

DATED 20<sup>th</sup> December 2005

- (1) EAST DEVON DISTRICT COUNCIL
- (2) LEISURE EAST DEVON LIMITED

**FUNDING AND MANAGEMENT AGREEMENT  
relating to the Provision of Leisure Services**

 Lawrence Graham

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THIS AGREEMENT is made on the

20<sup>th</sup> December

2005

**BETWEEN:**

- (1) **EAST DEVON DISTRICT COUNCIL** (the "Council"), of Council Offices, Knowle, Station Road, Sidmouth EX10 8HL;
- (2) **LEISURE EAST DEVON LIMITED** (the "Trust") an industrial and provident society registered on 25 November 2005 with registration number 30029R and whose registered office is Bicton College, East Budleigh, Budleigh Salterton, EX9 7BY.

**WHEREAS**

- (A) The Trust has been established as a community benefit industrial and provident society with the primary charitable purpose to provide or assist in the provision of leisure services for the benefit of those who live, work or visit the East Devon District.
- (B) The Council has resolved, pursuant to its duties of best value under the Local Government Act 1999 and in accordance with its corporate objectives for leisure services as set out in its Community Plan, as amended from time to time, (or such other relevant policy document as adopted by the Council from time to time), to work in partnership with public, private and voluntary sector bodies to improve the delivery of public services for the benefit and well being of the local community.
- (C) The Council has further resolved pursuant to its powers under Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 and Section 2 of the Local Government Act 2000 and all other powers in that behalf to provide financial and other assistance to the Trust in accordance with the terms of this Agreement to assist the Trust in the provision of leisure services in the District of East Devon.
- (D) The Council and the Trust have agreed proposals for the transfer to the Trust with effect from the Completion Date (as hereinafter defined) of the said leisure activities, together with certain of the property and assets thereof, upon the terms set out in the Business Transfer Agreement entered into by the parties on even date hereto.
- (E) The Council acknowledges that the Trust is an independent organisation and this agreement sets out the terms of the financial assistance provided by the Council in relation to certain activities and objectives of the Trust which are aligned to or coincide with objectives of the Council.

**IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context requires otherwise, the following expressions shall have the following meanings:

**"Annual Delivery Plan"** means the annual delivery plan submitted by the Trust in accordance with Clause 4 of this Agreement detailing the Services to be provided by the Trust during the forthcoming 12 month period. A copy of the Trust's Annual Delivery Plan for the period 1 January 2006 to 31 December 2006 shall be submitted to the Council for its approval by no later than 1 March 2006;

**"Agreement"** means this agreement;

- "Best Value Duty"** means the duty of local authorities to make arrangements to receive continuous improvement in the delivery of services as required by the 1999 Act;
- "Best Value Performance Indicators"** means performance indicators specified from time to time by the Secretary of State pursuant to the 1999 Act;
- "Best Value Performance Plans"** means the best value performance plans which are required to be prepared in accordance with the 1999 Act;
- "Best Value Review"** means the review required to be conducted in accordance with the 1999 Act;
- "Business Day"** means a day (excluding Saturday and Sunday) on which banks in London are open for business generally;
- "Business Information"** means the materials, books, data, financial and other costing documents of the Trust relating to the Services including without prejudice to the foregoing, marketing and promotional materials, accounting information, third party suppliers, customers, users and other information relating to the provision of the Services by the Trust pursuant to this Agreement;
- "Business Transfer Agreement"** means the agreement relating to the transfer to the Trust of the leisure services currently provided by the Council at the Facilities to the Trust together with various property and assets associated with the said services as set out in the agreement between the parties entered into on even date hereto;
- "Business Plan"** means the Trust's business plan, a copy of the Trust's business plan for the period 1 January 2006 to 31 December 2008 is attached at Schedule 2 to this Agreement;
- "Change in Law"** means the coming into effect after the date of this Agreement of any legislation, guidance or any applicable judgment of a relevant court of law which changes a binding precedent;
- "Code of Practice"** means the Code of Practice on Workforce Matters in Local Authority Service Contracts ODPM Circular 03/2003 as amended, updated or replaced from time to time;
- "Commencement Date"** means 1st January 2006 or such other date as may be agreed between the parties in writing as being the date on which the provision of the some or all of the Services shall begin;
- "Completion Date"** means 00.01 am on the date on which the transfer is effective which shall be 1 January 2006 unless otherwise agreed by the parties in writing;
- "Corporate Objectives"** means the Council's corporate and strategic objectives for the economic, social and environmental well-being of

	the area as set out in the Council's Community Plan, together with such other documents and strategies as notified to the Trust from time to time;
<b>"Comprehensive Performance Assessment"</b>	means the service reviews undertaken by the Council pursuant to the 1999 Act;
<b>"Condition Survey"</b>	has the meaning given to it in the Leases;
<b>"Council"</b>	means East Devon District Council being a District Council under the provisions of the Local Government Act 1972 or any statutory local authority created or to be created with the same or additional duties and powers which shall be or become the statutory authority for the District of East Devon or such enlarged District as shall be included within its administrative responsibilities;
<b>"Council Officer"</b>	means the Corporate Director - Communities from time to time of the Council or such other person or persons notified to the Trust by the Council appointed in his place for all purposes connected with this Agreement;
<b>"Council Policies"</b>	means the standards, policies, strategies and instructions issued by the Council and notified to the Trust from time to time;
<b>"Dispute Procedure"</b>	means the procedure for the resolution of disputes set out in Schedule 4;
<b>"DPA"</b>	means the Data Protection Act 1998;
<b>"Existing Third Party User Agreements"</b>	means the existing arrangements with third parties agreed between the third party and the Council prior to the Commencement Date;
<b>"Employees"</b>	means the employees of the Council who transferred to the Trust under the Business Transfer Agreement on the Commencement Date and who are listed in Schedule 3 of the Business Transfer Agreement;
<b>"Equipment"</b>	means the items of equipment located within the Facilities and owned or leased by the Council and made available to the Trust for the sole use in delivering the Services in accordance with the terms of the Equipment Agreement including but not limited to the items detailed in the Equipment Inventories including any replacements thereof on a like for like or equivalent value basis and any additional items purchased as part of an approved Investment Plan. For the avoidance of doubt, the Council does not transfer legal title to the Equipment (and any equipment over which the Council has a Floating Charge);

- "Equipment Agreement"** means the agreement between the parties relating to the use, repair, maintenance and replacement of the Equipment by the Trust entered into on even date hereto;
- "Equipment Inventory"** means the inventory of the items of Equipment as set out in Schedule 2 of the Equipment Agreement (as amended, replaced, modified, substituted or updated in accordance with the terms of this Agreement);
- "Equipment Inventory Audit"** has the meaning given to it in the Equipment Agreement;
- "Expenditure"** means the aggregate of expenditure incurred in any month during the Service Period by the Trust in relation to the proper performance of this Agreement in accordance with the Business Plan;
- "Expert Procedure"** means the procedure for appointment of an Expert to resolve disputes as set out in Schedule 8;
- "Facilities"** means the leisure facilities leased or licenced by the Council to the Trust and at which the Trust shall be providing the Services as identified in Schedule 1 and as more particularly described in the Leases and licences and "Facility" shall mean any one of the Facilities together with such additional facilities from which the Services are provided as the parties may agree from time to time;
- "Finance and Operational Reports"** means the format for the regular financial and operational reports to be provided by the Trust to the Council as set out in Schedule 7;
- "Funding Year"** means, in the case of the first Funding Year, the period from the Commencement Date to 31 March 2006 and, in respect of subsequent periods, a period commencing on 1 April in any year and ending on 31 March in the following year and, in respect of the last year, the period from 1 April in that year to the actual date of termination;
- "Good Industry Practice"** means the exercise of that degree of skill, diligence and prudence which would reasonably be expected from an experienced contractor engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matters arise;
- "Income"** means the aggregate of sums received by the Trust within each month during the Service Period from the users of the Facilities in relation to the proper performance of this Agreement in accordance with the Business Plan (which for the avoidance of doubt shall exclude the Services Fee);
- "Investment Plan"** means the Trust's proposals for the ongoing investment in the Services to continuously improve the Services available to the public;

<b>"Key Performance Indicators"</b>	means the performance indicators set by the Council against which the Trust's performance shall be measured. The current Key Performance Indicators are set out in Schedule 4;
<b>"Key Performance Targets"</b>	means the targets set by the Council which the Trust is required to achieve in the course of delivering the Services. The current Key Performance Targets are set out in Schedule 4;
<b>"Leases"</b>	means the leases or licences for the Facilities to be entered into by the parties on or near to even date hereto;
<b>"Losses"</b>	means all damages, losses, liabilities, costs, expenses (including reasonable legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;
<b>"Market Value"</b>	means the value likely to be achieved at an open market sale;
<b>"New Employees"</b>	shall mean those new employees employed by the Trust to provide the Service during the Service Period who will be working alongside the Employees;
<b>"Opening Hours"</b>	means the opening hours for each Facility as specified in the relevant Lease for each Facility;
<b>"Personal Data"</b>	means personal data as referred in the DPA which is supplied to the Trust by the Council or obtained by the Trust in the course of performing its obligations under this Agreement;
<b>"Prescribed Rate"</b>	means an interest rate of two per cent above the base lending rate of HSBC Bank plc (or any successor bank) from time to time;
<b>"Prohibited Act"</b>	means; <ul style="list-style-type: none"> <li>(a) offering giving or agreeing to give to any member, servant or employee of the Council any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> <li>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council; or</li> <li>(ii) for showing or not showing favour or disfavour to any member, servant or employee or any other person in relation to this Agreement or any other agreement with the Council;</li> </ul> </li> </ul>



- (b) entering into this Agreement or any other agreement with the Council in connection with which commission has been paid or has been agreed to be paid by the Trust or on its behalf or to its knowledge unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Council;
- (c) committing any offence:
  - (i) under the Prevention of Corruption Acts 1889-1916;
  - (ii) under law creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council;

<b>"Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended);
<b>"Relevant Employees"</b>	means the employees employed by the Trust in the delivery of the Services at the Facilities at the expiry of this Agreement or on the date on the notice if terminated early in accordance with the terms of this Agreement;
<b>"Retail Price Index"</b>	means the UK General Index of Retail Prices published by the Office for National Statistics or, if such index shall cease to be published, such other retail prices index as may be published in substitution therefor; or in the event of there being no direct substitute, such index as shall be the nearest to the General Index of Retail Prices as determined by agreement between the parties;
<b>"Review Meetings"</b>	means the regular review meetings between the parties pursuant to Clause 21;
<b>"Service Fee "</b>	means the Funding provided by the Council to the Trust in accordance with the Service Fee Schedule set out in Schedule 3;
<b>"Services"</b>	means the leisure services more particularly described in the Annual Delivery Plan consisting of the provision of leisure services within the District for the benefit of the general public in the interests of social welfare and improving their conditions of life and such other services as the parties may agree from time to time pursuant to Clause 8;

- "Service Level Agreement"** means the key outputs that the Trust is required to achieve in delivery of Services as set out in the Service Level Agreement set out at Schedule 4;
- "Service Period"** means the period commencing on the Commencement Date and continuing for a period of 30 years (subject to the provisions set out in this Agreement for early termination);
- "Third Party Users"** means those third parties permitted to use the Facilities pursuant to existing arrangements with the Council as specified in Schedule 6;
- "Trust Equipment"** means any items of equipment used in connection with the Services which are owned or leased by the Trust and which are not items of Equipment;
- "Trust Officer"** means the Chief Executive of the Trust appointed pursuant to the provisions of Clause 13 of this Agreement;
- "Users"** means customers who use the Facilities;
- "VAT"** means value added tax as provided for in the Value Added Tax Act 1994 of the United Kingdom and legislation (whether delegated or otherwise) supplemental thereto or in any primary or subordinate legislation promulgated by the European Union or any body or agency thereof and any tax similar or equivalent to such taxes imposed by any country other than the United Kingdom; and
- "1999 Act"** means the Local Government Act 1999.

- 1.2 In this Agreement unless the contrary is specified:
- 1.2.1 the table of contents and headings in this Agreement are for convenience only and shall not affect its construction;
- 1.2.2 words denoting the singular shall include the plural and vice versa. Words denoting any gender include all genders;
- 1.2.3 references to a "person" shall be construed so as to include any individual, firm, Company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- 1.2.4 references to a "Company" shall be construed so as to include any Company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 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;

- 1.2.6 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 thereunder or deriving validity therefrom and any reference to all statutory instruments, orders, regulations or other subordinate legislation made pursuant to that statutory provision;
- 1.2.7 an agreement or other document is a reference to that agreement or document as from time to time supplemented or amended;
- 1.2.8 "writing" shall be construed so as to include any communications effected by telex, cable, facsimile transmission or any comparable means ordinarily legible and non-transitory but excluding writing appearing only on the screen of a visual display unit or other similar device;
- 1.2.9 "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;
- 1.2.10 any references to a "day" shall mean a period of 24 hours running from midnight to midnight;
- 1.2.11 references to times of the day are to London time.
- 1.3 In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules or between any of the Schedules, the conflict shall be resolved according to the following order of priority:
- (a) the body of this Agreement;
  - (b) the Schedules;
- 1.4 In the event of any inconsistency between this Agreement and the Business Transfer Agreement and the Leases, the conflict shall be resolved according to the following order of priority:
- (a) this Agreement;
  - (b) the Leases;
  - (c) the Business Transfer Agreement.
- 2. THE APPOINTMENT OF THE TRUST**
- 2.1 With effect from the Commencement Date and in consideration of the Funding provided by the Council to the Trust, the Trust agrees to provide the Services in accordance with the terms of this Agreement.
- 2.2 The Services to be carried out by the Trust are part of an important relationship between the Council and the community it represents. The Council's key objectives for the District of East Devon are set out in it's Corporate Strategy. The Trust's objectives are closely aligned to those of the Council and through the delivery of the Services will help the Council and the Trust deliver their respective objectives.
- 2.3 The parties agree to work collaboratively and openly and develop effective means of joint working and communication. The parties further agree to act in good faith

towards each other and seek to find workable solutions to issues that may arise in relation to this Agreement and/or the delivery of the Services.

2.4 The financial assistance to be provided by the Council pursuant to the terms of this Agreement is to assist the Trust deliver the Services in accordance with the approved Business Plan and the Annual Delivery Plan.

2.5 The Council acknowledges that the Trust is an independent organisation. This Agreement does not preclude the Trust from entering into financial or other arrangements with other third parties or funding parties.

2.6 The term of the appointment of the Trust in respect of the Services at all or any of the Facilities shall be for the Service Period which shall automatically terminate on the thirtieth anniversary of the Commencement Date unless the parties agree otherwise, subject to the provisions of this Agreement for termination.

### 3. THE SERVICES

3.1 Throughout the Service Period the Trust shall provide the Services in accordance with the terms of this Agreement.

3.2 The Trust shall be responsible for ensuring that the Services are at all times throughout the Service Period performed:

3.2.1 in accordance with all aspects of the approved Business Plan and agreed Annual Delivery Plan;

3.2.2 in such a manner as is consistent with the delivery of the Service Level Agreement;

3.2.3 in an efficient timely and effective manner with proper care and skill;

3.2.4 in accordance with Good Industry Practice;

3.2.5 in compliance with the Code of Practice;

3.2.6 in compliance with all applicable United Kingdom or European Law and all statutory requirements and in particular the Human Rights Act 1996; and

3.2.7 at all times having regard to the Council's Corporate Objectives for the development of the Services.

3.3 The Trust shall ensure that the services and the range of activities available at the Facilities at all times meet the agreed objectives for the Services and meets the needs and demands of the local community and visitors to the District of East Devon.

3.4 The Trust shall develop a range of activities to encourage all sections of the community to participate in leisure activities. In particular, the Trust will develop programmes to retain existing users and to encourage new users and to ensure that the activities and programmes are accessible to all sections of the local community regardless of age, earnings or ability.

### 4. PRICING

4.1 The Trust shall at all times have due regard to the agreed objectives for the Services as set out in the Service Level Agreement and any strategic priorities of the Council for community service provision as advised by the Council to the Trust from time to time

and the Trust's charitable objectives when setting the fees and charges for the activities provided by the Trust pursuant to the terms of this Agreement.

## **5. SERVICE FEE PAYMENT ARRANGEMENTS**

- 5.1 The Service Fee shall be paid by the Council (exclusive of any VAT) to the Trust in equal instalments quarterly in advance on the first day of April, July, October and January in each year starting from 1 January 2006. In the event that the first day of any quarter month is not a business day the payment shall be made on the previous business day.
- 5.2 The Services Fee is exclusive of VAT. If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the "Recipient") shall in addition pay the person making the supply (the "Supplier") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 5.3 The Trust shall provide the Council with any information reasonably requested by the Council from time to time in relation to the amount VAT chargeable in accordance with this Agreement and payable by the Trust to the Council.

