

DATED

2006

- (1) LONDON BOROUGH OF LAMBETH
- (2) FUSION LIFESTYLE

AGREEMENT
relating to the provision of
community services at the Brockwell Park Lido

REDACTED VERSION: 12 JANUARY 2017

TO BE RELEASED IN RELATION TO INFORMATION REQUEST TO THE LONDON
BOROUGH OF LAMBETH: IR175996

FURTHER CIRCULATION STRICTLY PROHIBITED.

FUSION LIFESTYLE'S POSITION IS RESERVED IN FULL.

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BETWEEN:

- AND**

- WHEREAS:**

- NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement and the Schedules hereto unless the context otherwise requires the following expressions (set out in alphabetical order) shall have the meanings respectively attributed to them:

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"Best Value"	shall mean the duty of local authorities to make arrangements to secure continuous improvement in the delivery of services as required by the Local Government Act 1999;
"Brockwell Lido Steering Group"	means the steering group made up of the Council Officer, representatives of users of the Brockwell Park Lido, users of Brockwell Park, local residents and representatives of other key stakeholders (hereinafter referred to as "BLSG");
"the Commencement Date"	means the date on which Fusion takes beneficial occupation of the Facility following the refurbishments of the Facility by Fusion;
"Concessionary Prices"	means discounted fees and charges made to specific groups, individuals or sections of the community public and other users and hirers to encourage use of the Facility by those specific groups, individuals or sections of the community;
Consumer Price Index"	means the consumer price index (or such other index which may replace or supersede the same) at the time immediately preceding the anniversary of this Agreement;
"Core Outcomes"	means those outcomes that Fusion is required to deliver throughout the term of this Agreement as set out in Schedule 2 to this Agreement;
"Core Prices"	means those fees and charges made to the public and other users and hirers for use of the Facility as defined in Schedule 9;
"Council Officer"	means the Chief Executive from time to time of the Council or such other person or persons notified to Fusion by the Council appointed in his place;
"Communications Framework"	means the agreed communications framework as set out in Schedule 6;
"Community Services"	means the community leisure services offered by Fusion as set out in the Community Services Delivery Plan;
"Community Services Delivery Plan"	means Fusion's delivery plan setting out the services to be provided at the Brockwell Park Lido to be formatted in accordance with Schedule 1;
"Existing Service Providers"	means the various individuals, users, clubs and organisations providing services at the

Facility prior to Commencement Date as detailed in Schedule 7 to this Agreement;

"Facility"

means the land and buildings on the south east side of Dulwich Road, Brockwell Park and registered with title number 50578 (including for the avoidance of doubt the open air swimming pool) and shown for the purposes of identification only edged in red on the plan set out in Schedule 5 to this Agreement;

"Good Industry Practice"

means the degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of Fusion);

"Key Performance Indicators"

means the key performance indicators used to measure Fusion's progress in achieving the Key Performance Outputs as set out in the Community Services Delivery Plan;

"Key Performance Outputs"

means the key performance outputs required to deliver the Objectives and Core Outcomes in connection with the Community Services as set out in the Community Services Delivery Plan;

"Lease"

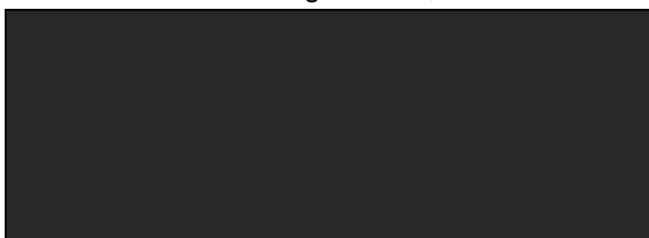
means the lease between the Council and Fusion relating to the Facility entered into on or near to the date of this Agreement;

"Net Expenditure"

means the total attributable costs of implementing changes to the Delivery Plan less any income generated or savings made as a result of those changes;

"Objectives"

means the Council's strategic and corporate objectives for community leisure provision at the Facility as agreed with Fusion and set out in Schedule 2 to this Agreement;



"Fusion Officer"

means the Chief Executive from time to time of Fusion or such other person or persons notified to the Council by Fusion appointed in his place for all purposes connected with this Agreement;

"VAT" means Value Added Tax or any tax of a similar nature as presently charged under the provisions of the Value Added Tax Act 1994 and any amendments thereto or any legislation substituted therefore;

"Year" means, the period of 12 months commencing 1 April and ending 31 March in each Year.

