

DATED

DEED OF SUPPLEMENTAL AGREEMENT

LONDON BOROUGH OF SOUTHWARK

and

SPORTS AND LEISURE MANAGEMENT LIMITED

This deed is dated

Parties

- (1) London Borough of Southwark, 160 Tooley Street, London, SE1 2QH (**Council**); and
- (2) Sports and Leisure Management Limited (company registration number 2204085) whose registered office is at 2 Watling Drive, Sketchley Meadows, Hinckley, Leicestershire LE10 3EY (**SLM**),

together the "**Parties**" and each individually a "**Party**"

BACKGROUND

- (A) The Council and SLM are parties to a leisure operating contract dated 11 April 2016 (**LOC**).
- (B) The global pandemic caused by the coronavirus (**Pandemic**), and the Coronavirus 2020 and associated guidance and legislation (**Act**), has resulted in unprecedented challenges for the leisure sector and has had a profound impact on the delivery of the Services under the LOC.
- (C) Consequently, the Parties wish to supplement the LOC on the basis set out in this deed.

Agreed terms

1. Terms defined in this deed

In this deed, expressions defined in the LOC and used in this deed have the meaning set out in the LOC. The rules of interpretation set out in the LOC apply to this deed. Additional defined terms used in this deed shall have the following meanings:

Act has the meaning given to it in Recital B

Actual Costs SLM's actual, direct costs of providing the Services in a relevant month, including operating costs, lifecycle costs, maintenance costs and costs of employees including salaries, national insurance and pension contributions and the other categories of costs set out in the Financial Forecast. This is provided that no costs in excess of £5,900,000 (five million, nine hundred thousand pounds)

over the Support Period shall constitute Actual Costs for the purposes of this definition

Actual Revenue	revenue received by SLM in a relevant month pursuant to or connected with the LOC, excluding Exceptional Revenue
Deficit	an amount by which Actual Costs exceed Actual Revenue in respect of the Support Period
Exceptional Revenue	Revenue of a type not expected by the Parties as at the date of this deed (as indicated by the Financial Forecasts). For example, but without limitation, grant funding received by SLM in respect of the relevant facilities
Financial Forecast	the forecast provided to the Council by SLM in respect of the Support Period, and which are set out at Annex 1
Open Book Information	has the meaning given to it in clause 2.7
Pandemic	has the meaning given to it in Recital B
Relevant Documentation	documentation which evidences, to the reasonable satisfaction of the Council and in such a form reasonably required by the Council, the Actual Costs, Actual Revenue and Exceptional Revenue in respect of the relevant month
Reduced Deficit	a sum in relation to the Support Period, where greater than zero, equal to: £2,600,000 (two million, six hundred thousand pounds) – Deficit
Support Payment	an amount equal to the aggregate of: (a) the Waived Payments; and (b) all amounts paid by the Council to SLM pursuant to clause 2.1(b) of this deed

Support Period the months of August 2020 until March 2021 (inclusive)

Waived Payments has the meaning given to it in clause 2.1(a).

2. Supplemental Terms

- 2.1 The Parties agree that the Pandemic and Act is having a significant and material impact on the leisure sector. Accordingly, and in consideration of continued performance by SLM of its obligations under the LOC:
- (a) the Council has agreed with SLM to waive payment by SLM of the monthly Management Fee in respect of the period from March 2020 to March 2021, inclusive (**Waived Payments**);
 - (b) the Council will, subject to the remaining provisions of this clause 2, pay to SLM the sum of £325,000 (three hundred and twenty five thousand pounds) plus VAT in respect of each month during the Support Period; and
 - (c) SLM will pay to the Council an amount equal to:
 - (i) any Exceptional Revenue received by SLM in any month during the Support Period; and
 - (ii) 50% of any Reduced Deficit, pursuant to clause 2.4.
- 2.2 Payments by the Council pursuant to clause 2.1(b) shall be made to SLM by the Council within 14 days of receipt by the Council, to its reasonable satisfaction, of the Open Book Information and a VAT invoice in respect of the relevant month.
- 2.3 Payments of Exceptional Revenue by SLM pursuant to clause 2.1(c)(i) shall be made to the Council by SLM within 14 days of receipt by SLM of the relevant Exceptional Revenue.
- 2.4 Following the end of the Support Period the Council may calculate, acting reasonably and in good faith, (based on the Open Book Information or any other information available to it) the extent to which a Reduced Deficit occurred during the Support Period. SLM shall pay to the Council an amount equal to 50% of any such Reduced Deficit, as notified to SLM pursuant to this clause, and such payment shall be made within 14 days of notification. The Parties agree that the amount payable by SLM to the Council pursuant to this clause 2.4 is separate from, and shall not be reduced by, payment by SLM to the Council of any Exceptional Revenue.
- 2.5 Without prejudice to any express provision of this deed, SLM will use all reasonable endeavours to maximise Actual Revenue and Exceptional Revenue, and to minimise Actual Costs.