## **6. SERVICE FEE FOR THE PERIOD 1 JANUARY 2006 TO 31 DECEMBER 2010**

- 6.1 The Trust has submitted to the Council and the Council has approved the Trust's Business Plan for the period 1 January 2006 to 31 December 2008 together with the Annual Delivery Plan for the period 1 January 2006 to 31 December 2006 and a Service Fee request for the period 1 January 2006 to 31 December 2010.
- 6.2 The Council has, subject to the terms of this Agreement, agreed to pay to the Trust the Service Fee set out in the Service Fee Schedule for the period 1 January 2006 to 31 December 2010.
- 6.3 Notwithstanding that the Service Fee has been agreed for the period set out in Clause 6.2 above, the Council shall review the Trust's performance in accordance with the terms of this Agreement and shall be subject to the rights and remedies of the Council in the event of poor or non performance by the Trust.

## **7. SERVICE FEE FOR THE PERIOD 1 JANUARY 2011 TO 31 DECEMBER 2012**

- 7.1 The Funding for the period from 1 January 2011 to 31 December 2012 shall be agreed in accordance with the following Funding application procedure:
- 7.2 the Council shall notify the Trust of its priorities and objectives for community leisure provision and any changes to its Corporate Priorities, the Funding and Service Level Agreement at the earliest opportunity following 1 April of each year and in any event by no later than 1 July of each year;
- 7.3 the Trust shall submit a Service Fee request for the period 1 January 2011 to 31 December 2012 to the Council by the 1 September 2008 (or such earlier date as agreed between the parties) for the Service Fee for that period and will with the request submit to the Council its updated Business Plan and a draft Annual Delivery Plan detailing the Trust's proposals for that period;
- 7.4 the Council shall give due consideration to the Service Fee request, Business Plan and draft Annual Delivery Plan and will alert the Trust at the earliest opportunity if the Business Plan or Annual Delivery Plan is not acceptable and/or whether any changes are required;

- 7.5 the Council and the Trust shall meet as required to review the Service Fee request, the Business Plan and draft Annual Service Plan prior to final approval by the Council in accordance with Clause 7.7 below. The Trust shall provide such additional information as reasonably required by the Council to assist the Council evaluate the Business Plan and draft Annual Delivery Plan.
- 7.6 the Council shall give a preliminary indication of the level of Service Fee for the Trust for the period 1 January 2011 to 31 December 2012 at the earliest opportunity. As appropriate, the Council will consider a revised Service Fee request prior to formal confirmation of the level of Service Fee in accordance with Clause 7.7 below;
- 7.7 the Council will approve the Business Plan and draft Annual Delivery Plan and confirm the Service Fee for the period 1 January 2011 to 31 December 2012 at the earliest opportunity ;
- 7.8 as part of the Service Fee request as set out in this Clause 7, the Trust shall submit to the Council such information as the Council may reasonably request to assist the Council give due consideration to the Trust's Service Fee request for that period including:
- 7.8.1 the Trust's objectives and priorities;
  - 7.8.2 the Trust's updated Business Plan;
  - 7.8.3 the Trust's Annual Delivery Plan;
  - 7.8.4 details of programmes and initiatives to achieve the Key Performance Targets and Service Level Agreement;
  - 7.8.5 the Trust's Investment Plan;
  - 7.8.6 details of leisure development plans.
- 7.9 The procedure for agreeing the Service Fee requirements from 1 January 2013 for the duration of the Service Period shall follow the same procedure as detailed above.
- 7.10 The Council reserves the right to periodically review the level of Service provision and/or priorities for the Service. The Council shall notify the Trust of the outcome of any periodic review. The Trust shall be expected to take into account any reprioritisation in relation to the Service when preparing its updated Business Plan and Annual Delivery Plan as part of its annual Funding request application.
- 8. MODIFICATIONS TO THE ANNUAL DELIVERY PLAN/CHANGES TO CORPORATE PRIORITIES**
- 8.1 As part of the regular meetings between the parties, the parties will review the delivery of the Services pursuant to the Annual Delivery Plan.
- 8.2 The Council may, acting reasonably,
- 8.2.1 request during the 12 month period of an Annual Delivery Plan, any changes in relation to the delivery of the services;
  - 8.2.2 during the initial funding period being 1 January 2006 to 31 December 2011 request changes to the Service Level Agreement.
- 8.3 The Trust shall use all reasonable endeavours to accommodate any such additional requirements requested by the Council within the existing operational budget for the

- 8.3 The Trust shall use all reasonable endeavours to accommodate any such additional requirements requested by the Council within the existing operational budget for the Services. Subject to that, the Trust shall inform the Council of any cost implications of any proposed variation of the Services requested in accordance with Clause 8.2.
- 8.4 As soon as practical after the Council receives details of the cost implications of any such change, the parties shall meet to discuss and agree the issues set out in the cost implications schedule provided by the Trust including:
- 8.4.1 providing evidence that the Trust has used reasonable endeavours to minimise any increase in costs and maximise reduction in costs;
  - 8.4.2 demonstrating how any capital expenditure to be incurred is being measured in a cost effective manner;
  - 8.4.3 if the Trust does not intend to use its own resources to implement any change to the Services, demonstrate that it has complied with best value principles when procuring any work, services, supplies, materials or equipment required in relation to the change in Service.
- 8.5 In any discussions pursuant to Clause 8.4, the Council may modify any request for a variation or change pursuant to this Clause 8.
- 8.6 Any such cost implications shall be agreed between the parties before the proposed variation is implemented by the Trust.
- 8.7 The Trust shall be bound by and shall carry out the variation to the Services once any cost implications have been agreed in accordance with Clauses 8.2 and 8.3.
- 8.8 In the event that the parties cannot agree a cost variation the matter will be determined by Expert Procedure.
- 9. THE FACILITIES**
- 9.1 The Council shall grant and the Trust shall take the Leases. The Leases shall be for a peppercorn rent and shall commence on the Commencement Date and shall automatically terminate in the event that this Agreement terminates.
- 9.2 The Trust shall not use the Facilities or any part of the Facilities for any purpose other than as provided for in the Leases.
- 9.3 The Trust shall observe and perform all the obligations as lessee or licensee under the Leases. Any breach by the Trust of any provision of the Leases shall in addition be deemed to be a breach of this Agreement.
- 9.4 The Trust shall keep the Facilities properly secured at all times and shall be responsible for the safekeeping of all keys, passes and other means of access made available to it by the Council and shall notify the Council immediately of the loss of any such keys passes or other means of access and shall where the losses have been occasioned by the act or default of the Trust its Employees agents or sub-contractors reimburse to the Council any cost of replacements and/or any other reasonable alternative security measures implemented as a result of such loss.
- 9.5 The Council will give to the Trust notice of all planned maintenance programmes, such notice period being not less than six months in the case of major works (excluding

emergency works). The Council will consult with the Trust when preparing its planned maintenance programme for the Facilities.

- 9.6 The Trust shall permit the Existing Third Party Users of the Facilities identified in Schedule 6 to have full access to the Facilities in accordance with and on the terms set out in the Existing Third Party Users Agreements.
- 9.7 The Trust shall not do, omit, suffer or permit at or in relation to the Facilities any act or thing which would cause the Council to be in breach of any of the Council's obligations in relation to any of the Existing Third Party Users Agreements and shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands and expenses suffered by the Council arising from an act or omission of the Trust relating to them and/or breach of the aforesaid.

## 10. EQUIPMENT

- 10.1 The Council grants to the Trust a lease to use the Equipment only for the purpose of delivery of the Services during the Service Period in accordance with the Equipment Agreement. For the avoidance of doubt, the Trust shall not transfer legal title to the Equipment and shall retain legal title throughout the Service Period in relation to the Equipment and any replacements thereof.
- 10.2 The Trust shall be responsible for the maintenance and repair and replacement of the Equipment throughout the Service Period in accordance with the Equipment Agreement.
- 10.3 The Trust shall ensure that the Equipment Inventory is updated regularly to include new, modified or replacement Equipment in accordance with Clause 6 of the Equipment Agreement and present to the Council an annual Equipment Inventory and shall expressly notify the Council of any variations to the previous years Equipment Inventory and to the original Equipment Inventory.
- 10.4 The Trust shall not enter into any payment arrangements in relation to the Equipment with a third party supplier which exceed the Service Period.
- 10.5 At the expiry or early termination of the Service Period, the Trust shall deliver up the Equipment unencumbered to the Council in accordance with terms of Clause 25.

## 11. ASSIGNMENT AND SUB CONTRACTING

- 11.1 Subject to Clause 11.2 neither party shall be entitled to assign the benefit of this Agreement or any part thereof.
- 11.2 The Trust shall not sub-contract the performance of the Services or any part thereof to any person without the previous written consent of the Council, such consent not to be unreasonably withheld. In considering whether to grant consent the Council shall reasonably take into account the impact of any subcontracting on the level of rate relief available to the Trust in relation to the Facilities. If consent is given this shall not relieve the Trust from any liability or obligation under this Agreement and the Trust shall be responsible to the Council for the acts, defaults or neglect of any sub-contractor.
- 11.3 The Trust may grant to any sub-contractor under Clause 11.2 such licence to use the Facilities as may be necessary to enable it to properly perform the Services and to discharge its obligations under this Agreement but for no other purpose.



~~12. CODE OF PRACTICE AND PENSION MATTERS~~

- 12.1 From the Commencement Date the Trust shall perform all of the Trust's obligations under or in connection with the contracts of employment of the Employees.
- 12.2 The Trust shall comply in all regards with the Code of Practice in relation to New Employees.
- 12.3 The Trust shall include in its contracts with sub-contractors of the Trust an obligation for any such sub-contractors to comply with the Code of Practice in relation to New Employees.
- 12.4 The Trust and any sub-contractors of the Trust shall provide the Council with all information as requested by the Council with regard to Employees and New Employees to allow the Council to monitor the Trust's compliance with the Code of Practice as soon as reasonably practicable including the terms and conditions of employment of the Employees and any New Employees.
- 12.5 If in the opinion of the Council or if the Council receives a complaint by an Employee or a New Employee of the Trust or a recognised Trade Union, the Trust or any of its sub-contractors have failed to comply with their obligations under the Code of Practice, the Council will seek an explanation from the Trust. If the Trust's response does not satisfy the Council (acting reasonably), the Council will request the Trust to take immediate action to remedy non-compliance.
- 12.6 In the event that the Trust fails to remedy the non-compliance or in the event of any dispute with regard to compliance of the Code of Practice which the parties are not able to agree, the matter will be dealt with in accordance with the dispute resolution procedure set out in Clause 44.2.
- 12.7 If the Trust is found to be in breach of the Code this will be a material breach of this Agreement. Throughout the Service Period, the Trust shall provide at its own expense continuous pension provision on the basis of an open scheme with the Local Government Pension Scheme as administered by Devon County Council on the terms agreed between the Council, the Trust and Devon County Council to all the Employees.
- 12.8 Throughout the Service Period the Trust shall provide at its own expense to all New Employees employed in the provision of the Services following the Commencement Date full access to the pension arrangements as detailed in the ODPM Circular (Annex D) which must be either:
- 12.8.1 the Local Government Pension Scheme as administered by Devon County Council, (on terms to be agreed between the Council, the Trust and Devon County Council); or
- 12.8.2 a good quality employer pension scheme being a contracted out final salary based defined benefit scheme or a defined contribution scheme under which the Trust must match employee contributions of up to 6 per cent (although either party could pay higher); or
- 12.8.3 a stakeholder pension scheme under which the Trust must match employee contributions up to 6 per cent (although either party could pay higher).
- 12.9 The Trust shall ensure that any new service operator responsible for delivering the services in place of the Trust complies with the obligations set out in this Clause 12.

**13. TRUST OFFICER**

- 13.1 The Trust shall appoint a suitably experienced and qualified Trust Officer for delivering the Services empowered at all times to act on behalf of the Trust and for all purposes connected with this Agreement. Any notice, information, instruction or other communication given or made to the Trust Officer shall be deemed to have been given to the Trust.
- 13.2 The Trust shall ensure that the Trust Officer or a competent deputy duly authorised by the Trust to act on its behalf, is available to the Council Officer in person at reasonable times during the Service Period.

**14. MANAGEMENT AND STAFFING ISSUES**

- 14.1 The Trust shall ensure that a suitably qualified Employee shall be present at each Facility during the Opening Hours. When the Facilities are closed to the public the Trust Officer shall arrange for a suitably qualified manager to be on call and available to deal with emergencies. The Trust Officer shall where practicable provide to the Council Officer details of the name address and telephone number of the managers on call at least seven days in advance.
- 14.2 The Trust shall at all times during the Service Period employ sufficient persons of sufficient abilities and skills for the proper performance and supervision of the performance of the Services in accordance with the Annual Service Delivery Plan.
- 14.3 The Trust shall ensure that every person employed by the Trust in and about the provision of Services is at all times properly and sufficiently trained and instructed with regard to:
- 14.3.1 the task(s) that that person has to perform;
  - 14.3.2 all relevant rules, procedures and statutory requirements;
  - 14.3.3 health and safety at work;
  - 14.3.4 fire risk and fire precautions;
  - 14.3.5 the necessity to observe high standards of courtesy and consideration to the users and others to promote the image and reputation of the Facilities and/or the Council.
- 14.4 The Trust shall take all reasonable steps to ensure that at all times throughout the Service Period the Employees and the New Employees are suitable to be employed to perform the Services. For the purposes of this Clause, reasonable steps shall mean that prior to their engagement by the Trust, the Trust shall make such checks and reasonable enquiries that a prudent and responsible employer should reasonably undertake including assessing their suitability whether at interview or otherwise and taking references from suitable persons about the person's character, background or convictions (including obtaining relevant criminal conviction certificates or criminal record certificates pursuant to the Police Act 1977). The Trust shall adopt good recruitment practices.
- 14.5 The Trust shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions, pension contributions or levies of any kind relating to or arising out of the employment of any person employed by the Trust.

- 14.6 Where the Council Officer becomes concerned at the behaviour or performance of an individual employed in or about the execution of the Services he will inform the Trust Officer in writing of his concern in order that, where appropriate, action may be taken under the relevant disciplinary policy of the Trust. Should an improvement not be forthcoming or should a single incident be considered by the Council Officer to be so serious as to necessitate immediate removal the Council Officer shall request the Trust Officer to remove the person from the Services. The Trust shall take all appropriate action in relation to the Council's request in accordance with the Trust's disciplinary policy and employment law generally.
- 14.7 The Trust shall inform the Council as soon as reasonably practicable if a member of staff has been subject to a disciplinary procedure or has been dismissed as a result of a complaint made by a member of the public or another member of the Trust's staff.
- 15. HEALTH AND SAFETY**
- 15.1 The Trust shall ensure that it and its employees, sub contractors and agents shall in the course of this Agreement comply with the Health and Safety at Work etc Act 1974 together with any reasonable additional guidance prepared by the Council and supplied to the Trust either before or during this Agreement.
- 15.2 The Trust shall adopt safe methods of work in order to protect the health and safety of its own Employees, the employees of the Council and of all other persons including members of the public.
- 15.3 The Trust shall properly maintain records of all accidents and incidents at the Facilities. The Trust shall notify the Council at the earliest opportunity and in any event not more than 24 hours after the event of any accidents or incidents which are RIDDOR reportable accidents or incidents.
- 15.4 The Trust shall throughout the Service Period maintain a written safety policy (and provide the Council with a copy of such) and shall ensure that the Council and the Trust's employees are notified of any changes to the policy.
- 15.5 The Council's authorised Health and Safety Advisor may suspend the delivery of any part or parts of the Services by the Trust in accordance with this Agreement in the event of material non compliance by the Trust with Health and Safety regulations or procedures including matters affecting public safety, the Council or the Trust's employees where such non compliance means that the Services cannot safely continue to be provided by the Trust. The Trust shall not resume the provision of the affected part or parts of the Services until the Council's authorised Health and Safety Advisor has certified that he is satisfied that the Trust has complied with Health and Safety regulations and procedures. All additional costs, fees, expenses and lost revenue occasioned by such supervision shall be borne by the Trust insofar as the breach is due to an act or omission of the Trust, its employees, sub-contractors or agents.
- 16. AGENCY**
- 16.1 The Trust is not and shall in no circumstances hold itself out as being the servant or agent of the Council.
- 16.2 The Trust is not and shall in no circumstances hold itself out as being authorised to enter into any agreement on behalf of the Council or in any way to bind the Council to the performance variation release or discharge of any obligation under any agreement entered into by the Trust whether for the purposes of performing the Services or otherwise.

16.3 The employees (and if appropriate the sub-contractors unless the facts support such holding out) of the Trust are not and shall not hold themselves out to be and shall not be held out by the Trust as being servants or agents of the Council for any purposes whatsoever.