- 1.2 Words in the singular shall include the plural and vice versa. Words denoting any gender include all gender. Words denoting any genders include all genders.
- 1.3 Table of contents and headings in this Agreement are for convenience only and shall not affect its construction.
- 1.4 References to clauses, appendices and schedules in this Agreement unless otherwise specified. The schedules to this Agreement shall for all purposes form part of this Agreement.
- 1.5 Any reference to a statute, statutory provisions or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, reenacted or replaced and enforced from time to time whether before or after the date of this Agreement and shall also be construed as referring to any previous statute, statutory provision or subordinate legislation amended, modified, consolidated, reenacted or replaced by any such statute, statutory provision or subordinate legislation.

2. PROVISION OF COMMUNITY SERVICES

- 2.1 [REDACTED] Fusion has agreed to provide the agreed Community Services at the Facility in accordance with the approved Community Services Delivery Plan and in accordance with the terms of this Agreement with effect from the Commencement Date and throughout the Term.
- 2.2 The Community Services Delivery Plan for the period from the Commencement Date to 31 March 2007 is attached at Schedule 1 to this Agreement.
- 2.3 Future Community Services Delivery Plans will be agreed and approved in accordance with the procedure set out in Clause 3 below.
- 2.4 The Community Services Delivery Plan shall set out how Fusion will meet and deliver the Agreed Objectives and Core Outcomes.
- 2.5 The Community Services Delivery Plan shall include the following information and shall be in substantially similar form to the Community Services Delivery Plan as set out in Schedule 1:
 - 2.5.1 The Agreed Objectives;
 - 2.5.2 The Core Outcomes;
 - 2.5.3 The Key Performance Outputs;
 - 2.5.4 The Performance Indicators;
 - 2.5.5 Service delivery plans;

- 2.5.6 Programming proposals (including opening hours);
- 2.5.7 Pricing policy and proposals (including Core Prices and Concessionary Charges);
- 2.5.8 Service improvement plans;
- 2.5.9 Quality framework;
- 2.5.10 Consultation framework;
- 2.5.11 Marketing strategy;
- 2.5.12 Customer care policy and arrangements for customer comments/feedback;
- 2.5.13 Staffing arrangements, staff training and requisite skills;
- 2.5.14 Facility maintenance and development plans.

3. PREPARATION AND APPROVAL OF THE COMMUNITY SERVICES DELIVERY PLAN

- 3.1 Fusion shall prepare and present to the Council a draft Community Services Delivery Plan by no later than 1 November in each Year of the Term of this Agreement.
- 3.2 Fusion shall consult with and consider feedback from the Council (as advised by BLSG) and from customers and users of the Facility when preparing the Community Services Delivery Plan for the forthcoming 12 month service period. This consultation process shall start at the earliest opportunity and in any event by no later than September in each year to enable all parties to fully participate in the process in accordance with the agreed Communications Framework.
- 3.3 The Council and Fusion shall meet as required to review the draft Community Services Delivery Plan prior to final approval by the Council. Fusion shall provide the information set out in the Communications Framework to the Council and the BLSG. Fusion shall provide such additional information as may be reasonably requested by the Council and/or BLSG to assist the Council (in consultation with the BLSG) evaluate the draft Community Services Delivery Plan.
- 3.4 Subject to clause 3.12, the Council shall approve the Community Services Delivery Plan by no later than 15 January in each Year.
- 3.5 The approved Community Services Delivery Plan shall be delivered by Fusion from 1 April in each Year following approval.
- 3.6 As part of the review process referred to in clause 3.3 above, the Council (as advised by BLSG) has the right to request a change to the Community Services Delivery Plan. Fusion shall use all reasonable endeavours to accommodate any requested change at no extra cost to the Council.
- 3.7 In the event that the requested change requires net expenditure which Fusion is not able to accommodate pursuant to clause 3.6 above, Fusion shall provide the Council with:

- 3.7.1 A cost estimate of the potential net costs of the requested change;
 - 3.7.2 Confirmation that Fusion has used all reasonable endeavours to accommodate the requested change and/or minimise the potential increase in costs and maximise any reduction in costs; and
 - 3.7.3 Such other evidence as reasonably required by the Council to enable the Council audit the net expenditure implications of the required change.
- 3.8 If the parties cannot agree the cost estimate, then the dispute shall be determined in accordance with clause 15.
 - 3.9 As soon as the cost estimate is agreed or otherwise determined in accordance with clause 15, the Council shall confirm in writing the cost estimate or withdraw the request for a change.
 - 3.10 Where the Council agrees to pay the cost estimate, the parties shall agree a payment schedule in respect of the payment.
 - 3.11 The Council shall make a payment within 15 business days of receipt by the Council of an invoice presented by Fusion to the Council in accordance with the agreed payment schedule.
 - 3.12 In the event that the Council cannot approve the Community Services Delivery Plan (in whole or part) within the time limits set out in this clause 3, Fusion shall continue to deliver the previous years Community Service Delivery Plan (in respect of those parts of the new Community Services Delivery Plan which are not agreed) until such time as the new Community Services Delivery Plan is approved by the Council.