- 2.6 SLM agrees that the Support Payments are in full and final settlement of any claims of SLM in connection with the Pandemic or the Act in relation to the Support Period or any period prior to it. This shall include, without limitation, any and all claims which SLM may otherwise have had in relation to a claim in respect of a change in law or loss of revenue under the LOC.
- 2.7 SLM will provide to the Council:
- (a) any and all information required by the Council, in connection with this deed and and SLM's current trading and financial position, on an open book basis, within 10 days of request; and
 - (b) without prejudice to the provisions of clause 2.7(a), SLM shall provide the Relevant Documentation in respect of each month within 10 days of the end of such month,
- (together, the **Open Book Information**).
- 2.8 Without prejudice to the generality of clause 2.7, SLM shall provide to the Council (in such format as the Council requires) a summary of the relevant direct debit information for each month within 10 days of the start of that month.
- 2.9 Except as set out in clauses 2.1 to 2.8 inclusive, the LOC shall continue in full force and effect, and SLM shall perform all of its obligations thereunder.
- 2.10 The Council acknowledges that no sums are due to it from SLM in respect of the period prior to the date of this agreement, save that:
- (a) SLM shall by 30 September 2020 pay to the Council the sum of [REDACTED] plus VAT which was acknowledged to be due in the agreement between the Parties dated 8 June 2020, and
 - (b) a reconciliation will be carried out to assess whether any sums are due to be returned to the Council in respect of the financial support provided from 21 March 2020 to 31 July 2020 inclusive, in accordance with the Council's letters to SLM dated 30 March 2020 and 18 May 2020.
- 2.11 The Parties agree that neither the Pandemic nor the Act shall give rise to any force majeure or frustration rights in relation to the LOC.
- 2.12 The maximum liability of the Council to SLM under or in connection with this deed shall be £2,600,000 (two million, six hundred thousand pounds) in aggregate plus VAT (excluding the Waived Payments which shall not count towards the cap), provided that this cap on the liability of the Council shall be separate from, and shall in no circumstances be increased by, payment by SLM to the Council of any sums in respect of Exceptional Revenue or Reduced Deficit.

- 2.13 If there is an inconsistency between any of the provisions of this deed and the provision of the LOC, the provisions of this deed shall prevail.
- 2.14 If there is any dispute about the amount of any Reduced Deficit or Exceptional Revenue, SLM shall pay the undisputed amount within 14 days of request by the Council, and the Parties shall comply with the Dispute Resolution Procedure to resolve the disputed amount if this cannot be resolved between the Parties. Once the matter is resolved or determined:
- (a) the Council shall return any overpayment so resolved or determined to SLM; or
 - (b) SLM shall pay make any additional payment to the Council,
 - (c) as the case may be, within 14 days of such resolution or determination.

3. Next steps

In the period from the date of this agreement to 31 December 2020 the Parties shall, acting reasonably, review and discuss the contractual arrangements for the provision of the Services after the expiry of the Support Period, including the Management Fee payable, taking into account the projected impact of the Pandemic on the performance of the Facilities.

4. Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

5. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

6. Third Party Rights

This deed is not intended to and does not confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999.

7. Counterparts

This deed may be executed in counterparts each of which shall be deemed to be an original. The counterparts shall together constitute one and the same deed.

8. Costs

Each Party shall bear their own costs in relation to the negotiation and completion of this deed.

ANNEX 1 – FINANCIAL FORECASTS

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as deed by SLM acting by David Bibby, a director in the presence of a witness:

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Director

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Witness

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Witness Name

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Witness Occupation

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Witness address

The common seal of the Council was affixed in the presence of:

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