16.4 Nothing herein contained shall be construed as creating a partnership between the Council and the Trust and the Services are to be performed by the Trust in its own right and on its own behalf.

## 17. INSURANCES

17.1 Without prejudice to the Council's rights under this Agreement, the Trust shall with effect from the Commencement Date and throughout the Service Period take out such policy or policies of insurance approved by the Council as may be necessary to insure the Trust against all risks anticipated by a prudent service provider engaged in providing the Services and any insurances as may be required by law for the Service Period including (without limitation) in respect of the following risks and, where stated, in the following amounts:-

17.1.1 business interruption insurance;

17.1.2 trustee indemnity insurance;

17.1.3 public liability, such insurance cover being in an amount not less than £10,000,000 (ten million pounds) in respect of each and every claim, the number of claims in any period of insurance to be unlimited;

17.1.4 employer's liability including (without limitation) in respect of personal injury or death of any person arising under a contract of Services with the Trust and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance cover shall not be less than £10,000,000 (ten million pounds) in respect of any one incident, the number of claims in any one period of insurance to be unlimited; and

17.1.5 property and contents insurance as required by the terms of the Leases.

## 18. COMPLAINTS PROCEDURE AND QUALITY CONTROL

18.1 It shall be the duty of the Trust to provide the Services to a standard that is in all respects in accordance with the requirements of this Agreement.

18.2 The Trust shall deal with any complaints received (whether orally or in writing whether from Users or others) in a prompt, courteous and efficient manner.

18.3 The Trust shall provide the Council with a copy of its complaints procedure before the Commencement Date (and shall provide the Council with an updated version of the procedure within 1 month of any change) and the Trust shall give such publicity of the procedure to the public generally and to complainants in particular as the Council may reasonably require.

18.4 Unresolved complaints received or referred to the Council may be investigated by the Council Officer. The Trust shall provide all reasonable assistance to the Council to deal with any such complaints.

- 18.5 The Trust shall throughout the Service Period institute and maintain a properly documented system of quality control designed to ensure that the Services are provided at all times and in all respects in accordance with this Agreement.
- 18.6 The Trust shall undertake an annual customer satisfaction survey the purpose of which shall be to assist both the Council and the Trust:
- 18.6.1 assess the level of satisfaction among users of the Facilities including the way the Services are being provided, performed and delivered;
- 18.6.2 assist in the preparation of the Trust's Annual Service Delivery Plan and Business Plan and Investment Plan;
- 18.6.3 monitor the compliance of the Trust with the Service Level Agreement;
- 18.6.4 assist the Council with the preparation of comprehensive performance assessments and best value reviews.
- 18.7 The Trust shall provide a summary of the results of the survey at the earliest opportunity of its completion and shall if requested by the Council provide copies of the completed questionnaires.
- 18.8 The system operated by the Trust shall be open to inspection at any time by the Council Officer. In the event that any reasonable recommendations concerning the improvement of the system are made by the Council Officer from time to time, any such recommendations which are agreed by the Trust shall be implemented by the Trust as soon as reasonably practicable.
- 19. BEST VALUE AND COMPREHENSIVE PERFORMANCE ASSESSMENT**
- 19.1 The Trust acknowledges that:
- 19.1.1 the Council is subject to the Best Value Duty; and
- 19.1.2 the provisions of this Clause 19 are intended to assist the Council in discharging its Best Value Duty and achieving its corporate objectives for community leisure services.
- 19.2 The Council shall, throughout the Service Period, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 19.3 The Trust shall undertake or refrain from undertaking such actions as the Council shall reasonably request to enable the Council to comply with the 1999 Act, including:
- 19.3.1 supporting and assisting the Council in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to the Services;
- 19.3.2 complying with requests for information, data or other assistance made by the Council in pursuance of its duty of Best Value Duty including to: -
- 19.3.3 facilitate any review, inspection or audit undertaken by the district auditor, the Improvement and Development Agency or any other relevant authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Council's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;

- 19.3.4 assist the Council in relation to any action taken by the Secretary of State under Section 15 of the 1999 Act; and
- 19.3.5 enable the Council to report on the Best Value Performance Indicators;
- 19.3.6 assist the Council in any comprehensive performance assessment;
- 19.3.7 enable the Council to comply with the Audit Commission's Publication of Information Direction 2000 (England);
- 19.3.8 complying with all requests by the Council to procure the attendance of specific officers or Employees of the Trust or any sub-contractor (or any of its or their sub-contractors) at any meetings of the Council at which the Services are to be discussed;
- 19.3.9 permitting any audit commission inspector (or authorised representative), in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
  - 19.3.9.1 the Facilities; and
  - 19.3.9.2 any document or data relating to the Services;
  - 19.3.9.3 any sub-contractor, agent or employee of the Trust.

## **20. INFORMATION, AUDIT AND INSPECTION**

- 20.1 The Trust shall maintain and provide and shall procure that any sub contractors shall maintain and provide current complete accurate operational and financial records in relation to the delivery of the Services including details of all Income and Expenditure which the Council may reasonably require.
- 20.2 The Council reserves the right to, acting reasonably at all times, inspect any relevant and necessary financial and operational records of the Trust as they relate to the Services for the following purposes (including but not limited to):
  - 20.2.1 to monitor the delivery of the Services;
  - 20.2.2 to verify any aspect of the financial or operational reports provided to the Council by the Trust;
  - 20.2.3 to monitor achievement of the key outputs set out in the Service Level Agreement;
  - 20.2.4 to demonstrate and verify any cost estimate for any variation of the Services requested by the Council or the Trust.
- 20.3 The Council has the right to request a statement from the Trust's auditors (or the Trust's Financial Manager if he or she as a Chartered Accountant) to verify any financial information provided by the Trust in accordance with this Agreement, including a statement from the Trust's auditors (or the Trust's Financial Manager if he or she as a Chartered Accountant) in relation to the Income and Expenditure items included in the annual contract account to confirm the contract accounts are a true and accurate statement of the Trust's affairs in relation to this Agreement. The Council agrees to meet the reasonable costs of such a request if the information so requested is provided by the Trust's external auditors.
- 20.4 The Trust shall comply with statutory requirements and any statements of recommended accounting practice which apply to the Trust.

- 20.5 The Trust shall provide the Council with a copy of its audited accounts as soon as they are available and in any event within six months from the end of the Trust's financial year.
- 20.6 The Trust shall co-operate with the Council's internal and/or external auditors with regard to any audit requirements of the Council's internal and/or external auditors in connection with the Trust's delivery of Services under this Agreement.
- 20.7 In the event that the Trust fails to comply with the requirements of Clauses 20.1 and 20.3 above then, without prejudice to any other rights or remedies available to the Council, the Council Officer or such other person nominated by the Council Officer shall be given access to all and any accounts, documents and information (and the assets, stocks, stores or other evidence which supports such documentation) in the possession, custody or control of the Trust to enable the Council to carry out its own audit of the Trust. In such circumstances, the Trust shall:
- 20.7.1 provide such facilities as the Council Officer (or his nominee) may reasonably require to visit any place where the accounts are held and examine any such accounts;
- 20.7.2 permit the Council Officer (or his nominee) to take and remove originals or copies of the accounts and other relevant documents subject to the Council Officer (or his nominee) giving an undertaking within seven days of demand to the Trust to return any originals of such documents);
- 20.7.3 provide such information and/or explanation as the Council Officer (or his nominee) may consider appropriate or necessary to carry out the audit; and
- 20.7.4 use reasonable endeavours to procure that any person acting on behalf of the Trust (including any subcontractors) who has relevant account information provides access to such to the Council Officer (or his nominee).
- 20.8 The Trust shall co-operate in a timely manner with any reasonable requests by the Council to assist with the provision of financial or other information required by any central government department or agency or the Local Government Ombudsman.
- 20.9 The Trust will notify the Council of any changes to its governing document and provide a revised version of the governing document as appropriate at the earliest opportunity following any change. The Trust shall consult with the Council before resolving to change the legal structure of the organisation.

## **21. REPORTING AND MONITORING**

- 21.1 The Trust acknowledges the Council's duty to be accountable for the Services Fee provided to it and agrees that throughout the Service Period it shall:
- 21.1.1 ensure the attendance by the Trust Officer at quarterly Review Meetings with the Council Officer (together with such other representatives from the Council as appropriate) to review the current performance of the Trust (and such additional meetings as may be reasonably required to address or remedy an urgent matter arising in relation to the Trust's performance of the Services pursuant to this Agreement);
- 21.1.2 ensure attendance of a representative of the Trust at least one annual meeting with the Council to present, inter alia, an end of year report of the Trust and details of its future service development proposals;

- 21.1.3 provide a financial and operational performance report no later than seven days prior to each relevant review meeting in a form required by the Council (acting reasonably) which shall include the financial and performance information set out in Schedule 10.
- 21.1.4 provide an annual report of performance against the previous years Annual Service Delivery Plan.
- 21.1.5 provide such additional information as the Council may reasonably request from time to time.
- 21.1.6 co-operate with the Council's reasonable requests in connection with any reviews undertaken by it, including but not limited to those related to Best Value, comprehensive performance assessment and/or audit inspection;
- 21.1.7 provide such financial, statistical and such other information as required by the Council to complete statutory returns; and
- 21.1.8 notify the Council forthwith of any changes to the status of the Trust, the Trust's governing document, the executive management team or any change of control of the Trust (including mergers, amalgamations, group structures or other forms of joint working or cooperation with other bodies).
- 22. MANAGING POOR PERFORMANCE**
- 22.1 Without prejudice to the Council's other rights and remedies under this Agreement, if, following a Review Meeting, the Council's Officer determines that the Trust has failed to perform any of its obligations under this Agreement (which shall be deemed to include a failure to deliver the Service Level Agreement), the Business Transfer Agreement, the Leases, the Support Services Agreement and/or the Pensions Admissions Agreement and/or is otherwise in material breach of any of its obligation under those agreements the Council Officer shall give written notice of such breach to the Trust.
- 22.2 Within 14 days of the receipt of a notice given under Clause 22.1 above, the Trust shall prepare and submit to the Council for its approval an action plan to remedy the breaches specified in the notice ("**Action Plan**").
- 22.3 An Action Plan shall specify a timetable for remedying each of the breaches complained of.
- 22.4 Within 14 days of its receipt of an Action Plan the Council may approve the plan or, in default of such approval, the Dispute Procedure shall apply.
- 22.5 Following the approval of an Action Plan under Clause 22.4 if, at the next review meeting between the parties, the breaches specified in the notice issued under Clause 22.2 have not been remedied by the Trust in the time period permitted by the Action Plan, the Council may:
- 22.5.1 agree to an extended period for the Action Plan; or
- 22.5.2 in the case of a material breach which is having a detrimental impact on the quality of the Services offered, terminate this Agreement in accordance with Clause 23; or
- 22.5.3 in the case of any breach (including a material breach referred to in Clause 22.5.2) reduce the Services Fee by an amount commensurate to the agreed value of any Key



Performance Output that the Trust has failed to deliver until such time as the breach has been remedied; or

22.5.4 issue to the Trust an improvement plan specifying the improvements required to be delivered by the Trust in relation to all or any of the Services provided pursuant to the terms of this Agreement. The improvement plan will include a time period for remedy and will notify the Trust of the consequences of failure to comply.

22.6 Any variation in the level of the Services Fee under Clause 22.5.3 shall have immediate effect.

## 23. TERMINATION

23.1 This Agreement shall terminate automatically on the expiry or early termination of the Leases in any circumstances or at the expiry of the Service Period unless the parties agree otherwise but termination of any one or more of the Leases under the terms if the break clauses contained therein, shall not be grounds for termination but will provide grounds for the terms of this Agreement to be renegotiated to take the altered circumstances into account.

23.2 The Council may, without prejudice to any of its other rights arising hereunder, terminate all or part of this Agreement forthwith upon giving written notice in any of the circumstances set out below:

23.2.1 if the Trust fails to comply with an Action Plan in the circumstances detailed in Clause 19;

23.2.2 if an order is made or a resolution is passed for the winding-up of the Trust except in the case of a voluntary winding-up for the purposes of a scheme of reconstruction or amalgamation the terms of which shall previously have been approved in writing by the Council (such approval not to be unreasonably withheld or delayed);

23.2.3 if an administration order is made in respect of the Trust;

23.2.4 if a receiver (which expression shall include an administrative receiver) is appointed in respect of the Trust or all or any of its assets;

23.2.5 if the Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

23.2.6 if any voluntary arrangement is proposed under Section 1 of the Insolvency Act 1986 in respect of the Trust;

23.2.7 if the Trust ceases or serves notice on the Council of its intention to cease to carry on business;

23.2.8 if the Trust commits a persistent breach of any of its obligations under this Agreement, the Business Transfer Agreement, the Leases, the Support Services Agreement and/or the Admissions Agreement. For the purposes of this Clause, a persistent breach shall mean a total of three breaches or a breach that is repeated more than three times, within six months of the first breach having been drawn to the attention of the Trust by the Council;

23.2.9 the Trust uses the Services Fee for purposes other than for which it has been expressly provided;

- 23.2.10 the Trust or any board member or member of the executive management team of the Trust shall in connection with this Agreement commit a Prohibited Act;
- 23.2.11 if the Trust ceases to be a charity; or
- 23.2.12 if the Trust fails to comply with the Code of Practice or implement any changes required by the Council to remedy a breach of the Code of Practice;
- 23.3 The Council may, without prejudice to any of its other rights arising hereunder, terminate this Agreement after 10 years or after 20 years by giving not less than twelve months' written notice to the Trust. In the event that the Council terminates this Agreement pursuant to the terms of this Clause, the Council will meet any residual costs of the Trust in those circumstances including but not limited to redundancy costs, breakage costs and exit costs.
- 23.4 In the event of the Council being entitled to terminate this Agreement and without prejudice to any of the Council's rights and remedies under this Agreement the Council may, without determining the whole of this Agreement, determine this Agreement in respect of part of the Services only by serving three months' written notice whereupon the Council may itself provide or procure a third party to provide such part of the Services in accordance with this Agreement where this has arisen at a result of a failure of the Trust, the Council shall be entitled to recover such costs from the Trust.
- 23.5 With effect from the date of termination of this Agreement, the rights and obligations of the parties under this Agreement shall cease but such termination shall be without prejudice to any rights or liabilities which have accrued or have been incurred on or prior to termination including, without limitation, unpaid amounts outstanding in respect of Services performed prior to termination.
- 24. CONSEQUENCES OF TERMINATION**
- 24.1 In the event that this Agreement terminates or expires then:
- 24.1.1 The Leases shall automatically terminate;
- 24.1.2 the Council shall be entitled to repossess the Facilities and the Equipment including for the avoidance of doubt replacement Equipment;
- 24.1.3 the Council shall be entitled to make alternative arrangements for carrying out the Services and shall be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof;
- 24.1.4 the Trust shall surrender the Leases in relation to those Facilities for which the Agreement is terminated in favour of the Council and the Council shall accept such surrender;
- 24.1.5 the Trust shall deliver the Business Information which may be necessary to enable the Council or any replacement service provider to carry on the Services;
- 24.1.6 The Trust shall grant to the Council (or the Council's agent, sub-contractor or new service provider) a non exclusive, non transferable, world wide, royalty free licence to use any intellectual property of the Trust which the Council (or its agent, sub-contractor or new service provider) may reasonably require to continue to provide the Services following termination of this Agreement up to a maximum period of six months following such termination;

24.1.7 the Council shall at any time during the contractual notice period (to take effect at termination of this Agreement) or within 30 days of termination (in the event of termination being effective with immediate effect) be entitled to acquire any Trust Equipment upon the following terms:

24.1.7.1 in the case of Trust Equipment not subject to any hire or hire purchase or operating or finance leases or other credit arrangements, at Market Value PROVIDED THAT if the Trust and the Council cannot agree on the Market Value of any of the Trust Equipment subject to the Council's notice exercising its right to purchase Trust Equipment under this Clause within seven days of the date of the Council's exercise of its right to purchase the price payable by the Council shall be determined by an independent valuer appointed by the parties and in default of agreement within a further seven days appointed on the application of either party following notice to the other requesting it to concur in an appointment by the President of the Royal Institution of Chartered Surveyors or his nominated officer:

24.1.7.1.1 whose determination as to valuation shall be final and binding between the parties in the absence of manifest error;

24.1.7.1.2 who shall be entitled to request such information as he considers necessary from either party;

24.1.7.1.3 who shall be granted access to relevant Facilities for the purpose of conducting the valuation;

24.1.7.1.4 whose costs shall be paid as he determines or in default of determination by the parties in equal shares:

and the Council shall pay the agreed or determined sum for the Trust Equipment that the Council elects to acquire within 30 Business Days of the date of agreement or of determination of the appropriate price for all the Trust Equipment so acquired, as the case may be; and

24.1.7.2 the Council shall not be obliged to purchase any Trust Equipment of the Trust subject to hire or hire purchase or operating or finance or other credit arrangements unless and upon such terms as the parties may agree.