4. USE OF THE FACILITY

- 4.1 The Council shall deliver up the Facility with vacant possession from the Commencement Date and shall grant to Fusion and Fusion shall enter into the Lease on or near to the Commencement Date.
- 4.2 Fusion shall be permitted to use the Facility for the permitted uses set out in the Lease being the provision of an outdoor public swimming pool together with associated, ancillary and/or complementary indoor and outdoor leisure, sports and recreational activities and on the terms therein and for the purposes of delivering the Community Services as set out in the agreed Community Services Delivery Plan.

5. COMMUNICATIONS FRAMEWORK

- 5.1 The parties have agreed a framework to ensure effective and ongoing communication between the Council, Fusion and BLSG, a copy of the Communications Framework is set out in Schedule 6.
- 5.2 Fusion shall engage and consult with the Council and BLSG in accordance with the Communications Framework.
- 5.3 The Communications Framework shall not be amended without the prior written consent of the Council (in consultation with BLSG), such consent not to be unreasonably withheld or delayed.

- 5.4 The BLSG shall consult the Council and Fusion in relation to any changes to the governing document once formally adopted of BLSG and shall inform the Council and Fusion of any changes to the executive committee of the BLSG. Until the BLSG has formally adopted a formal constitution, the individuals listed in Schedule 10 shall act on behalf of the BLSG for all purposes connected with this Agreement. The Council shall immediately notify in writing Fusion of any changes to the list of individuals. The Council shall also provide forthwith to Fusion full contact details for the individuals listed and any new/additional individuals appointed.
- 5.5 The Council shall be responsible for ensuring that BLSG comply with the Communications Framework and their obligations set out in this Agreement.

6. STAFFING

- 6.1 Fusion shall at all times employ sufficient qualified and experienced staff to ensure a high standard of service provision in accordance with the Core Outcomes and Good Industry Practice, customer care and health and safety at the Facility.

7. FEES AND CHARGES

- 7.1 Fusion will set out in the Community Services Delivery Plan the proposed charges for the use and hire of the Facility and activities by the public and local organisations taking place within the Facility. Core Prices may only be increased annually in line with the Consumer Price Index unless otherwise agreed in writing by the Council (following consultation with the BLSG) such consent not to be unreasonably withheld or delayed.
- 7.2 Any fees and charges for use of the Facility and activities taking place within the Facility which are not defined as Core Prices shall be at the discretion of Fusion provided that such fees and charges do not in any way inhibit the achievement of Fusion's obligations under this Agreement.
- 7.3 In addition to offering the Core Prices referred to in clause 7.1, Fusion will implement a Concessionary Pricing Scheme which offers discounts to those groups identified by the Council and agreed by Fusion as being target groups to benefit from lower entrance prices.

8. COMMITMENT TO EXISTING SERVICE PROVIDERS

- 8.1 Subject to Clause 8.2 Fusion shall grant Existing Service Providers detailed in Schedule 8 to this Agreement access to the Facility in accordance with and on the terms set out in any licence arrangements agreed between Fusion and each Existing Service Provider.
- 8.2 Fusion shall not be obliged to grant an Existing Service Provider access to the redeveloped Facility in the event that the Existing Service Provider does not vacate the Facility on the agreed date to enable the development works to commence on the commencement date for such works or do not act reasonably and in good faith in their dealings with Fusion with regard to their temporary relocation.
- 8.3 The terms of any such licence arrangements will be agreed with the Council acting reasonably and will be no less favourable than those enjoyed by the Existing Service Providers immediately prior to the commencement of the Invitation to Tender issued by the Council in relation to the future development

of the Facility with reasonable adjustments to reflect prevailing economic and market conditions.

- 8.4 Future changes to the terms of access, use or charges offered to the Existing Service Provider shall only be made with the agreement of the Council acting reasonably unless such changes are mutually agreed by Fusion and the Existing Service Provider.

9. PERFORMANCE MEASURES

- 9.1 Fusion shall use all reasonable endeavours to deliver the Key Performance Outputs.
- 9.2 Fusion's performance to achieve the Key Performance Outputs will be measured using the Key Performance Indicators. The Key Performance Indicators agreed by the parties are set out in Schedule 4. The Key Performance Indicators may be changed from time to time with the written consent of both parties.
- 9.3 The Key Performance Outputs will be agreed on an annual basis as part of the Community Services Delivery Plan approval procedure set out in Clause 3 above.

