

Dated

13th June

2008

Havant Borough Council
and
Horizon Leisure Trust

PARTNERING AGREEMENT

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THIS AGREEMENT is dated

13th June

2008

BETWEEN:-

- (1) **The Council of the Borough of Havant** the local authority based at The Civic Offices, Civic Centre Road, Havant, Hampshire P09 2AX.
- (2) **Horizon Leisure Trust** which is the working name for The Borough of Havant Sport and Leisure Trust, a company limited by guarantee (Company number 3319069) and a registered charity (number 1060896) whose registered office is Havant Leisure Centre, Civic Centre Road, Havant, Hampshire PO9 2AY.

(together "the Parties")

RECITALS

- a) This partnering agreement relates to the management of Havant Borough Council's leisure centres. These leisure centres are Havant Leisure Centre, Civic Centre Road, Havant, Hampshire PO9 2AY and Waterlooville Leisure Centre, Waterberry Drive, Waterlooville, Hampshire, PO7 7UW.
- b) The leisure centres are 'multi-purpose' centres, providing a wide range of leisure related facilities. These facilities include:

Havant Leisure Centre

Waterlooville Leisure Centre

Swimming Pools
 Children's Play Centre
 2-Court Sports Hall
 Small Hall
 Health Suite
 Dance Studio
 Health and Fitness Facility
 Crèche
 Conference Room
 Bar and café
 Squash Court
 Indoor Bowls Hall

Swimming Pools
 Health Suite
 Health and Fitness Facility
 Crèche
 Vending Area
 Meeting Room
 Retail Unit

- c) The centres are owned by Havant Borough Council (HBC) and Horizon Leisure Trust (HLT) currently operates the leisure centres, through a 30-year lease agreement, which commenced in 1997. HLT have been operating the centres since 1997 following the transfer of the management responsibility from HBC.
- d) These centres provide for and deliver a wide range of both sporting and non-sporting activities principally for the community of Havant and neighbouring authorities.

PHILOSOPHY OF USE

- a) HBC is committed to developing a long-term partnership for the management of its leisure provision.
- b) HBC will provide a framework for the management and delivery of this Partnering Agreement in relation to ensuring effective communication, involvement and the delivery of mutually agreed objectives between the parties.
- c) HBC will take the lead role in developing the 'Havant Tourism and Leisure Plan', the future strategy for leisure provision in Havant. Whilst HBC is taking the lead role it recognises the important role HLT will play in contributing to the leisure elements of its development and delivery.
- d) HBC will work in partnership with HLT on developing joint service delivery plans in key developmental and other operational areas where appropriate.
- e) HBC will work with HLT to agree the strategic framework for future investment plans at both centres, taking account of the evolving leisure plan. All future investment plans will be required to be supported by detailed business case development.
- f) HBC recognises that HLT is an independent body which will operate in partnership with the Council. It acknowledges HLT's freedom to develop leisure provision commercially, but fundamentally in the best interests of the community. HBC wish to work in partnership with an organisation that is successful, and responsive.
- g) HLT will prepare and share a detailed 3-year business plan supported by a comprehensive service delivery plan. The 3-year rolling business plan will be reviewed annually by HBC.
- h) The responsibility for the management of HBC's building assets, structure and contents will be clearly identified. This is in relation to the funding, management and delivery of maintenance, repair and replacement.
- i) Alternative ways of delivering sport and health related activity development will be explored through the revised partnership.
- j) HBC will from time to time, wish to utilise the skills and expertise of staff employed by HLT on corporate and community issues. It is also recognised that the support of the Trust (with commensurate compensation) will be available to HBC should there be a major disaster or emergency.
- k) HLT will work in partnership with local people including those working in the Borough.
- l) HLT will ensure its active participation in strategic partnerships in the Borough, and recognise its role and opportunities in a wider context and with cross-boundary working.
- m) Both parties will embrace the ethos of continuous improvement in all aspects of their partnership, management and service delivery.
- n) HLT will give consideration to and implement where practicable, innovation and any new Council, local, regional or national initiative in order to enhance the operation and the service delivery to the community.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expression shall carry the meaning set opposite them unless inconsistent with the context:

