  
Acting by two directors

.....  
Director

.....  
Print name

.....  
Director

.....  
Print name

**SCHEDULE 1**  
**SERVICES**

- Financial Services (including payroll, accountancy, purchase and sales ledgers)
- HR
- Legal Services
- IT Management
- Courier Services
- MFDs

**SCHEDULE 2**  
**SERVICE SPECIFICATIONS**

### SCHEDULE 3

#### DISPUTE RESOLUTION PROCEDURE

##### Escalation Process

- 1.1 Nothing in this Dispute Resolution Procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 1.2 The Trust Officer and the Council shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with the Agreement within fifteen (15) Business Days of either party notifying the other of the Dispute such efforts shall involve the escalation of the Dispute as follows:
- The Trust's Contract Manager and the Council's Authorised Officer
  - The Trust's Chief Executive and the Council's Corporate Director

##### Structured Dispute Resolution

- 1.3 If the Dispute cannot be resolved by the parties pursuant to paragraph 1.2 the Dispute shall be referred to mediation pursuant to the procedure set out in paragraph 1.5 unless either party acting reasonably considers that the Dispute is not suitable for resolution by mediation.
- 1.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a Dispute to mediation and each party shall comply fully with the requirements of the Agreement at all times.
- 1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 1.5.1 a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Business Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Business Days from the date of the proposal to appoint a Mediator or within ten (10) Business Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator.
- 1.5.2 The parties shall within ten (10) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 1.5.3 Unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 1.5.4 If the parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.
- 1.5.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without



prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both parties.

- 1.5.6 If the parties fail to reach agreement in the structured negotiations within ten (10) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any Dispute may be referred to the Courts or appropriate external body.

**SCHEDULE 4****PART 1  
CONFIDENTIAL INFORMATION**

<b>Clause</b>	<b>Subject</b>

**PART 2  
COMMERCIALLY SENSITIVE INFORMATION**

<b>Clause</b>	<b>Subject</b>