

DATED

2018

WINCHESTER CITY COUNCIL

-and-

PLACES FOR PEOPLE LEISURE MANAGEMENT LIMITED

DEED OF VARIATION

OF

Contract to provide for termination in connection with the provision of a
new leisure Centre at Bar End, Winchester

THIS DEED OF VARIATION is made the _____ day of _____, 20____.

2018 BETWEEN:-

- (1) **WINCHESTER CITY COUNCIL** of City Offices, Colebrook Street, Winchester, S022 9LJ ("the Council") and
- (2) **PLACES FOR PEOPLE LEISURE MANAGEMENT LIMITED** (company registration no. 02585598) whose registered office is situated at 80 Cheapside, London EC2V 6EE ("PFPLM").

WHEREAS:

- (1) This Deed of Variation is supplemental to a contract dated 31 December 1997 between Winchester City Council (1) and D C Leisure (Solent) Limited as amended by:
- i. a Deed of Extension dated 4 July 2006 between Winchester City Council (1) and D C Leisure (Solent) Limited (2),
 - ii. a Deed of Novation dated 11 September 2009 between Winchester City Council (1) D C Leisure (Solent) Limited (2) and D C Leisure Management Limited (3) ; and
 - iii. a Deed of Variation and Consent for Contractor to Enter into NPDO Contract dated 11 September 2009 between Winchester City Council (1) and D C Leisure Management Limited (2)
 - iv a Deed of Variation dated 22 December 2010 between Winchester City Council (1) and D C Leisure Management Limited (2)
 - iv. a Deed of Variation dated 22 March 2011 between Winchester City Council (1) and D C Leisure Management Limited (2) to extend the term of the contract to 31 March 2023 and
 - v. A consent deed dated 11 December 2012 consenting to the change in control of the parent company of PFPLM

(the "Contract") in relation to the management and operation of River Park Leisure Centre in Winchester.

- (3) The Council is proposing to construct a new leisure centre at Bar End, Winchester (the "New Centre") to replace the existing River Park Leisure Centre.
- (4) The parties have agreed to amend the Contract to include termination provisions in the Contract to permit the Council to progress the design, construction, and management arrangements for the New Centre.

NOW IT IS AGREED as follows

1. The Contract shall be read and construed from and including the date of this deed as varied by the provisions set out in Schedules A and B hereto.
2. The Contract shall remain fully effective as varied by this deed and the terms of the Contract shall have effect as though the provisions contained in this deed had been originally contained in the Contract
3. The expressions used in this Deed shall have the same meaning as those used in the Contract save where the context otherwise requires.
4. In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or, at the discretion of the Council, it may be severed from this Agreement.

IN WITNESS whereof the parties hereto have executed this deed the day and year first before written

EXECUTED AS A DEED BY AFFIXING
THE COMMON SEAL of WINCHESTER CITY)
COUNCIL)
in the presence of:-)

Executed as a DEED by PLACES)
FOR PEOPLE LEISURE MANAGEMENT LIMITED acting by two
)
directors whose signatures are here)
subscribed, namely:-)

Director

Director / Secretary

Schedule A

Condition 48.3 and 48.4 shall be deleted and a new Condition 25A and Schedule B shall be inserted in the Conditions of Contract forming part of the Contract as follows:-

“25A Replacement Leisure Centre

25A.1 The Contract may be terminated by the Council in accordance with the provisions of this Condition in order to permit the Council to progress the design, construction, and management arrangements of a new leisure centre (the “New Centre”) to replace the Centre.

25A.2 In the event that the Council determines to invoke the provisions of this Condition it shall serve notice on the Contractor (the “Initial Notice”) setting out:-

- 25A.2.1 its intention to seek to construct the New Centre;
- 25A.2.2 an indicative timetable for the provision of the New Centre, including indicative dates for procurement of the construction and management arrangements of the New Centre, and of the termination of the Contract.

25A.3 Following service of the Initial Notice:-

- 25A3.1 the Council shall keep the Contractor informed of the progress of the project to provide the New Centre, including the timetable and procurement arrangements for the construction and management of the New Centre.
- 25A3.2 the Contractor shall ensure that the terms of any contracts which it or any of its sub-contractors enters into with third parties in connection with the operation of the Centre including (without prejudice to the generality of the foregoing) maintenance contracts, concession contracts, or contracts for the provision of other services in connection with the Centre) (“Supply Chain Contracts”) permit (save as otherwise agreed by the Authorised Officer) the Contractor to terminate such contracts without any financial penalty on or before the indicative date for the termination of the Contract as set out in the Initial Notice provided that this provision shall not apply to any Supply Chain Contracts entered into prior to

25A.4.1 Not less than six months prior to the opening of the New Centre the Council shall serve a further notice ("the Termination Notice") stating the proposed opening date of the New Centre and the Contract shall terminate on the date specified for such opening in the Termination Notice.

25A.4.2 Notwithstanding the provisions of 25A.4.1 in the event of the opening of the New Centre being delayed after the date specified in the Termination Notice the Council shall notify the Contractor as soon as it becomes aware of any such delay and the parties shall thereafter agree in writing to extend the date for termination of the Contract to such later date as the parties shall (acting reasonably) agree

25.A.4.3 For the avoidance of doubt It Is Hereby Agreed and Declared that in the event of the parties agreeing a revised date or dates in accordance with the provisions of 25.1.4.2 above the Contract shall terminate on such revised date

25.A.4.4 The parties shall agree as many extensions of time as are necessary until such time as the New Centre is opened Provided Always that no extension of time shall be agreed which shall expire after 31 March 2023

25A.5 All applicable provisions (whether contained in the Contract or legislation) which would apply at the end of the Contract Period shall apply on termination under this Condition.

25A.6 On the termination of the Contract under this Condition, the Contractor shall not be entitled to any claim for any costs, expenses or other loss (including without prejudice to the generality of the foregoing any losses incurred by the Contractor as a result of early termination of any existing supply chain contracts as at the date of termination and any loss of profit which the Contractor may incur as a result of such termination prior to the end of the Contract Period) Provided Always and Without Prejudice to the generality of the foregoing in the event of the Contract being terminated under this Condition 25A prior to the expiry date of the Contract (being 31 March 2023) through no act or default on the part of the Contractor its agents employees or all those duly authorised by it to act on its behalf the Contractor shall be entitled to be compensated for the net book value of any equipment and building capital investment not fully depreciated as specified in the Asset Register dated and attached to this Deed as Appendix 1. Such net book value to be calculated on a straight line basis as at the date of termination of the Contract under this Condition 25 A using the formula gross book cost* (remaining life at termination/original life).

25.A. 7 On termination of the Contract under this Condition the Contractor will use its best endeavours to transfer any equipment belonging to it (and therefore the net book value) to other Leisure Sites operated or managed by the Contractor and/or any companies within the same Group as or controlled by the Contractor or shall offset any equipment disposal fees as may be agreed with the Authorised Officer.

25.A. 8 For the avoidance of doubt IT IS HEREBY AGREED AND DECLARED that the Council shall not be liable to pay any compensation to the Contractor in respect of any further investment or addition to the Asset Register by the Contractor after the date of this deed

25A.9 The Council shall not be bound to serve a Termination Notice on the Contractor if it subsequently determines that provision of the New Centre is not feasible and in such circumstances the Authorised Officer may serve a further notice withdrawing the Initial Notice. Following the service of such further notice the provisions of this Condition 25A shall cease to apply and the Contract shall continue to the end of the Contract Period.

Schedule B

Appendix 1

Asset Register dated.....

Please see attached