10. MONITORING AND REVIEW

- 10.1 Throughout the Term, Fusion shall:
- 10.1.1 attend regular meetings of the Council and BLSG in accordance with the agreed Communications Framework and provide prior to those meetings the information set out in the Communications Framework;
 - 10.1.2 attend such other meetings of the Council during the Year when reasonably required to do so by the Council;
 - 10.1.3 attend an annual review meeting with the Council;
 - 10.1.4 provide such information to the Council as the Council may reasonably request to demonstrate how Fusion has assisted maintaining and improving Community Services at the Facility having regard to the Council's duty of Best Value and objectives for such Community Services;
 - 10.1.5 provide specific information to the Council to demonstrate Fusion's performance in terms of delivering the Agreed Objectives and Core Outcomes as measured against the agreed Key Performance Indicators
 - 10.1.6 co-operate with the Council's reasonable requests in connection with any reviews undertaken by it, relating to Best Value; comprehensive performance assessment; and/or such other similar statutory reviews.
- 10.2 Fusion shall also maintain or procure that the following are maintained:
- 10.2.1 a full record of all incidents relating to health, safety, security and/or probity which occur at the Facility during the Term;

- 10.2.2 full records of all maintenance and operating procedures carried out at the Facility during the term;
- 10.2.3 Fusion shall ensure that the records referred to in this clause are made available for inspection by the Council as reasonably required and upon reasonable notice, and shall with reasonable prior notice present a report of them to the Council as and when requested; and
- 10.2.4 the records referred to in this clause shall be retained for a period of at least 6 Years except that any records relating to incidents of health and safety shall be retained for at least 21 Years.

10.3 Monitoring and review procedures may be revised or replaced by the agreement of both parties from time to time.

11. ACCOUNTS AND RECORDS

11.1 Fusion shall co-operate fully and in a timely manner with the Council's internal and/or external auditors with regard to any statutory audit requirements of the Council.

12. INSURANCES

12.1 Fusion shall effect or procure to be effected and maintained the following insurances:

- 12.1.1 such insurances as are necessary in relation to the Facility pursuant to the insurance obligations in the Lease;
- 12.1.2 public liability;
- 12.1.3 employers liability;

and such other insurances as are agreed between the parties from time to time in writing.

12.2 Each of the Council and Fusion will procure that there be given to the other such information in connection with the insurances and copies of the policies as the other may reasonably require and Fusion will promptly notify the Council of renewals made and variations or cancellations of policies made or, to the knowledge of Fusion, threatened or pending.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. DISPUTE RESOLUTION

If any dispute or difference arises out of or in connection with this Agreement the procedure for dispute resolution set out in Schedule 7 hereto shall take effect.

16. NO AGENCY OR PARTNERSHIP

- 16.1 None of the provisions of this Agreement shall be deemed to constitute an agency between the Council and Fusion and neither of them has authority to bind the other in any way.

18. ANNOUNCEMENTS

Without prejudice to clause 20 (Data Protection Act 1998), the Council and Fusion shall on completion of this Agreement make such announcements as may be agreed between the parties.

19. CONFIDENTIALITY

- 19.1 Subject to Clause 19.2, each party shall keep entirely confidential the terms of this Agreement, or any matter arising hereunder, including all the information provided by Fusion in compliance with the terms of this Agreement and otherwise subject matter of any dispute concerning the same, and each party shall consult with the other as to the timing, general terms and manner of any announcement or disclosure to third parties or the general public of whatsoever nature to be made by any of them in relation to any matter relating to or contained in this Agreement and no such announcement shall be made except with the agreement of the other party hereto save (in the absence of agreement) for any statement or disclosure which may be required by law, provided that

nothing in this clause shall prevent Fusion from undertaking any marketing or other similar arrangement in connection with or arising out of the provision of the Community Services or shall prevent the Council from:

- 19.1.1 complying with its obligations under the Data Protection Acts; and
 - 19.1.2 complying with its obligations under the Freedom of Information Act 2000 and any regulations or formal guidance issued thereunder (including any published by the Information Commissioner);
 - 19.1.3 disseminating such information within the Council, its contractors, agents or employees or to statutory or regulatory bodies or agencies to whom the Council reasonably considers it necessary to be provided with such information to in any way enable the Council to comply with all regulations, codes, practices, audits, recommendations and guidelines whether statutory or otherwise as may from time to time apply to the subject matter of this Agreement.
- 19.2 Clause 19.1 shall not apply to:
- 19.2.1 any disclosure of information by the Council which the Council is required to make available to the public by law, in particular, the Local Government (Access to Information) Act 1985;
 - 19.2.2 any information which is already in the public domain otherwise than as a result of a breach of this clause;
 - 19.2.3 any provision of information to financial, insurance or other professional advisers or, to a person where it is proposed that that person should or may provide funds to Fusion to enable it to carry out its obligations under this Agreement;
 - 19.2.4 any disclosure of information to any person which is required in connection with Best Value (including the Comprehensive Performance Assessment) or any other similar external inspection or assessment carried out on the parties or any disclosure of information by the Council to its external auditors required pursuant to clause 11.1 of this Agreement.
- 19.3 If at any time any part of clause 19.1 or any obligation thereunder is rendered invalid or unenforceable by virtue of, or in conflict or inconsistent with, the obligations of either party under the Data Protection Acts and/or the Freedom of Information Act 2000 or any regulations or formal guidance issued thereunder (including any published by the Information Commissioner), but would be adjudged reasonable, enforceable and consistent if any particular provision or obligation was deleted or limited in any manner, then the said restrictions shall apply with such deletions or limitations.
- 19.4 The obligations under this clause shall continue and remain in force following the termination or expiry of this Agreement.
- 20. DATA PROTECTION ACT 1998**
- 20.1 Insofar as the Data Protection Act 1998 (in this clause the "Act") shall apply to the provisions of this Agreement including the Schedules hereto from time to time:

- 20.2 Fusion warrants to the Council that it has applied for or will when necessary apply for and thereafter maintain for as long as is reasonably necessary registration as a data controller under the Act.
- 20.3 The Council warrants to Fusion it has supplied for and will maintain for as long as is reasonably necessary registration as a data controller under the Act.
- 20.4 The Council and Fusion shall use information provided by the other only for the purposes which (a) are permitted by the provisions of this Agreement (b) are permitted for the purpose of the Act and not further or otherwise.
- 20.5 Each party shall keep the other party full and sufficiently indemnified against any liability arising from any breach of their respective warranties contained in sub-clauses 20.1, 20.2 and 20.3.

21. SEVERABILITY

If any of the provisions of this Agreement is found by a competent authority to be void or unenforceable it shall be deemed to be deleted from this Agreement and the remaining provisions shall continue to apply. The Council and Fusion shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be void or unenforceable.

22. REPUTATION OF THE COUNCIL

- 22.1 Fusion shall not by itself or its employees do anything in the course of providing the Community Services under the terms of this Agreement which would conflict with the interests of the Council or would harm its reputation.
- 22.2 Without prejudice to the generality of clause 22.1 the Council reserves the right by notice in writing to Fusion to require removal from the Community Services and/or removal from any of the Facilities of any employee of Fusion who, in the reasonable opinion of the Council Officer, is guilty of serious misconduct or negligence or is otherwise acting in a manner which is in conflict with the interests of the Council or would harm its reputation.

23. OBSERVANCE OF STATUTORY REQUIREMENTS

- 23.1 Fusion shall comply with all relevant legal provisions to be observed and performed in connection with the provision of the Community Services at the Facility.
- 23.2 Fusion shall at all times comply with the requirements of the Health and Safety At Work etc act 1974 and any other act, regulation, order or rules of law relating to health and safety.

24. EQUAL OPPORTUNITIES

- 24.1 Fusion shall comply with equal opportunities legislation.

25. E-GOVERNMENT

- 25.1 Fusion shall co-operate fully with the Council, as far as is reasonably practicable, in assisting the Council to achieve the implementation of its E-Government strategy as set out in its IEG Statement as updated from time to time.

26. NOTICES

- 26.1 Notices required to be given hereunder may be delivered by hand or sent by fax or by pre-paid first class letter post addressed, in the case of notices and the Council, to the Town Hall or in the case of notices to Fusion to its Registered Office.
- 26.2 Notices given by letter post shall be deemed to have been given at the time when the letter would be delivered in the ordinary course of post. Notices given by fax shall be confirmed forthwith by letter sent by recorded delivery mail or personal delivery to the addressee.

27. WAIVER

- 27.1 No term or provision in this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by the party.
- 27.2 No waiver under clause 27.1 shall be a waiver of a part or future default of a part or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement (and then only to the extent) expressly stated in that waiver.

28. VARIATION

This agreement may not be released, discharged, supplemented, amended, varied or modified except by an instrument in writing signed by a duly authorised representative of each of the parties hereto.

29. FORCE MAJEURE

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. In the event that a party is unable to fulfil its obligations in the above circumstances, 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. FURTHER ASSURANCE

Each party agrees to execute and deliver to the others or do as appropriate all such acts, deeds, documents and things as may be reasonably necessary or desirable to fulfil the provisions of this agreement and to carry into effect the intentions of the parties as expressed herein.

31. ENTIRE AGREEMENT

- 31.1 This agreement and the Lease 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, promises, undertakings, warranties or other statements (whether written or oral) of any nature whatsoever except as expressly provided in this agreement.