24.1.8 The Council shall be entitled to require the repayment of any funding or other monies paid to the Trust in relation to the Facilities for which this Agreement is terminated which has not been expended or which the Trust acting in good faith has agreed to pay at the time of expiry or termination of this Agreement.

## 25. EXIT AND HANDOVER ON TERMINATION

25.1 In the event of this Agreement terminating or expiring then:

25.1.1 Within 28 days of notice of termination of this Agreement being served, the parties will meet to discuss a timetable for drawing up and will draw up an exit plan covering the performance of the obligations of both parties during the exit and handover period. In any event, the Trust will, at no cost to the Council, provide such cooperation, information and assistance to the Council and/or proposed replacement supplier of the Services as may be reasonably required by the Council and/or the proposed replacement supplier to transfer and to enable a smooth migration of the Services being supplied by the Trust including enabling the Council and/or its replacement

supplier to perform all of the Trust's obligations in this Agreement provided the Trust shall not be required to disclose any information which is either:

- 25.1.2 a breach of existing confidentiality obligations; or
- 25.1.3 confidential and commercially sensitive to the Trust.
- 25.2 The Trust and the Council shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the said termination and the Trust shall consult with the Council on all aspects and will comply with any reasonable requirements of the Council in relation to the same;
- 25.3 The Trust agrees that if it is requested by the Council it shall use all reasonable endeavours to assign or novate any then existing contracts which the Trust has entered into with third parties in connection with the operation and management of the Facilities (and subject to the Council meeting the Trust's reasonable legal costs associated with such) including the leasing of any equipment to the Council or to any nominee of the Council;
- 25.4 In the event of a total or partial termination of the Services by the Council, the Trust shall not in the six month period or in the case of Clauses 25.4.13 to 25.4.16 inclusive in the twelve month period leading to expiry or during any period of notice of termination of this Agreement in relation to any Services or facilities for which this Agreement is being terminated except with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed:
  - 25.4.1 incur any expenditure or enter into any commitments other than in the ordinary course of trading;
  - 25.4.2 dispose of or agree to dispose of or grant any option in respect of any part of its assets other than stock in the ordinary course of trading;
  - 25.4.3 vary the terms of any contracts with any provider of goods and/or services already entered into;
  - 25.4.4 enter into any long-term, unusual or abnormal contract or commitment;
  - 25.4.5 enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
  - 25.4.6 grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future revenues or assets;
  - 25.4.7 permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;
  - 25.4.8 in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;
  - 25.4.9 pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;

- 25.4.10 release, waive or modify any warranty or guarantee given by any supplier of goods or services;
- 25.4.11 cause or permit any item comprised in the records to be removed or destroyed or any programs or data held on the computer systems of the Trust and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the DPA or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
- 25.4.12 take any action if the reasonably foreseeable consequence would be to materially and adversely affect the value of the Facilities or any of them;
- 25.4.13 terminate the employment of any of the Relevant Employees for any reason whatsoever without first notifying the Council of such termination save where, in the reasonable opinion of the Trust, termination is justified for cause due to the actions of any such of the Relevant Employees
- 25.4.14 alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees whether with or without the consent of the Relevant Employees other than for wage or salary awards which are in line with those offered generally for similar stated individuals within the Trust's workforce or as provided for in a contract of employment or as is required by law;
- 25.4.15 relocate or assign to new duties any of the Relevant Employees without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; or
- 25.4.16 make any other alterations to the structure or composition of the Relevant Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Council or another service provider.
- 25.5 Upon cessation of service by the Trust and at any time during the preceding six months, the Trust shall, subject to the DPA, Human Rights Right Act 1998 and all legislation relating to the confidentiality of personal information provide the Council with the following:
- 25.5.1 full details of all the existing Relevant Employees including, but not limited to, details of terms and conditions of employment (including but not limited to full details of the remuneration of the Relevant Employees in whatever form and detail the Council may reasonably require) and benefits (including but not limited to any bonus, incentive, employee share scheme and life, accident and health insurance), working arrangements, outstanding obligations to increase remuneration, recognition agreements, redundancy schemes, disciplinary records and attendance records (including all those Relevant Employees temporarily absent from work for any reason, for example, maternity leave, sick leave or holiday) and list of agency workers;
- 25.5.2 all existing, anticipated or threatened claims and disputes so far as it is aware (including but not limited to industrial injury claim or claims in an employment tribunal); and
- 25.5.3 details of an existing users, customers of the Facilities, suppliers of goods and services and any third party arrangements;
- 25.5.4 any other information which may reasonably be required by the Council.

- 25.5.5 The Trust shall and authorise the Council to use any and all the information it may consider necessary for the purposes of its business or for informing any new service provider for any services which are substantially the same as the Services (or any part thereof).
- 25.6 The Trust shall indemnify the Council and any new service provider appointed by the Council to deliver all or any of the Services in full from and against all direct, indirect and consequential liability; loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any new service provider may incur in connection with the employment or termination of employment of any employee of the Trust during any period prior to the expiry or termination of this Agreement expressly excluding any such liability or losses referred to above caused by an act or omission of a Council employee or new service provider employee.
- 25.7 It is expressly acknowledged that, unless otherwise required by the DPA or any other legislation relating to the confidentiality of personal information, the Council can make available such information provided pursuant to Clause 25.5 to a new service provider or a prospective service provider; together with copies of all personnel and employment records (including without limitation National Insurance, PAYE records and pension details), employment contracts and statements of terms and conditions of employment and disciplinary and attendance records relating to the Relevant Employees.
- 25.8 The parties shall jointly undertake (and shall jointly share the costs of) a stock take, Equipment Inventory Audit and Condition Survey on or before termination of this Agreement as more particularly described in the Leases.

## **26. LIABILITY OF THE TRUST**

- 26.1 Subject to the limitations set out below the Trust shall be liable for and shall indemnify the Council its officers, servants, employees, agents or other contractors against any demands liability damages losses costs claims or proceedings whatsoever whether in tort contract or under any statute or common law arising directly out of or in connection with the provision of the Services by the Trust save where the same shall have arisen in whole or in part as a result of any act or omission of the Council.
- 26.2 Provided always that:
- 26.2.1 the Trust shall indemnify and hold harmless the Council against all demands liability, damages, costs, losses, claims or proceedings for which the Trust may be liable under Clause 26.1 save that the Trust's liability to indemnify the Council hereunder may be reduced proportionately to the extent that the act or omission of the Council, its servant or agent have contributed to such liability;
- 26.2.2 nothing herein contained shall be deemed to render the Trust liable for or in respect of or to indemnify the Council against any compensation or damage to persons or property resulting from any act of neglect or breach of statutory duty done or committed by the Council its agents servants or other contractors not being employed by the Trust (or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto).

## **27. LIABILITY OF THE COUNCIL**

- 27.1 The Council shall be responsible for and accept and promptly discharge its liability in connection with all and any claims, costs, demands, actions or any other liabilities relating to the Services (and whether the same arose before or after the

Commencement Date) resulting from any act, default, transaction or circumstance of the Council its employees or agents occurring on or before the Commencement Date and shall indemnify the Trust fully at all times from and against all actions, proceedings, costs, claims, demands or liabilities arising 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 Trust.

**28. SURVIVAL**

Notwithstanding termination of this Agreement, the provisions of Clauses 9 (Code of Practice) Clause 29 (Notices), Clause 36 (Confidentiality) Clause 47 (Governing Law) shall continue in full force and effect.

**29. NOTICES**

29.1 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 Corporate Director - Communities at the Council's Civic Centre and every notice to the Trust shall be made for the attention of the Chief Executive.

29.2 Every notice will be treated as served at the end of the day that it is delivered if it is delivered by hand, two 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.

29.3 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.

29.4 For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by email.

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

**30. FORCE MAJEURE**

30.1 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").

30.2 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.

30.3 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.

30.4 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.

30.5 Where a Force Majeure Event has a material effect on the provision of all or any significant part of the Services for more than 90 days then either party shall be entitled to terminate this Agreement in relation to the part of the Services and/or Facilities affected by giving not less than 90 days' prior written notice to the other.

### 31. WAIVER

31.1 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.

31.2 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.

31.3 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.

31.4 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.

### 32. INTEREST

If either party fails to pay any sum due under this Agreement on the due date for payment, that party shall pay interest on that sum from the due date up to the date of actual payment (as well after as before judgment) at the Prescribed Rate as at the final date for payment.

### 33. SEVERABILITY

33.1 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.



33.2 Without prejudice to clause 33.1 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 28 days of the application of this clause 33.2 then clause 33.3 below shall apply.

33.3 Instruction of Counsel

33.3.1 Where this clause applies the parties shall instruct counsel of not less than ten 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.

33.3.2 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.

33.3.3 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.

34. **ENTIRE AGREEMENT**

34.1 This Agreement together with the Support Services Agreement, Equipment Agreement, the Business Transfer Agreement and Admissions 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 Business Transfer Agreement and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

34.2 In particular but without prejudice to the generality of Clause 34.1, the Council irrevocably and unconditionally waives any right it 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.

35. **ASSIGNMENT**

35.1 No party to this Agreement may assign or transfer its rights or obligations under this Agreement.

## 36. CONFIDENTIALITY

36.1 The Trust acknowledges that it is in receipt of public funding and provides a service to the local community. The Trust agrees to, as far as possible and without prejudicing its commercial interests, operate in an open and transparent manner. Each party undertakes to the other to keep secret and confidential all information (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 or any Group Trust of the other party including without limitation:

36.1.1 the provisions of or the subject matter of this Agreement;

36.1.2 information concerning the trade secrets, customers, suppliers or business associations of the other party; and

36.1.3 information concerning the financial, operational, technical or commercial affairs of the other party

all of which shall be the "Confidential Information".

36.2 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:

36.2.1 is required to be disclosed by the law of any relevant jurisdiction including but not limited to any investigations by government agencies including the Audit Commission and Local Government Ombudsman;

36.2.2 is trivial or obvious;

36.2.3 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;

36.2.4 is in the disclosing party's possession (as evidenced by written records) otherwise than as a result of a breach of this Clause;

36.2.5 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

36.2.6 was disclosed after the express prior written approval of the party to whom such information belongs;

36.2.7 is required to be disclosed by the Council for the purposes of best value or performance assessments

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

36.3 The Trust shall assist the Council at no additional cost to the Trust in meeting any reasonable requests for information in relation to this Agreement which are made to the Council in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Council may, from time to time serve on the Trust an information notice requiring

the Trust within such time and in such form as is reasonably specified in the information notice (having regard to the statutory timescales and requirements), to furnish to the Council such information as the Council may reasonably require relating to such requests for information.

36.4 The Trust acknowledges that in responding to requests for information described in Clause 36 the Council shall be entitled to provide information relating to this Agreement provided that the Council shall not, in responding to such requests for information, disclose any confidential information as defined by and which is exempted from disclosure under any provision of Part II of the Freedom of Information Act 2000; and

36.5 Notwithstanding anything contained elsewhere in this Agreement, the provisions of this Clause 36 shall survive the termination or expiry of this Agreement.

### **37. COPYRIGHT**

Copyright in the documents comprising this Agreement shall vest in the Council but the Trust may obtain or make at his own expense any further copies for use by it in performing the Services.

### **38. DOCUMENTS, RECORDS AND MANAGEMENT INFORMATION**

38.1 The Council shall retain title to all files, documents, electronic and other form of records supplied by the Council to the Trust during the Service Period.

38.2 The Trust shall ensure that these documents are properly safeguarded throughout the Service Period.

38.3 At the termination or expiry of the Service Period, the Trust shall pass all such records and information back to the Council.

38.4 All such records and information shall be made available for inspection during normal business hours on the Council Officer or anyone authorised by her/him giving at least two Business Days' notice in writing (save in the case of emergency, when shorter notice may be served), whether or not such persons are employees of the Council.

### **39. RIGHTS OF THIRD PARTIES**

39.1 No person who is not a party to this Agreement shall have any right under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

39.2 Nothing contained in Clause 39.1 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.

### **40. COSTS**

Except where this Agreement provides otherwise each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and implementation by it of this Agreement.

**41. 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 of any other fiduciary relationship between the parties.

**42. AMENDMENTS**

42.1 Subject to Clause 6, no amendment or variation of this Agreement shall be valid or of any effect unless it is agreed in writing and executed as a deed by duly authorised representatives of both parties.

**43. DATA PROTECTION**

43.1 The Council shall assign to the Trust such Personal Data as it presently holds with regard to existing and prospective Users.

43.2 The Trust shall maintain a database containing details of Users.

43.3 The Data Controller of the Personal Data shall be the Trust.

43.4 Neither the Council nor the Trust shall knowingly do anything which places the other in breach of its obligations under the DPA.

**44. DISPUTE RESOLUTION**

44.1 Except for disputes or differences arising in relation to employment or workforce which shall be dealt with in accordance with Clause 44.2 if any dispute or difference arises out of or in connection with this Agreement, the provisions of Schedule 5 shall take effect.

44.2 Any disputes or differences arising in relation to employment or workforce matters shall be dealt with in accordance with the ODPM Code of Practice on Handling Workforce Issues: Alternative Dispute Resolution Procedure 2004 or such other procedures as may be issued by the Deputy Prime Minister from time to time provided always that in the event that the Code of Practice ceases to exist at any time, the parties shall follow the Dispute Procedure.

**45. CHANGE IN LAW**

45.1 The Trust shall, in the provision of the Services, comply with all applicable law and legislation whether made by statute, enactment, order, regulation or other similar instrument notwithstanding any change of law whether through legislation or jurisprudence after the Commencement Date including for the avoidance of doubt the Human Rights Act 1998.

45.2 The Trust shall be entitled to discuss and consult with the Council the impact of any change in law on the Trust's ability to deliver the Services and comply with the terms of this Agreement. The Council acknowledges that any such changes in law will be taken into account by the Trust when preparing its Business Plan and Annual Delivery Plan.

**46. CORRUPT GIFTS PAYMENTS OF COMMISSION AND GRATUITIES**

46.1 The Trust shall not (and shall procure that any subcontractors shall not), whether itself, or by any partner or director engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other

form of money taking or reward, collection, or charge for any part of the Services other than charges properly approved by the Council in accordance with the provisions of this Agreement.

46.2 The Trust shall not, and confirms that in entering this Agreement it has not committed any Prohibited Act.

**47. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by and shall be construed in accordance with English law and, subject to Clause 44 the parties submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising from this Agreement or its subject matter.

AS WITNESS whereof the duly authorised representatives of the parties hereto have signed and delivered this Agreement as a Deed the day and year first before written.

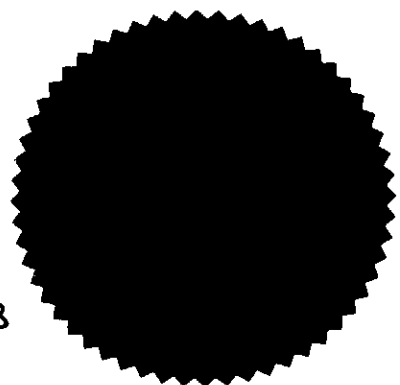
The Common Seal of )  
EAST DEVON DISTRICT COUNCIL )  
was affixed in the presence of )

*Mark R. Williams*  
.....  
Authorised Signatory

Print name *MARK R. WILLIAMS* .....

.....  
Authorised Signatory

Print name:.....



17453

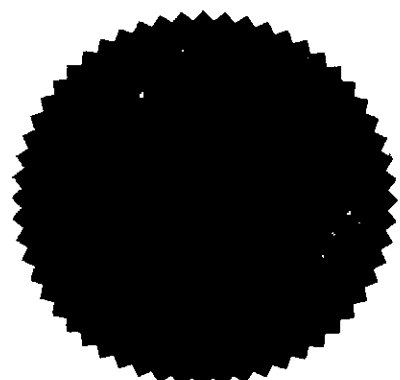
The Common Seal of )  
LEISURE EAST DEVON LIMITED )  
was affixed in the presence of )

*J.P. Micklethwait*  
.....  
Board member

Print name *J. P. MICKLETHWAIT* .....

*David Pagett*  
.....  
Board member/Secretary

Print name *DAVID PAGETT* .....



1.