- "Authorised Officers" means officers appointed by each of HLT and HBC as notified to each other as soon as reasonably practicable after the Effective Date as may be changed from time to time upon details being provided to the other Party.
- "Business Plan" means the Business Plan for the management of the Centres, as may be amended in accordance with the terms of this Agreement.
- "Change Control Procedure" means the procedure to be adopted by the Parties set out in Schedule 5 to implement a change to the Services or the terms of this Agreement.
- "Centres" means the Havant and Waterlooville Leisure Centres or (in the event that one of those Centres shall be permanently closed) the Centre which remains open.
- "Community Use" means all use of the centres:-
 - (a) for self organised casual use (whether or not such use requires pre booking) by members of the general public where such use is not dependent upon membership of or connection with any club or organisation;
 - (b) for the purposes of any other sport, leisure, physical education or recreation programmes by HLT; or
 - (c) by any club or organisation of part only of the Centre which use furthers the objects of HLT in managing the Centre.
- "Effective Date" means the date upon which this Agreement comes into full force and effect being ...13th June 2008
- "HBC" means the Council of the Borough of Havant.
- "HLT" means the Horizon Leisure Trust.
- "Lease" and "Leases" means (as the context so requires) the leases made between HBC and HLT dated...13th June 2008 relating to Havant Leisure Centre ("the Havant Lease") and the lease dated ...13th June 2008 relating to the Waterlooville Leisure Centre ("the Waterlooville Lease").

"Employees"	means the employees of HLT working at the centres.
"Event of Force Majeure"	means any event excusing performance beyond the reasonable control of any party including but not limited to shortage of raw materials, sabotage, fire, flood, act of God, civil commotion, strike, slowdown or industrial action of any kind, riot, insurrection, war or act of governmental authority.
"Exit Strategy"	means the exit strategy as at clause 9 that may be amended from time to time in accordance with the Change Control Procedure.
"Expenditure"	means all expenditure incurred by HLT in managing the centres, examples of which are detailed in the Business Plan.
"Income"	means all income received by HLT in managing the centres including rental and other payments due under sub leases and payments received in respect of community use.
"Local Area Agreements"	LAAs set out the priorities for a local area agreed between central government and a local area (the local authority and Local Strategic Partnership) and other key partners at the local level.
"Major Incidents"	means any accident or incident such as a fatality, severe injury or assault on customers, theft of property worth more than £5,000, major damage to plant or equipment major plant failure or chemical leakage, fire, flood, hurricane and other acts of God, industrial action, closure [or any other issue likely to be of interest or concern to HBC, stakeholders, users or attract the attention of the media.]
"Material Breach"	means any breach of this Agreement which goes to the heart or root of the Agreement.
"Monitoring of Service Requirements"	means the monitoring requirements set out in Schedule 4.
"Month"	means a calendar month.
"Operator"	means any other organisation appointed by HBC in succession to HLT to manage the centres.
Partnering Period	means the duration of this Agreement as

provided in Clause 2.1.

“Payment Mechanism”	means the payment mechanism for the operation of the centres set out in Schedule 3.
“Planned Maintenance Obligations”	means the obligations relating to the repair and maintenance of the centres as set out in Schedule 2.
“Pricing Policy”	means the pricing policy for the centres included as part of the business plan submission
“Quest™”	means the UK Quality Scheme for Sport and Leisure.
“Service Responsibilities”	means the services to be provided by HLT as more particularly set out in Schedule 1, Part 1.
“Term”	means the Term referred to in clause 2.
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
“Useful Life	the period of time during which, with regular economic repair and maintenance in accordance with manufacturers’ instructions and best practice, the elements continue to support the operation of the Centres in a safe and satisfactory manner.