- 31.2 This agreement hereby cancels all prior agreements between the parties (if any) relating to the subject matter of this agreement and also cancels and modifies all rights (if any) of either party arising against the other by virtue of all or any of such prior agreements.

32. COUNTERPARTS

This agreement may be executed in any number of counterparts and by the different parties in different counterparts each of which when executed and delivered is an original but all such counterparts shall be deemed to constitute one and the same instrument.

33. COSTS AND EXPENSES

Save as otherwise stated in any other provision of this agreement, each party shall bear its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this agreement and all other documents referred to in it.

34. RIGHTS OF THIRD PARTIES

- 34.1 No person who is not a party to this agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 34.2 Nothing contained in Clause 34.1 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.

35. GOVERNING LAW AND JURISDICTION

- 35.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and subject to Clause 13 (Dispute Resolution), the parties to this Agreement submit to the exclusive jurisdiction of the Courts of England and Wales.

SCHEDULE 1{ TC "Schedule 1 - Format and content for Annual Delivery Plan" \f C \l "1" }**Format and Content for Annual Delivery Plan**

1. Review of Consultation and User Feedback (yr 2 onwards)
 - Results of research into the sporting and recreational needs of the community in and around the facility catchment;
 - Customer Comments;
 - Results of User Survey;
 - Results of BLSG consultation;
 - Other

Recommendations on agreed key priorities/actions for the year to which the plan applies.
2. Programming Proposals

Set out programming proposals for meeting outcomes described in Objective 2, together with any agreed amendments as a result of 1. above.

Set out proposals for parameters for closure in adverse weather conditions (pursuant to objective 1).
3. Retention of Ambience

Set out proposals for achieving Objective 4, including:

 - Changes to physical fabric or décor of the facility;
 - Staffing levels and types;
 - Staff training and development;
 - Quality systems;
 - Catering proposals;
 - Customer Care.
4. Marketing

Set out proposals for achieving Core Outcomes of Objective 6.
5. Financial Summary

Financial plan for the year.

It is suggested that PIs (schedule 4) are set as the achievement of the Annual Plan.

SCHEDULE 2{ TC "Schedule 2 - Objectives and Core Outcome" \f C \l "1" }**Objectives and Core Outcomes****1. Objective 1**

To ensure the long-term sustainability of the Facility as, inter alia, a large open-air swimming pool accessible to and in harmony with the local community and open to the public at large for a reasonable swimming season.

2. Core outcomes for Objective 1

2.1 Unless otherwise agreed in writing with the Council in accordance with the terms of the Lease and subject to clauses 2.3 in this schedule, the maximum permissible opening hours for all purposes of the Facility shall be from 0600 to 2300 each day. The minimum permissible opening hours for the open air swimming pool within the Facility shall be 0645 to 2045.

2.2 Subject to clauses 2.3 in this schedule, the open air swimming pool within the Facility shall be open and available for public swimming for a minimum of 14 seven day weeks between 1st May and 30th September each Year. These weeks shall include all of the weeks within the months of July and August.

2.3 Notwithstanding the agreed opening times for the Facility detailed in clauses 2.1 and 2.2 above, Fusion shall be permitted to vary the opening times for the open air swimming pool in the event of adverse weather conditions in accordance with the agreed parameters set out in the Annual Service Delivery Plan.

3. Objective 2

To make full use of the pool and buildings by providing a range of leisure, health related and creative activities suitable for people of all cultural backgrounds, ages and lifestyles.

4. Core outcomes of Objective 2

4.1 To promote and encourage the widest possible use of the Facility by providing a substantial and varied programme of activities designed to attract customers from all age groups, abilities, ethnic groups and social classes.

4.2 To provide a programme of activity that includes casual use, targeted sessions, teaching, coaching, competitions, school use, private hire and special events.

4.3 To provide and promote a Concessionary Pricing Scheme to encourage participation by groups, individuals and sections of the community for whom the parties identify that pricing is a barrier to participation.

5. Objective 3

To involve users and the local community actively in evaluating service, ensuring that the programme meets local needs and planning future developments through representation in the management structure.

6. Core outcomes of Objective 3

- 6.1 Throughout the Term of the Agreement, and as a minimum on an annual basis, to research and identify the sporting and recreational needs of the community in and around the Facility catchment, and use all reasonable endeavours to provide a balanced activity programme within the Facility to satisfy those needs.
- 6.2 To provide a customer comment system and ensure that this is prominently displayed at the Facility.
- 6.3 To provide to the Council a summary of customer feedback and Fusion's actions taken or to be taken in response to customer feedback.
- 6.4 As a minimum on an annual basis to undertake an annual a valid, representative and robust survey of the Facility users, their opinions of the Facility, the activities available, the level and quality of service, and improvements they would like to see implemented at the Facility.
- 6.5 To address the reasonable comments and findings of the surveys and research undertaken as a result of 6.1, 6.2, 6.3 and 6.4 in the Community Services Delivery Plan.
- 6.6 To make good use of community and user contacts within the BLSG by:
 - 6.6.1 consulting the BLSG when devising customer comment and survey systems;
 - 6.6.2 working closely with the BLSG in collating customer feedback and identifying the key points for Fusion to consider when drafting the service delivery plan for the following Year.