## SCHEDULE 1

### THE FACILITIES

- 1 Exmouth Swimming Pool & Sports Centre, Imperial Road, Exmouth EX8 1EN more particularly described in the Lease – part freehold title number DN114266
2. East Devon Tennis Centre, Withycombe Village Road, Exmouth EX8 2AZ more particularly described in the Sub-Lease – Leasehold title DN 345042
- 3 Exmouth Pavilion, The Esplanade, Exmouth EX8 2AZ more particularly described in the Lease – part freehold title DN322833
4. Bowling greens, pavilion, café and Putting green being part of Phear Park, Exmouth, more particularly described on the Plan attached to the Lease – part freehold title DN 3228834
- 5 Broadclyst Sports Hall, Station Road, Broadclyst EX5 3AH more particularly described in the Sub- Lease – Leasehold title DN 345107
- 6 Colin Tooze Sports Hall, and all weather pitch , Kings School, Ottery St. Mary EX11 1QW, described in the Sub Lease – new Leasehold title to be allocated
- 7 Sidmouth College Sports Hall, Sidmouth EX10 9LG, more particularly described in the Sub Lease.- Leasehold title DN349541
- 8 Sidmouth Swimming Pool ( excluding the embedded TIC ), Ham Lane, Sidmouth EX10 8XR, more particularly described in the Lease – part freehold title DN 283387
9. Honiton Sports Centre, Squash Court, Swimming Pool and Tennis Courts, School Lane, Honiton EX14 1QT, more particularly described in the Lease – part freehold title DN 349523
10. Axe Vale Sports Centre, The Axe Valley School, Axminster EX13 5AZ, more particularly described in the Sub-Lease – Leasehold title number DN 295677
- 11 Colyton Sports Centre, Colyton Grammar School, Whitwell Lane, Colyford EX24 6HN more particularly described in the Sub- Lease – Leasehold title number DN 519477
12. Putting Green and Bowling Green , Coburg Gardens, Sidmouth more particularly described in the plan attached to the Lease -part freehold title number DN 349553
- 13 Tennis courts, putting green and buildings part of Seafield Gardens, Seaton, more particularly described in the plan attached to the Lease – part freehold title number DN 373740

**SCHEDULE 2**  
**BUSINESS PLAN**



**LEISURE EAST DEVON LTD.**

**Business Plan**

**1<sup>st</sup> January 2006 – 31<sup>st</sup> December 2008**

Issued November 2005.

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- B SWOT Analysis
- C List of Competitors
- D Organisation Chart – Senior Posts
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- F 2006 Budget

## 1. Introduction.

### **The Trust**

Leisure East Devon Ltd (The Trust) is a newly established, not for profit organisation which is incorporated under the Industrial and Provident Societies act as a society for carrying on business for the benefit of the local community & visitors. The Trust will achieve Charitable recognition.

The Trustees and the District Council see the formation of The Trust as providing more investment opportunities, more involvement by local people and employees in the decision making process and greater flexibility in meeting the needs of the community. The new Trust will have the added advantage of having a single issue focus.

### **Scope of the Trust**

The scope of the new organisation is detailed at Appendix A.

### **Mission Statement & Aims.**

The Trust's mission statement encapsulates the philosophy underlying its creation and is:

**To provide accessible, diverse and high quality leisure and cultural opportunities that meet the needs of the local community & visitors.**

The organisation has the following aims:-

- **To recognise the diversity of customers and their leisure needs and to provide opportunities which meet their expectations.**
- **To promote, develop and sustain physical, mental and social well-being by encouraging healthy lifestyles for the whole community.**
- **To advance educational opportunities through leisure and cultural activities.**
- **To achieve a relationship with residents of East Devon such that the Trust is seen to belong to and is for the benefit of the local community.**
- **To address the issues of Sustainability and Financial Viability.**

To achieve these aims, The Trust will work in partnership with a number of other key partners (see item 5 below) to provide increased integration of

social and cultural opportunities within the district and increased provision of programmes and opportunities delivered at wider community locations.

## **2. Executive Summary.**

### **A new partnership.**

Leisure East Devon Ltd will be established on 1st January 2006 by the transfer of activities of the former Leisure and Lifestyles Team of East Devon District Council to a non-profit distribution organisation (Industrial & Provident Society with exempt charity status).

Leisure East Devon Ltd's Board of Trustees will consist of 12 un-paid members - 8 volunteers from the community, 2 elected member representatives nominated by East Devon District Council and 2 members of staff.

The Trust will provide a range of diverse cultural, sporting and physical activities throughout the district in the sectors of indoor and outdoor sports, swimming, exercise and health, children's play schemes, educational Programmes, sporting and cultural events and the performing arts. The Trust plans to further develop the scope and range of its services.

The joint working arrangements between Leisure East Devon Ltd and East Devon District Council and the shared strategic aims and objectives for this new venture will be set out in a detailed management agreement

The legal documents (key provisions papers) which formalise the transfer include:

- Business Transfer agreement
- Landlord/tenant Lease of Premises agreement
- Service Level agreements under the terms of which the Trust will pay the Council for a range of specialist services
- Dual use agreements
- Funding and Management agreement
- Rules for East Devon Leisure Ltd.

The Funding and Management Agreement has been entered into for an initial period of 3 years and this guarantees the Trust an annual, but reducing, grant for each of the first three years of its existence. The 3 year commitment will be rolled forward on an annual basis with the funding for year 4 being agreed during year 1.

Some support services will continue to be provided by the District Council. The service level agreements for these support services will be subject to a 12 month period of notice on either side, or earlier by mutual agreement.

## **Financial arrangements.**

In addition to outlining a rationale for the Trust, this Business Plan seeks to establish the Trust on a sound financial footing.

The Trust will earn a significant percentage of its income by way of fees and charges levied on its customers but, in addition, will be heavily dependent on an annual grant from EDDC.

The key financial outcomes of this plan are:

- A year on year reduction of 2½% in real terms in the amount of the grant from EDDC
- Whilst detailed figures for the next three years have not yet been completed, it is estimated that the savings will be in the excess of £100,000 in year one and in excess of £200,000 in year three.
- The Trust also plans to make further improvements in order to create an operating surplus which will be employed to establish and maintain a cash reserve for The Trust itself. As the reserve grows, it will be used to reinvest in the business.

2006 will be a testing time for The Trust as it seeks to establish itself and develop its plans for the future. While the projections made in this plan are cautious, they do provide for a period wherein the infrastructure will be strengthened to allow a more expansive strategy in the future.

## **3. The Market.**

The Leisure market in East Devon is extensive and diverse, covering services to residents and visitors over a wide geographic area. The market includes the differing needs of all sections of the community including early years children, those in full-time education and the elderly.

The market is served by a large number of organisations, many of which can be viewed as legitimate competitors to the Trust.

The market sectors with which the Trust is concerned include:

- indoor and outdoor sports
- swimming
- exercise and health
- play scheme and holiday education programmes
- crèches
- shows

- events
- sports training
- functions
- sales of equipment and merchandise
- catering and bar sales.

#### **4. Risk Management**

The Trust has identified three main categories of risk - business, economic and legislative.

##### **Business Risk**

Business risk arises mainly through competition from other providers offering similar leisure opportunities.

Competition is strongest in the market sectors of gyms, exercise classes and indoor tennis and in the geographic areas of Exmouth and the western part of the district close to Exeter. Further private sector expansion is planned. A list of current competitors is included at Appendix C.

East Devon's leisure services have traditionally attracted customers on the promise of providing a balance between reasonable price and good quality. There is evidence to suggest that private sector providers - which traditionally have targeted high-income groups - are increasingly adopting this approach.

The Trust faces a lower level of competition in its arrangements for providing facilities for local schools and entertainment opportunities in Exmouth.

To mitigate this risk the Trust will:

- Develop a brand position that emphasis quality and affordability
- Support the brand with marketing and by investment in facilities, targeted in those areas vulnerable to competition
- Commit to high standards of day to day operation so that the trust is at least as clean, safe and welcoming as the private sector
- Make revenue savings and undertake prudent borrowing, to provide funds for investment

##### **Economic Risk**

The Trust's financial position will suffer if the country's economy enters a recession. Under these circumstances, there would be a significant risk

that customers would reduce the frequency of visits/ cancel memberships etc.

To mitigate this risk the Trust will:

- Maintain the 'Passport to Leisure scheme' which targets those with low discretionary spending power
- Develop a brand position in the 'affordable' segment of the market so that the Trust benefits from people looking for "value for money" leisure opportunities.
- Plan to build a reserve of £300,000 during the first three years to reduce vulnerability to short term falls in income and to provide the Trust with time to adjust its budget as necessary.

### **Legislative Risk**

The Trust would be at risk if it fails to act according to law, a legal precedent, a code of practice or Industry guidelines.

Also, a change in the law could result in either higher costs or lower revenue for the Trust, for example:

- European Union legislation on workers rights increasing the cost of employment and/ or disrupting traditional methods of working
- The minimum wage increasing the cost of labour
- The publication of updated codes of practice such as 'Pool Water Treatment Advisory Group' and 'Safety in Swimming Pools' changing standards resulting in higher costs.

The Trust will keep manage this risk by;

- Appointing an Operations Manager with responsibility for keeping the Trust up to date on industry specific matters, and whose competence will be demonstrated by full membership of the Institute of Sports and Recreation Management or equivalent
- Appointing a Finance Manager, with a relevant professional qualification.
- Procuring the services of a Health and Safety Specialist for generic Health and Safety advice.

In line with Charity Commission guidance there will be an annual risk management report to the Board and a statement in the annual report. These will demonstrate the effectiveness with which the management team is managing risk.

## **5. Partnership.**

The Trustees recognise that there are a number of other key organisations which have an influence on the provision of leisure opportunities and is keen to foster and further develop working relationships with these bodies.

Partners and potential partners include national, regional and local organisations with interests in Culture, Health, Education, Leisure and Sport, including:

- East Devon District Council
- Devon County Council Education Department
- Schools Sports Partnership
- Youth Sports Trust
- Sport England
- Sport England South West
- The Lawn Tennis Association
- Active Devon – County Sports Partnership
- Mid and East Devon Primary Health Care Trust.
- Bicton College
- Countryside Agency
- Phoenix Arts Centre
- Arts Council of England

Whilst the range of partners identified above is by no means exhaustive, it does illustrate where the Trust can find synergies and support for its own charitable purposes. Clear identification of such purposes should improve opportunities for the Trust to attract funds in partnership with other organisations and, to this end, shared policy areas with partners have been identified and embraced in the Trust's charitable and organisational aims.

The newly established partnership arrangements with Bicton College offer important opportunities for the Trust. The Executive Management Team will be based at the college following the transfer.

## **6. Marketing Policy.**

Projecting the right image from day one will be of paramount importance to the success of the venture.

The Trust's intention is to maintain the existing services in such a way that customers will see little or no change (apart from the name) during the initial period of trading. Improvements to existing services, new services and new branding will be introduced as the Trust develops. Each change will be carefully handled and professionally marketed.



The Trust plans to offer leisure opportunities at its sites across East Devon, as at present, at prices which provide good value for money.

The Trust will seek to increase progressively the number of residents and visitors who regularly take part in physical activity sessions.

A Business Development Manager will be employed and one of the Trustees' first requirements will be the production a detailed Marketing Plan to address each sector of the market.

Forecasts of demographic change will be taken into account when preparing the Marketing Plan.

The Trust will actively seek proposals for improving the service. However, some of these improvements will carry cost implications and so the Trustees will be asked to determine the Trust's priorities.

## **7. Staffing.**

In order to deliver effectively, the Trust needs to employ a wide range of qualified staff with appropriate skills. Currently there are nearly 400 employees on the payroll - some full time, many part time and others employed on casual contracts.

### **Executive Management Team**

The Head Office management team will comprise:

- Chief Executive. (Responsible to the Board of Trustees for the management of the Trust. The Chief Executive will also fulfil the role of Company Secretary and be responsible for media contact)
- Business Development Manager. (Responsible to the Chief Executive for Marketing; relationships with Partners; Web site; The Trust's image; Fund Raising; Community Development; the introducing of new initiatives to grow the business.)
- Operations Manager. (Responsible to the Chief Executive for the day to day operations of all the Trust's sites, other than Head Office; for ensuring compliance with all health and safety legislation; for compliance with all HR procedures; for addressing all environmental issues; for the development and motivation of all the staff who report to him/her)
- Finance Manager. (Responsible to the Chief Executive for all Financial matters; for I.T.; corporate training).

- Support Marketing, finance and administrative staff.

### **Site Managers.**

There will be 7 front-line site managers (as at present) as follows:-

- Manager, Axe Valley and Colyton Sports Centres
- Manager, Broadclyst and Colin Tooze (Ottery St Mary) Sports Centres
- Manager, East Devon Tennis Centre (Exmouth)
- Manager, The Pavilion (Exmouth)
- Manager, Exmouth Sports Centre
- Manager, Honiton Sports Centre
- Manager, Sidmouth Sports Centre and Sidmouth Swimming Pool.

Each Site Manager will be supported by a range of staff.

An organisation chart for senior posts is included at Appendix D.

## **8. Specialist Support Services.**

The Trust needs to procure a number of specialist support services as follows:

- Human Resources
- Health & Safety
- IT
- Payroll
- Grounds Maintenance

These five support services will be provided initially by East Devon District Council. Service level agreements are being prepared. The SLAs will be subject to a 12 month period of notice on either side, or earlier by mutual agreement.

The support services listed below will be procured externally:

- Independent Audit
- Legal services.
- Cash collection.

## **9. Premises: fixtures, fittings and plant.**

The Trust will rent from the District Council the existing premises (including fixtures, fittings and plant) as follows:

- Axminster sports centre
- Broadclyst sports centre
- Colyton sports centre
- Exmouth sports centre
- Honiton sports centre
- Colin Tooze sports centre (Ottery St Mary)
- Sidmouth sports centre
- Sidmouth swimming pool
- East Devon Tennis Centre
- The Pavilion (Exmouth)

The Council will retain responsibility for all repair, maintenance and replacement. Landlord/tenant agreements have been prepared.

## **10. Furniture and Equipment.**

Existing furniture and equipment will be loaned to the Trust. The Trust will assume the responsibility for replacing it over time. An agreement has been prepared.

## **11. Environmental considerations.**

The Trust acknowledges the need to make sustainability, recycling and energy efficiency an integral part of service delivery. Whilst some progress has been achieved in the past, the Trustees will encourage further advances in this area.

## **12. Equality and diversity**

The Trust will ensure that everyone who comes into contact with its services will be treated equally.

## **13. Finance.**

The Trust will have its own independent financial management system. It will open its own bank account and will appoint independent auditors who have the necessary experience of meeting the requirements of the Charities Commission.

All financial transactions between the Trust and other organisations, including partners, will be by invoice and payment.

The Business Plan includes a year-on-year reduction in grant from the District Council of 2½% per annum, in real terms.

In order to remain viable, the Trust will have to improve performance year-on-year. This will be achieved through increased sales and by employing more modern technology to cut costs.

Financial performance figures for the last 4 completed years together with the budget figures for 2005/06 are shown at Appendix E.

The Trust's budget for 2006 will be attached to the final Business Plan together with a forecast for 2007 & 2008 at Appendix F.

#### **14. Capital expenditure.**

Because the Trust is responsible for replacing furniture and equipment, as necessary, and will want to invest in new technology from time to time to maximise cost savings, it will need to have a Capital Expenditure budget and provide for depreciation of its assets.

East Devon District Council has stated that it proposes to plough back into Leisure the financial benefits that arise from the formation of the Trust. Whilst much of these savings are likely to be retained within the Council for spending on the Council's Leisure buildings, the Trust will expect the Council, at least in the early years, to provide the Trust with the funds needed to meet capital expenditure requirements.

#### **15. Management information**

The Trust will give high priority to improving the financial information that is currently available to site managers and to training them to use it effectively.

The existing on-line Membership and Booking system is being rolled out to all sites along with the necessary training.

A new Sage software package is being purchased and configured to meet the Financial Management needs of the Trust. The two systems will be interfaced so as to minimise manual data inputting - thus minimising costs.

Because of the nature of the business, out-of-hours IT cover is essential and this will be built into the service level agreement with the Council's IT section.

The Trust will also purchase BACS software to improve management information and reduce the existing costs that are being incurred in administering the direct debit system.

The manual booking system at Exmouth Pavilion is in urgent need of upgrading in order to improve management information, to reduce existing costs, to open the way for increased income and to provide a better service for customers.

## **16. Performance Indicators & Benchmarking.**

The Trustees will measure performance against the following performance indicators:

- Operational recovery rate (income divided by total spend for each facility)
- Usage (number of visits to each facility)
- Net cost per visit to each facility.
- Number of referrals on to the "Pulse" Programme
- Number of referrals on to the Cardiac Rehabilitation Programme
- Customer satisfaction ratings

In addition, the management agreement with East Devon District Council will require the Trust to meet other measures of performance.

A recommendation to introduce a regime of benchmarking will be included in the Marketing Plan.

## **SCOPE OF CURRENT SERVICE**

### **Facilities**

#### **Exmouth Sports Centre**

Exmouth Sports Centre is located on Royal Avenue by Exmouth sea front. It was opened in 1980 and has undergone a series of phased developments since then.