- 1.2 References to clauses, schedules and appendices are (unless specified otherwise) references to clauses, schedules and appendices of this Agreement.
- 1.3 The headings to this Agreement have been inserted for convenience only and do not affect its construction or interpretation.
- 1.4 The various schedules all form part of this Agreement.
- 1.5 Where the context so admits references to the masculine gender include the feminine and vice versa and references to the singular include the plural and vice versa.
- 1.6 Any reference in this Agreement to a statute or statutory instrument or any provision thereof shall be construed as a reference to that statute or statutory instrument or provision thereof as amended, re-enacted or extended.
- 1.7 Any definitions contained in or referred in the Lease shall apply to this Agreement where the context applies.

2. DURATION

- 2.1 This Agreement shall, continue from the Effective Date until the earliest of:

- 2.1.1 The date on which the Leases shall cease and be determined (howsoever such cessation and determination may arise) or, as the case may be, shall expire by effluxion of time PROVIDED THAT and for the avoidance of doubt, in the event that one of the Leases shall be determined or expire before the other, this Agreement shall continue until the determination or expiry of that other remaining Lease.
- 2.1.2 The date on which this agreement is terminated under Clause 8 of this Agreement.
- 2.2 This Agreement will be subject to formal review annually.
- 2.3 The review will be based on the monitoring of service performance and key reporting requirements indicators as identified in Schedule 4.

3. THE OBLIGATIONS OF HLT

HLT agrees and undertakes:

- 3.1 To conduct its management and service delivery arrangements at all times under the auspices of this agreement's philosophy of use.
- 3.2 To achieve the quality assurance system Quest™ by 2009/10 and maintain accreditation for the Centres during the remaining period of this Agreement.
- 3.3 To perform and observe the Service Requirements as detailed in Schedule 1 and in accordance with all relevant Quest™ standards at all times.
- 3.4 To perform and observe the obligations on its part under the Planned Maintenance Programme, as detailed in Schedule 2 and in accordance with all relevant manufacturers, industry and legislative standards at all times.
- 3.5 To observe and comply with the obligations on its part set out in the Payment Mechanism – Schedule 3.
- 3.6 To observe and comply with the obligations on its part under the Monitoring of Service Requirements.
- 3.7 To assist in achieving the Havant Leisure Partnership objectives.

4. THE OBLIGATIONS OF HBC

HBC agrees and undertakes that:

- 4.1 It will ensure it delivers its requirements under the auspices of the agreement's philosophy of use.
- 4.2 It will observe and comply with the obligations on its part set out in the Payment Mechanism (Schedule 3) and the Planned Maintenance Programme (Schedule 2).
- 4.3 It will provide the management responsibility and organisation for servicing the Havant Leisure Strategy Partnership Group.
- 4.4 It will work in partnership with HLT to develop a medium term investment strategy.

5. AUDIT AND CORRUPT GIFTS AND PAYMENTS

5.1 For the purposes of any examination under the National Audit Act 1983 and Audit Commission Act 1998 of the economy, efficiency and effectiveness with which each party has used its resources, each party undertakes to:

5.1.1 Provide the auditors of the other party with such documents as they may reasonably require which are owned, held or otherwise within the control of it, excluding (to the extent permitted by law) commercially confidential information and each organisation's legal advice; and

5.1.2 Procure that all professional advisers, agents or any other persons it engages in relation to this Agreement shall provide the auditors of the other party with such documents as they may reasonably require which are owned, held or otherwise within their control excluding (to the extent permitted by law) commercially confidential information and legal advice.