7. Objective 4

- 7.1 To safeguard and develop the unique ambiance of the Lido as a place where people may come, as to a beach, to relax, socialise, lounge and enjoy the Facilities.
- 7.2 To create a welcoming ambiance in which users of the Facility feel welcome to linger before or after an activity to relax or meet friends and to provide suitable environment, ambiance and space for each of the scheduled classes, programmes and activities.
- 7.3 To create an ambiance that reflects the comment from a user survey: "the lido is an oasis in the city".
- 7.4 To ensure Staff recruitment and training address the specific challenges of operating an outdoor pool within Brockwell Park and maintaining a welcoming and safe environment for users from diverse age groups, abilities, ethnic groups and life styles.

8. Core outcomes of Objective 4

- 8.1 To achieve an upper quartile response to a customer satisfaction survey approved by the Council to demonstrate Fusion's achievement of Objective 4 with particular reference to:

- Opportunities to socialise
- Ambiance
- Usage of space
- Decor
- Friendliness
- Refreshments

9. Objective 5

To ensure that all activities and developments are appropriate for a Facility of this nature and in compliance with the permitted use of the Facility in accordance the Lease.

10. Core outcomes of Objective 5

- 10.1 To comply with the permitted user clause in accordance with the Lease.

11. Objective 6

To ensure there is a widespread awareness of the Facility and the activities it offers amongst all members of the local community and further a field, and that such awareness generates a positive image and perception of the Facility.

12. Core outcomes of Objective 6

- 12.1 To prepare and implement a Marketing Plan that sets out how the above objective will be achieved as part of the Community Service Delivery Plan.
- 12.2 To use all reasonable endeavours to ensure that information relating to the Facility, the opening hours, charges and activities is clearly displayed, up to date, accurate and easily understood by visitors to the Facility.
- 12.3 To use all reasonable endeavours to ensure that no advertising material associated with the Facility causes offence or embarrassment to users of the Facility or to the Council. The Council will reserve the right to prohibit any material which it considers offensive or detrimental to the reputation of the Borough or the Facility.
- 12.4 The parties shall jointly agree wording to be used in publicity for the Facility which acknowledges the partnership between the Council and Fusion.

SCHEDULE 4{ TC "Schedule 4 - Key Performance Outputs and Indicators" \f C \l "1" }

Key Performance Outputs and Indicators

Attendances General

Target group attendance:

U-16

U-19

O-60

B&ME

Customer Satisfaction Indices

Availability stats

Accidents and incidents

SCHEDULE 5{ TC "Schedule 5 - The Facility" \f C \l "1" }

The Facility

SCHEDULE 6{ TC "Schedule 6 - Communications Framework" \f C \l "1" }

Communications Framework

The Role and Context of the Brockwell Steering Group

Strategic consultation

Promoting good communications

Develop strategic community targets and outputs

Monitor quality and availability of services

Consultation Framework

Monthly / 2-monthly

Who?

Lido General manager

LSG / BLU representative

What?

Operations review

Agenda

Availability

Attendances

Feedback summary

Incidents

Forthcoming programme and events

Quarterly

Who?

Lido General manager

Fusion Head of Operations

LSG

LBL representatives

What?

Performance / Business Plan review and report

Agenda

PIs report

Service Delivery Plan progress

Service Delivery re-plan

[Summary monthly stats]

Annual – October / November

Who?

Lido General manager

LSG

What?

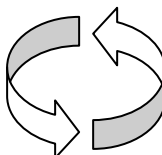
Service Delivery Plan Context planning

Agenda

PIs and stats review

Service Delivery Plan progress

Survey results



Draft Business Plan targets

Annual – November

Who?

Lido General manager
Fusion Head of Operations
LSG
LBL representatives

What?

Draft Service Delivery Plan review

Agenda

Presentation of draft plan

Annual – May

Who?

Fusion Chief Exec
Fusion head of Operations
LSG
LBL

What?

Formal Review

Agenda

Presentation and review
Key performance indicators

Periodic – minimum every 3 years

Who?

Lambeth Steering Group

What?

Nominate representative to Fusion Management Board



Who?

Fusion Management Board

What?