The Centre includes a 25 metre, six-lane main pool, a teaching pool, a 27 station fitness suite, a multi-purpose dance / martial arts studio, function rooms, four squash courts, a four-badminton court sports hall and a seated area offering vending and snack machines.

The Centre is accredited as an approved training centre for qualified lifeguards and has developed key working partnerships with a number of community groups.

The Centre is owned by the Council on a freehold title deed basis.

#### **Exmouth Pavilion**

The Exmouth Pavilion is situated on the centre of the esplanade at Exmouth sea front and is one of Exmouth's more established landmarks.

The Pavilion consists of function hall, theatre and stage, free parking area, outside seating area, restaurant and bar.

The banqueting hall is spacious enough to accommodate 40 to 400 guests for a sit down meal, 600 for a buffet and the building is licensed for up to 900 for a standing event.

The Pavilion has a broad programme of events throughout the year, including craft fairs, boxing, pantomimes, dances, private functions, parties and Theatre productions.

Future opportunities for development include the possibility of investing in a roof terrace above the existing restaurant.

#### **East Devon Tennis Centre**

The Centre is a dual use facility, opened in 1995 and situated in the grounds of the Gipsy Lane site of the Exmouth Community College.

The Centre includes four indoor carpet tennis courts, two acrylic covered tennis courts, a multi-purpose function room / fitness room, bar, lounge area

and catering facilities. There are also 2 outdoor synthetic turf pitches, which are operated by the school, under a dual use agreement with EDDC. The indoor carpet tennis courts have recently been re-surfaced at a cost of £50,000 to the Council.

The Centre has Lawn Tennis Association (LTA) performance club accreditation and 'Mini Tennis' development accreditation. The Centre provides court time for coaching, social and competitive programmes for adults and juniors, including pupils of the Community College. Devon County Council (DCC) owns the freehold and the Council have taken a 99-year peppercorn lease (effective from 27 May 1994). The management agreement permits the Community College to use the tennis facility for a period of 15 hours per week for 40 weeks of the year.

### **Sidmouth Swimming Pool**

Sidmouth Swimming Pool was built in 1991 and is situated in Ham Lane, close to Sidmouth sea front.

The facilities include a 25 metre, five-lane swimming pool, a sauna, spectator areas and a cafe.

The Pool runs a successful Swim School and is following the ASA National Swim Plan in order to create a more professional approach to teaching.

The Pool is owned by the Council on a freehold title deed basis.

### **Sidmouth Sports Centre**

Sidmouth Sports Centre is a dual use facility located on the site of Sidmouth Community College site.

The Centre includes a four-court, multi-purpose sports hall, a 16 station fitness suite, screening room, a converted sports hall balcony, which is used for fitness classes and children's parties, two squash courts and a small seated vending area. The Centre also has an outdoor astro-turf pitch, which is owned by the College.

The Centre is owned by DCC and is on a leasehold title deed with the Council for 99 years. The user agreement reflects a nominal 40/60 split of usage between the school and the community. Accordingly, whilst the Council are responsible for the operation of the Centre, DCC contribute 40% of the running costs.

### **Colyton Sports Centre**

Colyton Sports Centre was opened in January 2004 and is situated in the village of Colyford on the site of Colyton Grammar School.

The Centre includes a four-court sports hall, a multi-purpose dance studio, an outdoor synthetic turf pitch. An outdoor tarmacadum netball / 5 a side football pitch alongside the sports centre is not currently part of the dual use arrangement, and is not floodlit.

The deed title to Colyton Sports Centre has not yet been completed, but the lease is likely to be for a term of 99 years from January 2004 at an annual ground rent of £25.00. The Management Agreement provides for the school to have exclusive use of the sports hall, dance studio and playing pitch during term-time weekdays, with the exception of 10 hrs day time use being available for community use, by agreement of both parties. The Council are responsible for the operation of the Centre and Colyton Grammar contribute 40% of the running costs.

### **Axe Valley Sports Centre**

Axe Valley Sports Centre is a dual use facility, built in 1984 and situated on the campus of Axe Valley and Community College.

The Centre includes a four-court sports hall, a 20 station fitness suite, a screening room, a converted sports hall balcony with partition wall used for multi-purpose activities and an outside floodlit hard court area.

The Centre is owned by DCC and is on a leasehold title deed with the Council for 99 years at an annual ground rent of £100 per annum. The user agreement reflects a nominal 40/60 split of usage between the school and the community. Accordingly, whilst the Council are responsible for the operation of the Centre, DCC contribute 40% of the running costs.

### **Honiton Sports Centre and Swimming Pool**

Honiton Sports Centre is a dual use facility, built in 1978 and situated in the grounds of the Community College in Honiton town centre.

The Centre includes a four-court badminton hall, converted balcony to accommodate children's parties and meetings, two squash courts, 23 station fitness suite and multi-purpose dance studio and changing facilities.

The Swimming Pool is a separate building adjacent to the Sports Centre, with both facilities sharing the same car park. The swimming pool was built in 1989 and consists of a 25 metre, five-lane pool with associated changing facilities.

The Council own the freehold for the facility. The management agreement is on similar terms to the other dual use facilities. Accordingly, whilst the Council are responsible for the operation of the Centre, DCC contribute 40% of the running costs of the sports hall and 11% of the running costs of the squash courts.



## **Colin Tooze Sports Centre, Ottery St Mary**

The Colin Tooze Sports Centre is a dual use facility situated in the grounds of King's School, Ottery St Mary.

The Centre includes a four-court sports hall, a converted sports hall balcony for children's parties, a 20 station fitness suite and consultation room, multi-use dance / aerobic suite and a full size, outdoor all-weather pitch.

The Centre has recently passed the accreditation for Devon Get Active. DCC own the freehold for the site and the Council have taken a 99 year lease with an annual ground rent of £75. The terms of the management agreement are similar to those of the other dual use facilities. DCC have the use of the facilities for approximately 40% of the total time and provide 40% of the running costs.

## **Broadclyst Sports Hall**

Broadclyst Sports Hall is a dual use facility, opened in 1987 and situated adjacent to Clyst Vale Community College in Broadclyst.

The facility includes a four-court main sports hall and three outdoor tennis courts.

DCC own the freehold for the site and the Council have taken a 99 year lease with an annual ground rent of £75. The terms of the management agreement are similar to those of the other dual use facilities. DCC have the use of the facilities for approximately 40% of the total time and provide 40% of the running costs.

## **Development Services**

### **Sports Development**

Until recently, the Council's sports development unit has worked in partnership with local clubs, associations, schools, the voluntary sector and individuals to provide leisure and recreation throughout East Devon.

The unit had a mix of responsibilities ranging from events, funding advice, club sport, school sport, health and fitness, coach education and play development.

The unit worked closely with partners such as Devon LEA and the Youth Sport Trust to support a variety of school initiatives such as TOPs, coaching for teachers, inter-school festivals and the "Step into Sport" community volunteering programme.

Event organisation formed the basis of a lot of the Unit's work, with events including the Earlybird Duathlon Series and the Devon Youth Games, which are held on an annual basis.

LED would wish to re-establish a sports development role, with key focus on establishment of partnerships and the attraction of funds to underpin coach development and deployment.

### **Health & Exercise Development**

This function was initially established to coordinate the work of the Health and Recreation Officers managing the Fitness suites at five sports centre facilities, particularly in relating to the extensive GP Referral Schemes (PULSE). [Although reduced to a part time (2 days) position, the role is pivotal to maintaining and developing relationships with health providers (eg PCT). LED will reestablish and strengthen the Health and Exercise Development role by joining it with the Training & Development (Health & Fitness). The new unit will be based at facilities and will focus on establishing partnerships and attracting funds to improve health based customer outputs, and developing training programmes maximise facility performance.

### **Marketing & Membership**

Reporting to the Business Development Manager, the marketing and membership coordinator administers and promotes the Direct Debit Subscription Schemes (CHOICE) across all facilities. The role also currently encompasses the duty management of the outdoor parks and lesiure facilities.

### **Training & development**

A part time position (3days) which has been introduced to focus on the recruitment, training, deployment and performance management of exercise instructors. There is an intention to manage and operate an in house training programme to ensure that all health & exercise related training can be undertaken regularly and effectively, with the added benefit of attracting income from external trainees.

## **Outdoor Facilities**

### **Phear Park**

The park is located on the Withycombe Village Road near to the Exmouth Tennis Centre.

Facilities include an 18 hole pitch and putt course, a putting green, crazy golf, outdoor tennis courts, bowls, skate park and a cafeteria.

The Park is open from 9am until dusk from the beginning of March to the end of October.

### **Coburg Field**

The Field is located in Sidmouth near to the esplanade.

Facilities include an 18-hole putting green, grass and hard outdoor tennis courts and a bowls green.

The facility is open from 9.30am and closing times vary throughout the season from 5.30pm to 9pm, depending on the light from April till the end of September.

### **Seafield Gardens**

The Gardens are located near to the seafront in Seaton

Facilities include an 18-hole putting green and two outdoor tennis courts.

The Gardens are open from 10am until 5.30pm or 6.30pm in the height of the summer from April to the end of September.

## SWOT ANALYSIS

### Single use Sports Centres

#### **Exmouth Sports Centre**

##### **Key Strengths:**

Multi use facility without dual use constraints.  
Relatively large catchment population in Exmouth – 30,000+  
25m Swimming Pool + Learner Pool is unique strength in the area.

##### **Key Weaknesses:**

Limited Capacity and quality of Health & Fitness Studio, in relation to competitors.  
Location useful for tourist markets, but not well placed in relation to local communities and schools.  
Inconsistent standards of building.  
Overcapacity of squash courts in relation to declining market.

##### **Key opportunities:**

Relocation potential under Exmouth Regeneration Scheme. Relocation to Phear Park to consolidate management of EDTC, Park and Exmouth Sports Centre would create scale efficiencies and place facility at heart of communities and schools.

Potential to improve capacity and quality of health & fitness studio in order to maximise earnings; to enable facility to provide for socially targeted use alongside mainstream programmes; and to underpin aggressive subscription strategy.

Conversion of two squash courts to provide for Improved health & fitness provision, or alternatively, childcare, softplay and  
Proposed base for Health & Exercise Development and/or Sports Development.

##### **Key Threats:**

Increased competition locally from Cranford club in relation to Health & Exercise and from Education sector in relation to sports courses and bookings.

Loss of activities to education providers who can access funding to provide extra curricular activities.

Lack of availability of employed instructors to provide consistent levels of classes and courses.

## **Sidmouth Swimming Pool**

### **Key Strengths:**

Single use facility without dual use constraints.

Single focus offers opportunity to develop good practice in relation to swimming development.

Fully implemented ASA programmes structure, which should be replicated at Honiton and Exmouth.

### **Key Weaknesses:**

Location useful for tourist and town markets, but not well placed in relation to local communities and schools.

Parking fees impact on customer decision to visit.

Relatively high fixed staffing costs due to single use facility.

Lack of learner pool.

### **Key opportunities:**

Potential base for effective management of Coburg terrace leisure activities in Sidmouth.

### **Key Threats:**

Increased competition locally - mainly from Hotels, some of which offer swimming lesson programmes and/or Spa facilities.

## **Dual Use Facilities**

### **Honiton Sports Centre**

#### **Key Strengths:**

Multi use facility with only partial dual use constraint.

Growing catchment population in Honiton, limited competition.

Extensive range of training and instructional skills within staff team.

#### **Key Weaknesses:**

Limited capacity and quality of Health & Fitness Studio.

Separate Pool and Sports centre buildings leads to excessive fixed reception staffing costs.

#### **Key opportunities:**

Potential to improve capacity and quality of health & fitness studio in order to maximise earnings; to enable facility to provide for socially targeted use alongside mainstream programmes; and to underpin aggressive subscription strategy.

Creation of space for operating training courses/wider community activities, possibly through balcony conversion, or through work associated with Health & Fitness studio expansion.

Proposed base for Health & Exercise Development and/or Sports Development.

**Key Threats:**

Lack of availability of employed instructors to provide consistent levels of classes and courses.

## **Colin Tooze Sports Centre (O.S.M.)**

**Key Strengths:**

Range of activity spaces outside of Fitness studio and Main hall.  
Location on Kings School site – Sports College and HQ for Schools partnership management for the area.

**Key Weaknesses:**

Dual use constraint limits capacity to expand programme.  
Very limited daytime access to dance studio.

**Key opportunities:**

Potentially good base for sports development resource focus, due to Sports College, School sports partnership opportunities.

**Key Threats:**

Reduced existing markets for Synthetic Pitch.  
Lack of availability of employed instructors to provide consistent levels of classes and courses.

## **Axe valley Sports centre**

**Key Strengths:**

Unique Health and Fitness provision in local area (lack of competition)  
Strong core of regular gym users  
Successful courses (Archery, Trampolining and Gymnastics)

**Key Weaknesses:**

Very poor building quality.  
Access limited further by recent school redevelopment.  
Dual use constraint limits capacity to expand programme.  
Poor quality of gym and sports equipment.  
Local catchment population of 3000-4000 cannot always support high class numbers. Therefore margins reduced.

**Key opportunities:**

Develop balcony area (agree daytime usage with school/improve soundproofing).

**Key Threats:**

Growth unlikely given building and access constraints.

**Colyton Sports Centre****Key Strengths:**

New purpose built facility with range of activity spaces.

**Key Weaknesses:**

Limited management and operational infrastructure.  
Location (for Seaton users)

**Key opportunities:**

Potential hub for delivery of services in Seaton.  
Potential base for effective management of Seafield Gardens leisure activities in Seaton.

**Key Threats:**

The 'other' Colyton SC (currently building a bar, provide grass pitches, tennis courts, changing, and 'function' room)  
Identity (need to differentiate from other Colyton SC)  
Lack of availability of employed instructors to provide consistent levels of classes and courses.

**Sidmouth Sports Centre****Key strengths:**

Varied programme for all ages  
Focus on non-mainstream sports such as gymnastics, fencing & trampoline  
Ofsted accredited summer playscheme

**Key Weaknesses:**

Dual use constraints limits capacity to expand programme  
Lack of extra small compared to other EDDC dual use sites  
Centre in pool decorative condition  
Location of site leads to lack of public awareness to newcomers to the town.  
Limited parking during term time

### **Key Opportunities:**

Floodlighting for AstroTurf could lead to extra income and maximise bookings  
Building of extra small hall, if school purchase extra land for outdoor PE sessions.

Potential to turn balcony into multi-purpose room

Use of external facilities for delivery of classes and courses i.e. Yoga, Exercise and nutrition, pilates

### **Key Threats**

Difficulty in finding suitably qualified staff for income generators such as parties, playschemes, and trampoline courses.

Alternative summer playscheme providers/

## **Broadclyst Sports Hall**

### **Key Strengths:**

Small facility with capacity and capability to focus on non mainstream sports such as fencing, archery.

### **Key Weaknesses:**

Limited space and capacity due to dual use constraint.

Lack of any daytime availability in school term time.

### **Key opportunities:**

Dependant on outcome relating to provision of facilities in new town at Cranbrook, four to five miles away. Possibility to relocate.

### **Key Threats:**

Lack of availability of employed instructors to provide consistent levels of classes and courses.

## **Specialist Regional Facilities**

### **East Devon Tennis Centre**

#### **Key Strengths:**

High Quality facilities for Tennis, Functions and wider community use.

Highly developed tennis programmes for all ages and abilities.

Highly developed playscheme activities.

#### **Key Weaknesses:**

Low awareness of facility nature or scope from non users.

High seasonal variation in use through lack of outdoor courts.



### **Key opportunities:**

Additional changing facilities would improve child protection situation for playschemes and enable control of bookings and use of synthetic Pitches. This can generate improved returns both for the tennis centre and community college.

Development of currently dilapidated courts at Phear park, possible as part of Exmouth Sports centre relocation.

### **Key Threats:**

New Indoor tennis Facilities in Exeter – University and David Lloyd. EDTC While EDTC could compete on quality of existing facilities, it would not compete as well in relation to ancillary facilities for health and exercise, relaxation etc.

Arts & Entertainment & Events Venues

## **Entertainment venues**

### **Exmouth Pavilion**

#### **Key Strengths**

Multi purpose venue without dual use constraints  
Prominent position and picturesque location  
Level easy access and parking  
Limited competition  
Large bar income  
In house facilities. Lights / sound / dressing rooms

#### **Key Weaknesses**

Seasonal trade (But opposite season to Leisure Centres)  
Old expensive building to maintain  
Lack of raised seating  
Image/ Identity problem  
Prehistoric ticket system

#### **Key Opportunities**

Daytime and out of season capacity  
Improved web and ticket access  
New ticket system  
Portable raised seating  
Development of roof terrace, Upstairs Restaurant  
Extended patio area  
Outside band stand  
Change of licence to provide takeaway food and licence

## **Key Threats**

New Bowling alley opposite  
New entertainment premises  
Removal of car park  
Closure of Rolle College

## **Parks Leisure**

### **Phear Park, Exmouth**

#### **Key Strengths**

Beautiful Location close to communities and schools  
Space

#### **Key Weaknesses**

Café Location  
Tennis Courts Quality is very poor. Very difficult to supervise or collect cash.  
Difficulty in controlling  
Image of Park  
Very Poor Signage.