5.2 Each party shall ensure (including by way of appropriate contractual provisions) that neither it nor, any of its employees shall:

5.2.1 Offer or give or agree to give to any person employed by or on behalf of the other parties or any other public body any gift or consideration of any kind as an inducement or reward for doing or having done or not doing any act in relation to the obtaining or execution of this Agreement or for showing favour or for not showing favour or disfavour to any person in relation to this Agreement; or

5.2.2 In connection with this Agreement or its subject matter, act fraudulently or commit any offence under the Prevention of Corruption Acts 1889 to 1916 (or any equivalent statute).

6. ASSIGNMENT AND SUB-CONTRACTING

6.1 HLT shall not assign, sub-contract, charge or otherwise deal with all or any of its rights and obligations under the Agreement without the previous written consent of HBC, which consent (if given), shall not relieve HLT from any liability or obligations under the Agreement. HLT shall be responsible for the acts, defaults or neglect of any sub-contractor or its agents or personnel in all respects as if they were the acts, defaults or neglect of HLT or its agents or personnel notwithstanding that HBC may require as a condition of giving any consent to sub-contract a direct warranty and undertaking from the sub-contractor concerning the performance of the service requirements and compliance with this Agreement.

6.2 Without prejudice to the provision of this Clause, it shall be the responsibility of HLT to maintain full control over and adequate liaison with any sub-contractor in order to ensure compliance with the provisions of this Agreement and in particular (but without prejudice to the generality of the foregoing) with the Service Responsibilities.

6.3 HBC shall take all reasonable steps for the control and oversight of the operations/activities of such contractors as it may appoint to undertake works of

maintenance, repair or replacement at the Centres.

7. LIABILITY AND INSURANCE

- 7.1 Notwithstanding anything to the contrary in this Agreement, neither Party excludes its liability for fraudulent misrepresentation or death or personal injury caused by its negligence.
- 7.2 Each Party agrees to indemnify the other against direct cost, loss, claim demand, expenses or liabilities arising from the negligent acts or omissions of its employees, agents or sub-contractors save to the extent that such act or omission is due to the acts or omissions of the other Party.
- 7.3 Subject to clauses 7.1 and 7.2 above, no Party shall be liable whether under the terms of this Agreement or otherwise for any indirect, special or consequential loss or damage or for any loss of surplus, loss of opportunity or loss of goodwill arising from any act or omission which arise out of or in connection with this Agreement.
- 7.4 HLT shall at all times during the Partnering Period hold and maintain public liability and employer's liability insurance at a suitable level to meet the requirements of the business.

8. TERMINATION

- 8.1 This Agreement shall terminate automatically on the termination of the Leases PROVIDED THAT, and for the avoidance of doubt, in the event that one of the Leases shall be determined or otherwise expire before the other, this Agreement shall terminate automatically on the termination or expiry of that other remaining Lease.
- 8.2 Either party shall be entitled to terminate this Partnering Agreement forthwith if the other party commits a Material Breach of the terms of this Agreement which is incapable of remedy or (if capable of remedy) is not remedied within 10 working days (or such longer period as may reasonably be specified having regard to the subject matter of the breach) of service upon the party in breach of a notice specifying the breach and requiring it to be remedied.

9. TERMINATION CONSEQUENCES/EXIT STRATEGY

- 9.1 Following termination or expiry of this Agreement for whatever reason, the Parties shall implement the Exit Strategy.
- 9.2 As soon as reasonably practicable after the date of termination or expiry (as the case may be) HLT shall submit to HBC a statement which shall set out the amount (if any) due and payable by HBC, to HLT pursuant to the provisions of this Agreement to the date of termination or expiry and such amount shall (unless HBC acting reasonably considers it to be inaccurate in which event it shall pay such part as it accepts and the disputed element shall be resolved in accordance with clause 10) be due and payable to HLT within [20] Working Days of receipt of the date of such statement by HBC.