Consider nomination from Lambeth Steering Group

Information Requirements

To assist the Council and BLSG monitor and review Fusion's progress against the Agreed Objectives and Core Outcomes as set out in Schedule 2 of this Agreement, Fusion shall provide the following information to the Council and BLSG as part of the Consultation Process:

- The current programme of activities and events on offer at the Facility and the prices charged.
- Statistics showing attendance and patterns of use of the Facility.
- Quarterly management account for the Facility.
- Results of any surveys or questionnaires of users and the local community conducted by Fusion.

- A summary of any feedback from users.

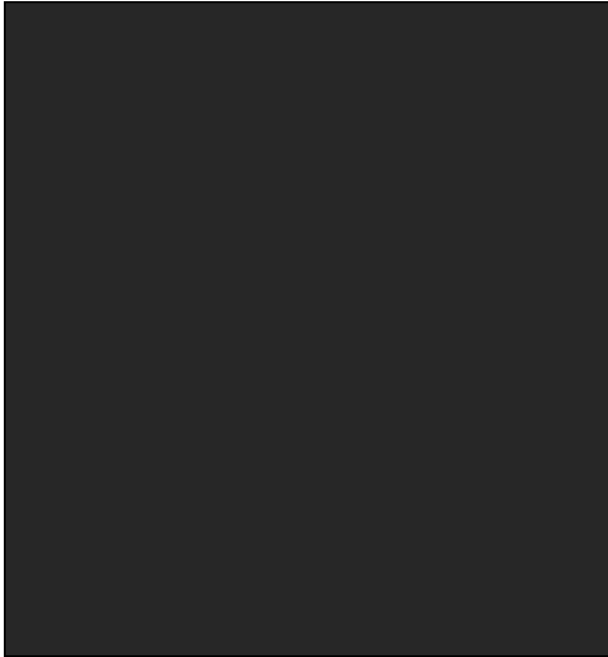
NB. Schedule setting out attendees and agenda for meetings to be inserted.

SCHEDULE 7{ TC "Schedule 7 - Procedure for Dispute Resolution" \f C \l "1" }**Procedure for Dispute Resolution**

- (1) The Council and Fusion shall use their best endeavours to resolve by agreement any disputes arising between them.
- (2) If any dispute arises out of this Agreement, the parties will, in the first instance, refer the dispute to the Council's Strategic Director of Community Services and the Chief Executive of Fusion. If the dispute remains unresolved it will then be referred to the Council's Chief Executive and the Chairman of the Trust Board of Fusion.
- (3) If any dispute arises out of this Agreement and the matter has been referred to the higher levels of management referred to 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 Mediation 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.
- (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) Where a mediation is abandoned or the mediation fails to resolve the dispute, the dispute shall be referred to the Courts.

SCHEDULE 8{ TC "Schedule 8 - Existing Service Providers" \f C \l "1" }

Existing Service Providers



SCHEDULE 9{ TC "Schedule 9 - Core Prices" \f C \l "1" }**Core Prices**

Category	Prices	Inflation 2.5% p.a.	Proposed base
Casual Adult Swim	£5	£5.13	£5.10
Casual Under 16's Swim	£3	£3.08	£3.00
Casual Concessionary Swim	£3.50	£3.59	£3.50
Season Swim Ticket	£120	£126.08	£126.00
Early morning Swim (6:00am - 10.00am)	£2.50	£2.56	£2.50
Concession	£2.00	£2.05	£2.00
Under 5's	Free		

SCHEDULE 10{ TC "Schedule 10 - BLSG Individuals" \f C \l "1" }

Committee of Brockwell Lido Steering Group (BLSG)

	<p>Brockwell Park Management Advisory Committee (MAC)</p> <p>PO Box 27810</p> <p>London SE24 9WN</p> <p>bpmac@brockwellpark.com</p>
	<p>Friends of Brockwell Park</p> <p>PO Box 27810</p> <p>London</p> <p>SE24 9WN</p> <p>friends@brockwellpark.com</p>
	<p>Herne Hill Forum</p> <p>hernehillforum@aol.com</p>
	<p>Herne Hill Society</p> <p>PO Box 27845</p> <p>London</p> <p>SE24 9XA</p>
	<p>Brockwell Lido Users (BLU)</p> <p>PO Box 27857</p> <p>London SE24 9YP</p> <p>info@brockwelllido.com</p>

EXECUTED as a deed and delivered on the date set out on the head of this Agreement.

THE COMMON SEAL of the)
LONDON BOROUGH OF LAMBETH)
was hereunto affixed in the presence of:)

.....
Authorised Signatory

.....
Authorised Signatory

THE COMMON SEAL of **FUSION**)
LIFESTYLE)
was hereunto affixed in the presence of:)

.....
Director

.....
Director/Secretary