#### **Key Opportunities**

Resite café closer to Tennis Courts. Revise starting hole for golf.  
Provide in same building, change rooms to enable events and activities and tournaments.  
Free Tennis!  
Wide scope to use Sports, Entertainment, Staging capabilities to develop programme of community

Dedicated management to focus on programmes of events and activities  
Outsource café management.

#### **Key Threats**

Safety issues arising from Pitch and Putt proximity to Houses, other park users and vehicles.

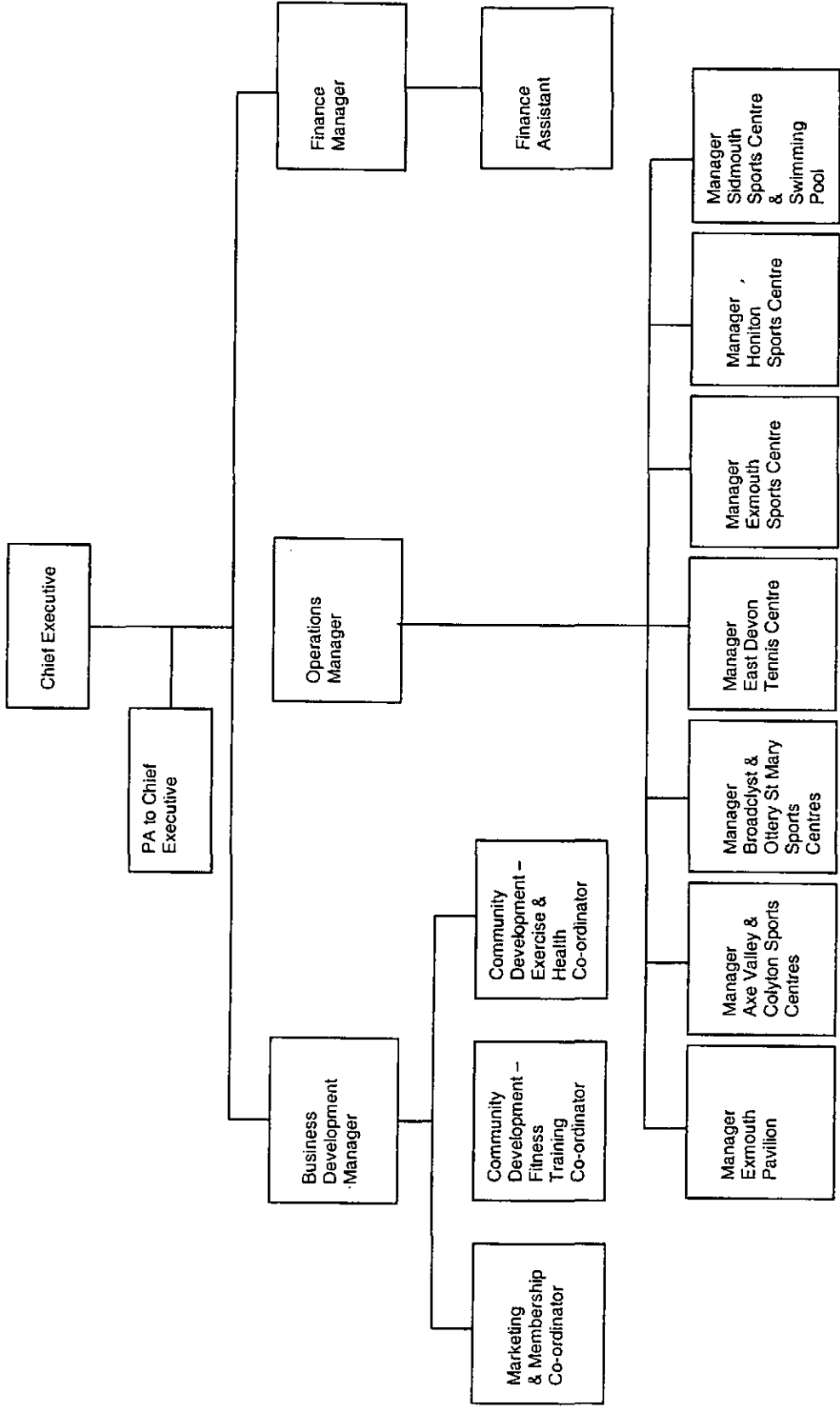
## APPENDIX C

**LEISURE EAST DEVON LTD - LIST OF COMPETITORS**

NAME	TOWN	FACILITIES	STAFF	
			PAID	VOLUN TARY
Cloakham Lawns	Axminster	Sports pitches/Indoor bowls	X	
Flamingo Pool	Axminster	Pool	X	
Cresta Pool	Chard	Pool		Trust
David Lloyd Leisure	Clyst St Mary	Tennis, Fitness (opening 2006)	X	
McCauleys Westpoint	Clyst St Mary	Gym	X	
Colyton Memorial SC	Colyton	Sports pitches/FCT room		X
Culm Valley SC	Cullompton	Sports hall/Gym	X	
Exeter City Council (Arena, St Peters, St James, Clifton Hill)	Exeter	Sports halls/Gyms/ Pools etc.	X	
Exeter University Tennis Centre	Exeter	Tennis	X	
Northcott Theatre	Exeter	Theatre and Bar	X	
Barnfield Theatre	Exeter	Theatre		X
Phoenix Theatre	Exeter	Theatre and Bar	X	
Banqueting Suite	Exmouth	Bar /weddings		X
Comm. Education Programme	Exmouth	Various	X	
Cranford Sports Club	Exmouth	Tennis /Gym /Studio	X	
Crazy Golf	Exmouth	Crazy golf	X	
Devon Court Hotel	Exmouth	Gym/Pool	X	
Exmouth Gym	Exmouth	Gym	X	
Rolle College	Exmouth	Exercise classes	X	
International Swimming Pool	Fairmile	Pool/Gym	X	
Salston Manor	Ottery St Mary	Pool/Gym/Squash	X	
Thorn Pitch and Putt	Salcombe Regis	Pitch and putt/putting green	X	
Community Education Programme	Sidmouth	All areas of exercise	X	
Fords Fitness Studios	Sidmouth	Yoga/room for hire	X	
Royal York and Faulkner Hotel	Sidmouth	Hydrotherapy pool/sauna	X	
ExeValley SC	Tiverton	Sports hall/pool/gym	X	
Woodbury Park	Woodbury	Pool/gym	X	



**Leisure East Devon – Senior Posts**



# Leisure Services Trading Account (2003/04 to 2006/07)

Category	2001/02 Actual £000	2002/03 Actual £000	2003/04 Actual £000	2004/05 Actual £000	2005/06 Budget £000
<b>Income</b>					
Fees & charges	(1,935)	(2,059)	(2,160)	(2,370)	(2,452)
Rents	(41)	(45)	(46)	(41)	(42)
Sales	(164)	(155)	(213)	(195)	(210)
DCC contribution	(174)	(133)	(150)	(183)	(185)
Other income	(26)	80	(24)	(52)	(27)
<b>Total</b>	<b>(2,339)</b>	<b>(2,311)</b>	<b>(2,593)</b>	<b>(2,840)</b>	<b>(2,916)</b>
<b>Expenditure</b>					
Employees	1,957	2,155	2,396	2,322	2,406
Premises	673	508	662	771	642
Transport	43	47	48	45	43
Supplies & Services	636	593	831	798	831
Support services	208	281	365	420	319
<b>Total</b>	<b>3,516</b>	<b>3,585</b>	<b>4,301</b>	<b>4,356</b>	<b>4,242</b>
<b>Deficit</b>	<b>1,177</b>	<b>1,273</b>	<b>1,708</b>	<b>1,516</b>	<b>1,326</b>

**Notes:**

Increase / (decrease) in income  
 Increase / (reduction) in deficit  
 Recovery rate

Increase / (decrease) in income	NA	(28)	281	247	76
Increase / (reduction) in deficit	NA	96	435	(192)	(190)
Recovery rate	67%	64%	60%	65%	69%

Excludes any support payment from general council funds, capital charges and recharges within the leisure trading account.

The 2006 budget does not include property maintenance expenditure as this responsibility transferred to Property Services.

As a consequence £160k was removed from the leisure account.

Includes recharges outside the leisure trading account.

Expenditure increased by 20% between 2002/3 and 2003/4 due to:

- : A rebate on NNDR in 2002/3.
- : Increased employee costs from 2003/4 due to the implementation of legislative changes.
- : Revenue expenditure to set up and run the 'Gladstone' till system and associated 'Choices' membership from 2003/4 and thereafter.
- : Increases in recharges from outside the leisure account.



**LEISURE EAST DEVON LTD**

**AMMENITIES OFFICER/OPERATIONS MANAGERS/OPERATIONS ASSISTANT**

**INCOME & EXPENDITURE ACCOUNT LESS CAPITAL AND RECHARGES**

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/6	TOTAL
	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	BUDGET	
<b>INCOME</b>							
Fees & charges	£0.00	£0.00	£0.00	-£7,160.56	-£325.63	£0.00	-£7,486.19
Choice Cards	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Stock sales	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Rents	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Sales	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
DCC contribution	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Other income	£0.00	£0.00	-£1.70	£0.00	£0.00	£0.00	-£1.70
LS Trust - Int Recharges; Cleaning	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
LS Trust Other Internal Recharges	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
<b>TOTAL INCOME</b>	<b>£0.00</b>	<b>-£3.00</b>	<b>-£1.70</b>	<b>-£7,160.56</b>	<b>-£325.63</b>	<b>£0.00</b>	<b>-£7,490.89</b>
<b>EXPENDITURE</b>							
Employees	£0.00	£73,870.51	£92,129.64	£125,231.29	£128,407.14	£148,870.00	£568,508.58
Premises	£0.00	£81.04	£299.72	£409.88	£514.76	£370.00	£1,675.40
Transport	£0.00	£6,739.46	£7,659.47	£9,505.05	£9,625.04	£6,500.00	£40,029.02
Supplies & Services	£0.00	£9,710.70	£9,196.97	£52,658.59	£38,215.70	£12,640.00	£122,421.96
Support services	£0.00	£36,569.24	£43,910.16	£71,169.72	£93,220.08	£55,930.00	£300,799.20
Capital Charges	£0.00	£126,970.95	£153,195.96	£258,974.53	£269,982.72	£224,310.00	£1,033,434.16
<b>TOTAL EXPENDITURE</b>	<b>£0.00</b>	<b>£126,970.95</b>	<b>£153,195.96</b>	<b>£258,974.53</b>	<b>£269,982.72</b>	<b>£224,310.00</b>	<b>£1,033,434.16</b>
<b>(SURPLUS) DEFICIT</b>	<b>£0.00</b>	<b>£126,967.95</b>	<b>£153,194.26</b>	<b>£251,813.97</b>	<b>£269,657.09</b>	<b>£224,310.00</b>	<b>£1,025,943.27</b>
<b>BUDGETTED SURPLUS / DEFICIT</b>	<b>£0.00</b>	<b>£106,810.00</b>	<b>£149,950.00</b>	<b>£198,440.00</b>	<b>£160,100.00</b>	<b>£224,310.00</b>	<b>£839,610.00</b>
<b>VARIANCE - (FAVOURABLE)/ADVERSE</b>	<b>£0.00</b>	<b>£20,157.95</b>	<b>£3,244.26</b>	<b>£53,373.97</b>	<b>£109,557.09</b>	<b>£0.00</b>	<b>£186,333.27</b>
<b>RECOVERY RATE</b>	<b>#DIV/0!</b>	<b>0%</b>	<b>0%</b>	<b>-3%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>CREATED</b>							
<b>15/12/2005</b>							



LEISURE EAST DEVON LTD GROUP SUMMARY							
INCOME & EXPENDITURE ACCOUNT LESS CAPITAL AND RECHARGES							
	2000/01 ACTUAL	2001/02 ACTUAL	2002/03 ACTUAL	2003/04 ACTUAL	2004/05 ACTUAL	2005/06 BUDGET	TOTAL
<b>INCOME</b>							
Fees & charges	£0.00	-£1,934,683.42	-£2,058,707.46	-£2,160,066.18	-£2,369,741.98	-£2,452,330.00	-£10,975,529.04
Choice Cards	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Stock sales	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Rentals	£0.00	-£40,679.45	-£44,819.57	-£46,488.78	-£40,721.98	-£42,000.00	-£214,709.78
Sales	£0.00	-£164,032.63	-£154,673.60	-£213,110.30	-£194,820.04	-£210,000.00	-£936,636.57
DCC contribution	£0.00	-£173,946.92	-£133,385.30	-£149,617.70	-£182,744.10	-£184,510.00	-£824,204.02
Other income	£0.00	-£25,786.44	£80,215.84	-£23,529.43	-£51,994.06	-£27,000.00	-£48,094.09
LS Trust - Int Recharges; Cleaning	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
LS Trust Other internal Recharges	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
<b>TOTAL INCOME</b>	£0.00	-£2,339,128.66	-£2,311,370.09	-£2,592,812.39	-£2,840,022.16	-£2,915,840.00	-£12,999,173.50
<b>EXPENDITURE</b>							
Employees	£0.00	£1,956,725.16	£2,154,937.12	£2,395,506.03	£2,321,713.24	£2,405,920.00	£11,234,801.55
Premises	£0.00	£673,380.11	£508,077.99	£661,725.55	£771,496.15	£642,430.00	£3,257,109.80
Transport	£0.00	£42,509.46	£47,019.85	£48,139.66	£45,358.57	£43,260.00	£226,287.54
Supplies & Services	£0.00	£636,044.08	£593,312.31	£830,780.12	£797,662.63	£831,450.00	£3,689,249.14
Support services	£0.00	£207,700.91	£281,459.28	£364,728.69	£419,693.18	£318,800.00	£1,592,382.06
Capital Charges	£0.00	£3,516,359.72	£3,584,806.55	£4,300,880.05	£4,355,923.77	£4,241,860.00	£19,999,830.09
<b>TOTAL EXPENDITURE</b>	£0.00	£3,516,359.72	£3,584,806.55	£4,300,880.05	£4,355,923.77	£4,241,860.00	£19,999,830.09
<b>(SURPLUS) DEFICIT</b>	£0.00	£1,177,230.86	£1,273,436.46	£1,708,067.66	£1,515,901.61	£1,326,020.00	£7,000,656.59
<b>BUDGETTED DEFICIT</b>	£0.00	£1,168,118.00	£1,147,787.00	£1,319,777.00	£1,467,257.00	£1,326,020.00	£6,428,959.00
<b>VARIANCE - (FAVOURABLE)/ADVERSE</b>	£0.00	£9,112.86	£125,649.46	£388,290.66	£48,644.61	£0.00	£571,697.59
<b>RECOVERY RATE</b>	0%	-67%	-64%	-60%	-55%	-69%	-65%
<b>CREATED</b>							
<b>15/12/2005</b>							

**LEISURE EAST DEVON LTD**  
**TRAINING & DEVELOPMENT/EXERCISE & HEALTH DEVELOPMENT/CARDIAC REHABILITATION/SPORTS DEVELOPMENT**  
**INCOME & EXPENDITURE ACCOUNT LESS CAPITAL AND RECHARGES**

	2000/01 ACTUAL	2001/02 ACTUAL	2002/03 ACTUAL	2003/04 ACTUAL	2004/05 ACTUAL	2005/06 BUDGET	TOTAL
<b>INCOME</b>							
Fees & charges	£0.00	£8,480.04	£8,887.08	£15,839.55	£4,648.51	£6,000.00	£43,855.18
Choice Cards	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Stock sales	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Rents	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Sales	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
DCC contribution	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Other income	£0.00	£8,453.93	£409.70	£0.00	£0.00	£0.00	£8,863.63
LS Trust - Int Recharges; Cleaning	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
LS Trust Other internal Recharges	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
<b>TOTAL INCOME</b>	£0.00	£16,933.97	£9,296.78	£15,839.55	£4,648.51	£6,000.00	£52,718.81
<b>EXPENDITURE</b>							
Employees	£0.00	£64,084.41	£67,425.77	£82,693.79	£58,507.76	£29,640.00	£302,351.73
Premises	£0.00	£564.08	£118.86	£986.10	£232.20	£120.00	£2,021.24
Transport	£0.00	£6,389.57	£6,476.86	£6,312.54	£3,399.23	£1,620.00	£24,198.20
Supplies & Services	£0.00	£43,232.90	£39,478.22	£33,437.69	£32,439.83	£14,490.00	£163,078.64
Support services	£0.00	£14,448.18	£22,629.84	£29,970.24	£35,840.04	£23,600.00	£126,488.30
	£0.00	£128,719.14	£136,129.55	£153,400.36	£130,419.06	£69,470.00	£618,138.11
Capital Charges	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
<b>TOTAL EXPENDITURE</b>	£0.00	£128,719.14	£136,129.55	£153,400.36	£130,419.06	£69,470.00	£618,138.11
<b>(SURPLUS) DEFICIT</b>	£0.00	£111,785.17	£126,832.77	£137,560.81	£125,770.55	£63,470.00	£565,419.30
<b>BUDGETTED SURPLUS / DEFICIT</b>	£0.00	£126,990.00	£117,520.00	£139,750.00	£162,940.00	£63,470.00	£610,670.00
<b>VARIANCE - (FAVOURABLE)/ADVERSE</b>	£0.00	£-15,204.83	£9,312.77	£-2,189.19	£-37,169.45	£0.00	£-45,250.70
<b>RECOVERY RATE</b>	0	-13%	-7%	-10%	-4%	-9%	-9%
<b>CREATED</b>							£0.00
<b>15/12/2005</b>							

LEISURE EAST DEVON LTD							
EXMITH SYNTHETIC PITCH/SEAFIELD GARDENS/EXMITH BOWLING CLUB/SEATON TENNIS CLUB/SIDMITH BOWLING CLUB/SIDMITH PUTTING GREEN/PHEAR PARK							
INCOME & EXPENDITURE ACCOUNT LESS CAPITAL AND RECHARGES							
	2000/01	2001/02	2002/03	2003/04	2004/05	2005/6	TOTAL
	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	BUDGET	
<b>INCOME</b>							
Fees & charges	£0.00	-£58,050.89	-£57,951.31	-£44,193.16	-£58,373.85	-£90,970.00	-£309,539.21
Choice Cards	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Stock sales	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Rentis	£0.00	-£2,530.48	-£2,635.48	-£2,685.48	-£2,685.48	£0.00	-£10,536.92
Sales	£0.00	£0.00	£0.00	-£1,286.81	£0.00	£0.00	-£1,286.81
DCC contribution	£0.00	-£18,065.92	-£18,438.78	-£21,195.20	-£12,461.82	-£22,680.00	-£92,841.72
Other income	£0.00	-£970.00	£0.00	£0.00	-£1,600.00	£0.00	-£2,570.00
LS Trust - Inti Recharges: Cleaning	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
LS Trust Other internal Recharges	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
<b>TOTAL INCOME</b>	<b>£0.00</b>	<b>-£79,617.29</b>	<b>-£79,025.57</b>	<b>-£69,360.65</b>	<b>-£75,121.15</b>	<b>-£113,650.00</b>	<b>-£416,774.66</b>
<b>EXPENDITURE</b>							
Employees	£0.00	£18,051.57	£19,826.93	£41,586.05	£43,123.86	£42,170.00	£164,758.41
Premises	£0.00	£17,916.90	£58,382.41	£34,339.70	£66,248.34	£44,150.00	£221,037.35
Transport	£0.00	£0.00	£0.00	£198.75	£1,748.41	£0.00	£1,947.16
Supplies & Services	£0.00	£32,781.02	£27,184.44	£30,222.90	£21,183.21	£35,740.00	£147,111.57
Support services	£0.00	£12,215.21	£15,429.96	£9,710.04	£820.08	£710.00	£38,885.29
	£0.00	£80,964.70	£120,823.74	£116,057.44	£133,123.90	£122,770.00	£573,739.78
Capital Charges	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
<b>TOTAL EXPENDITURE</b>	<b>£0.00</b>	<b>£80,964.70</b>	<b>£120,823.74</b>	<b>£116,057.44</b>	<b>£133,123.90</b>	<b>£122,770.00</b>	<b>£573,739.78</b>
<b>(SURPLUS) DEFICIT</b>	<b>£0.00</b>	<b>£1,347.41</b>	<b>£41,798.17</b>	<b>£46,696.79</b>	<b>£58,002.75</b>	<b>£9,120.00</b>	<b>£156,965.12</b>
<b>BUDGETTED SURPLUS / DEFICIT</b>	<b>£0.00</b>	<b>-£16,000.00</b>	<b>-£13,650.00</b>	<b>-£17,050.00</b>	<b>£4,550.00</b>	<b>£9,120.00</b>	<b>-£33,030.00</b>
<b>VARIANCE - (FAVOURABLE)/ADVERSE</b>	<b>£0.00</b>	<b>£17,347.41</b>	<b>£55,448.17</b>	<b>£63,746.79</b>	<b>£53,452.75</b>	<b>£0.00</b>	<b>£189,995.12</b>
<b>RECOVERY RATE</b>	<b>#DIV/0!</b>	<b>-98%</b>	<b>-65%</b>	<b>-60%</b>	<b>-56%</b>	<b>-93%</b>	
<b>CREATED</b>							
15/12/2005							

## LEISURE EAST DEVON LTD

## Appendix F

## INCOME &amp; EXPENDITURE ACCOUNT - REPORT TO TRUSTEES

	BUDGET	FORECAST	FORECAST
	2006	2007	2008
	£	£	£
<b>INCOME</b>			
Non-Sporting	261,479	269,324	277,403
Resale Income	20,000	20,600	21,218
Catering Income	405,001	417,151	429,666
Sporting Income	1,377,368	1,418,689	1,461,250
County Council Fees	112,882	116,268	119,756
Membership Direct Debits	547,648	564,077	580,999
Membership Sales	204,803	210,947	217,276
<b>Sub total - Earned income</b>	<b>2,929,181</b>	<b>3,017,057</b>	<b>3,107,569</b>
East Devon District Council	1,155,000	1,155,000	1,155,000
<b>Sub total - Funding</b>	<b>1,155,000</b>	<b>1,155,000</b>	<b>1,155,000</b>
<b>TOTAL INCOME</b>	<b>4,084,181</b>	<b>4,172,057</b>	<b>4,262,569</b>
<b>EXPENDITURE</b>			
Employees	2,694,524	2,775,360	2,858,621
Employee Related	13,708	14,120	14,543
Premises	11,147	11,481	11,826
Utilities	303,303	312,402	321,774
Supplies	368,740	379,802	391,196
Catering Costs	270,905	279,032	287,403
Professional Services	50,903	52,430	54,003
Licences	11,482	11,827	12,181
Unrecoverable VAT	160,000	164,800	169,744
<b>Sub total - Purchases</b>	<b>3,884,711</b>	<b>4,001,253</b>	<b>4,121,290</b>
Rent of premises	4,000	4,120	4,244
Human Resources Support	20,350	20,961	21,589
ICT Support	89,000	91,670	94,420
Health & Safety Support	500	515	530
Payroll Support	46,000	47,380	48,801
Street Scene Support	39,620	40,809	42,033
<b>Sub total - Contracted support services</b>	<b>199,470</b>	<b>205,454</b>	<b>211,618</b>
<b>TOTAL EXPENDITURE</b>	<b>4,084,181</b>	<b>4,206,707</b>	<b>4,332,908</b>
<b>GROSS SURPLUS / (DEFICIT)</b>	<b>(0)</b>	<b>(34,650)</b>	<b>(70,340)</b>
Depreciation	0	20,000	20,000
<b>SURPLUS / (DEFICIT) AFTER DEPRECIATION</b>	<b>(0)</b>	<b>(54,650)</b>	<b>(90,340)</b>
<b>RECOVERY RATE (Earned Income / total expenditure)</b>	<b>72%</b>	<b>72%</b>	<b>72%</b>
<b>CAPITAL EXPENDITURE</b>	<b>£ 100,000</b>		

**SCHEDULE 3**  
**SERVICE FEE SCHEDULE**

Year	Fee
1 January 2006 – 31 December 2006	£1,155,000
1 January 2007 – 31 December 2007	£1,155,000
1 January 2008 – 31 December 2008	£1,155,000
1 January 2009 – 31 December 2009	£1,155,000
1 January 2010 – 31 December 2010	£1,155,000

**SCHEDULE 4**  
**SERVICE LEVEL AGREEMENT**

# SERVICE LEVEL AGREEMENT TO EAST DEVON DISTRICT COUNCIL FROM LEISURE EAST DEVON

## **Name of Service**

Leisure East Devon

## **Contact Name and Numbers**

David Pagett ext. 2612

Joseph Lowe ext. 2569

## **Response Times**

Quarterly reports on financial matters

Annual reports on service standards matters

Access immediately, unless unreasonable to demand this, to documentation which supports the above reports.

## **General Description of Service**

To assist the Council to achieve its Corporate Strategy through:

Providing accessible, diverse and high quality leisure and cultural opportunities that meet the needs of the local community and visitors.

- To recognise the diversity of customers and their leisure needs, and to provide opportunities which meet their expectations.
- To promote, develop and sustain physical, mental, and social wellbeing by encouraging healthy lifestyles for the whole community.
- To advance educational opportunities through leisure and cultural activities.
- To achieve a relationship with residents of East Devon such that the Trust is seen to belong to, and is for the benefit of, the local community.

This will be achieved by using the 10 leased leisure buildings, and associated assets, as a base for activities but outreaching from these as appropriate.

## **Detailed description of service level to be provided**

- Year on year maintenance of, or improvement upon, customer satisfaction ratings for Leisure Services (supported by the Council's general survey every 3 years).
- Year on year maintenance of, or improvement upon, satisfaction ratings of groups who hire our facilities.
- Achievement of a year on year increase in the percentage of East Devon residents who attend a cultural or physical activity session run or directly promoted by Leisure East Devon (to be measured as from a baseline set in '06-07).
- Achievement of a year on year increase in the number of visits to the physical activity sessions and events run or directly promoted by Leisure East Devon.
- Achievement of a year on year increase in the number of visits to cultural events run or directly promoted by Leisure East Devon.
- Achievement of a year on year increase in the number of physical activity and culture 'sessions' provided 'off site' from the leisure centres.

- Management to show a year on year improvement in operational recovery rate (from year '06-07).
- Annual accounts to show a year on year increased diversity of funding sources.
- A minimum 2.5% demonstrable efficiency saving each year.
- Meeting Business Plan and Delivery Plan milestones.
- Maintaining and developing facilities and links to ensure that there are a range of opportunity levels for participation in all major sports within East Devon (beginner, intermediate, special needs, and, where possible, advanced and elite).
- Increased press and other media publicity levels year, on year, for sports, physical activity, cultural programmes, and achievement.
- Avoidance, and effective management of, adverse press and other media coverage.
- Demonstrating year by year progress on environmental sustainability issues, notably initiatives to reduce the number of people who drive less than one mile to use a sports or leisure centre.
- Achieving year on year increases on numbers of East Devon residents (non staff) attending steering group meetings (in aggregate).
- Maintaining a current website with deep links to Council websites.
- Achieving year on year increases in e-enabled transactions eg e-bookings and provide statistics on use to the Council.
- Systems in place to ensure that a wide range of opportunities for physical activity provided by Leisure East Devon, or directly promoted by them, remain affordable to those on means tested benefits.
- Systems to ensure that Council staff are encouraged and incentivised to engage in physical activity.
- Maintaining, and preferably enhancing, effective partnerships with youth, health and education agencies.
- Maintaining and improving a 'health promoting' approach across all sports centres operations.
- Provision of advice, information and small scale assistance, at no cost, to East Devon District Council on issues of sport, culture, and physical activity. Representation of East Devon District at relevant meetings and seminars (including meetings of the Council and its partners) so far as this is reasonable.
- Display and distribution of Council promotional materials so far as is reasonable.
- "In kind" support to the major annual cultural events in the towns where relevant.
- Meeting all requirements of the leases and transfer documents.
- Maintaining clear and consistent good practice which is no less effective than, and achieves the same aims as, that of the Council on Risk Management, Procurement, Health and Safety, Equalities and Diversity, Child Protection, Emergency Planning and Disaster Recovery.
- Maintain openness of information so far as is practicable under commercial sensitivity.



- Regular meetings with the Corporate Director – Communities and Culture Portfolio holder and annual meetings with relevant Council Committees.

**Cost Schedule**

Annual:	Annual service payment '06-07'	£1,155,000
	Annual service payment '07-08'	£1,155,000
	Annual service payment '08-09'	£1,155,000
	Annual service payment '09-10'	£1,155,000
	Annual service payment '10-11'	£1,155,000

All payments to be plus VAT and paid quarterly in advance.

**Fees for other work**

Actual hourly rates of officers involved.

**SCHEDULE 5****DISPUTE RESOLUTION**

- (1) Subject to the preceding terms of this Agreement, the Council and the Trust shall use their reasonable endeavours to resolve by agreement any disputes arising between them in accordance with paragraphs 2-8 below.
- (2) If any dispute arises out of or in connection with this Agreement, the parties will first refer the dispute to Corporate Director – Communities of the Council and the Chief Executive of the Trust and if matters cannot be resolved at that level, the dispute will then be referred to the Chief Executive of the Council and Chairman of the Trust.
- (3) If any dispute arises out of or in connection with this Agreement and the matter has been referred to the higher levels of management referred to in (2) above (or there are no higher levels of management within both parties' organisations) the parties will attempt to settle the dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) (or its successor body) Model Mediation Procedure ("the Model Procedure").
- (4) To initiate mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute, requesting mediation.
- (5) The procedure in the Model Procedure will be amended to take account of any relevant provisions of this Agreement or any other agreement which the parties may have entered into relating to the conduct of mediation.
- (6) The mediation will start not later than 28 days after the date of the ADR Notice or such later date as may be agreed between the parties.
- (7) Both parties agree to co-operate fully with any mediator appointed, and to bear their own costs and one half of the fee and expenses for such mediation, unless a different agreement as to costs and fees is reached as part of the settlement arrived at as a result of the mediation.
- (8) If the matter has not been resolved by mediation within [60] days of initiation of the procedure or if either party will not participate in the mediation, the dispute shall be referred to litigation.

**SCHEDULE 6**  
**EXISTING THIRD PARTY USERS**

## Funding and Management Agreement

### **Schedule 6 Existing third party users**

#### Axe Valley Sports Centre

Devon County Council

#### Broadclyst Sports Hall

Devon County Council

#### Colin Tooze Sports Centre

Devon County Council

#### East Devon Tennis Centre

Devon County Council  
Devon Lawn Tennis Association

#### Honiton Sports Centre

Devon County Council

#### Colyton Sports Centre

Governors of Colyton Grammar School

#### Sidmouth Sports Centre

Devon County Council

#### Sidmouth Swimming Pool

Sidmouth Tourist Information Centre

#### Manor Pavilion, Sidmouth

Sid Vale Talking Newspaper  
Sidmouth Amateur Dramatic Society  
C.V. Productions Ltd

#### Coburg Gardens, Sidmouth

Sidmouth Bowling Club

#### Phear Park, Exmouth

Phear Park Bowling Club

#### The Pavilion, Exmouth

Aby's Catering

**SCHEDULE 7****REPORTING INFORMATION**

Financial and Performance information to be provided by the Trust to the Council prior to review meetings:

- a quarterly report setting out details of actual Income and Expenditure during the previous month;
- a quarterly operational performance;
- a quarterly report on the achievement of the key outputs set out in the Service Level Agreement;
- a quarterly report on the outcome of any Action Plan approved by the Council pursuant to Clause 19 together with details of any acts, omissions, breaches or failures of the Trust under the terms of this Agreement;
- a quarterly report on health and safety compliance;
- a quarterly report on customer complaints or comments;
- a quarterly report on compliance with repair and maintenance obligations;
- a quarterly report on amendments to the Equipment Inventory and any proposals relating to replacement or additional items of Equipment;
- results of the annual customer survey and any non user survey results;

## SCHEDULE 8

## EXPERT PROCEDURE

1. Any expert (the "Expert") appointed to resolve any matter under the terms of this agreement shall be an independent expert whose appointment is agreed between the parties or, if the parties are unable to agree on an Expert within seven days of either party serving notice that it wishes to seek an expert determination, nominated at the request of either party by the President for the time being of the Institute of Chartered Accountants in England and Wales.
2. The parties shall be entitled to make submissions to the Expert and shall provide (or procure that others provide) the Expert with such assistance and documents as he shall reasonably require for the purposes of making his determination and the parties shall provide each other with such reasonable information concerning the affairs of the Company as will enable them to make such submissions.
3. The Expert shall be required to deliver his determination within [60 days] of his appointment.
4. The Expert shall act as expert and not as arbitrator and his written opinion on the matters referred to him shall, save for manifest error, be final and binding.
5. The cost of any reference under this clause shall be borne by the parties equally unless the Expert shall otherwise decide in which case it shall be borne by the parties in the proportions decided by the Expert.