In the last 6 months of the Partnering Period, or on and after the termination of this Agreement, howsoever such termination shall arise HLT shall (prior to and for the purpose of facilitating the establishment of a new partnership agreement, management contract or, as the case may be, HBC assuming direct management of the centres) supply within 14 days of demand by HBC all information as HBC considers it requires as a result of the Acquired Rights Directive/TUPE (including but not limited to the terms and conditions of all of HLT's staff engaged in the provision of the service) and will fully and promptly indemnify HBC or any third party against any claims or expenses and proceedings brought about as a result of any failure to supply such information or supplying inaccurate information. AND IT IS AGREED that this obligation on the part of HLT is in addition and without prejudice to the obligations and liabilities it may have concerning employee liability information under TUPE.

- 9.3 Whereas among the liabilities under TUPE, which are transferred to a third party on termination or in establishing another partnership agreement or other arrangements for managing the Centres, is liability for Employer Liability Insurance claims, the normal convention of the insurance industry is that the insurance company which took the premium handles the claim: this convention will be followed under this partnership agreement so that subject to only regulation 17 of TUPE all Employer Liability Claims which are in respect of circumstances that occurred during a transferred employee's period of employment with HLT will be dealt with by HLT/its insurers.
- 9.4 HLT shall throughout the period of any notice of termination served under the provisions of this Agreement or of the Leases and, if reasonably practicable, for a period of six months following the date of termination of the Partnership, provide such advice, assistance and co-operation as HBC may reasonably require, to enable HBC to provide or procure the performance of the service requirements or any part thereof.
- 9.5 HLT will use all reasonable endeavours to assign promptly to HBC or (at HBC's direction) to any third party taking over all or part of the Service Responsibilities, any contract to which HLT is a party and which relates to the Service Responsibilities or part thereof.
- 9.6 At the end of the Partnering Period or earlier termination, HLT shall return to HBC all original and copy records, documents and Information relating to the Agreement (except for any Charitable records required by the Charity Commission and any information or documents properly the subject of legal professional privilege) in its possession or under its control or in possession or under the control of any permitted sub-contractor PROVIDED THAT nothing in this clause shall oblige HLT to disclose to HBC any commercially sensitive information unless the same is reasonably required by HBC to enable HBC to continue to provide or procure the performance of the Service Requirements or any part thereof.
- 9.7 Termination or expiry of the Partnering Agreement shall be without prejudice to any rights and remedies of HLT and HBC accrued before such termination or expiration. Nothing in the Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

10. DISPUTE RESOLUTION

- 10.1** In the event that any dispute arises between the parties in relation to the operation or interpretation of this Agreement, the Authorised Officers of the parties will meet within [10] Working Days of the dispute arising to negotiate in good faith to reach a settlement.
- 10.2** If the Authorised Officers cannot reach agreement within [10] Working Days of the meeting held in accordance with clause 10.1, any of the parties may refer the dispute to the Chief Executive of HLT and a nominated Director of HBC who shall meet within [15] Working Days of such notice to seek to resolve the dispute.
- 10.3** If the parties referred to in clause 10.2 cannot resolve the dispute within [10] Working Days of the meeting referred to in clause 10.2, the dispute shall be referred to an independent expert appointed by the Parties and in the event that the Parties cannot agree the identity of the expert within a further period of [5] Working Days the Managing Director of HBC for the time being of the relevant organisation as set out in clause 10.4 shall appoint such an expert.
- 10.4** The expert appointed shall be as follows:
- 10.4.1** (in the case of a financial dispute) the Institute of Chartered Accountants or Chartered Institute of Public Finance Accountants (CIPFA) in England and Wales;
- 10.4.2** (in the case of a dispute relating to the interpretation of this Agreement) the Law Society of England and Wales;
- 10.4.3** (in the case of a dispute relating to the Services) the Institute of Sport, Parks and Leisure (ISPaL) or Institute of Sport and Recreation Management (ISRM);
- 10.4.4** (in a case relating to building related disputes) the Royal Institution of Chartered Surveyors.
- 10.5** Any expert appointed in accordance with either clause 10.3 or 10.4:
- 10.5.1** Shall act as an expert and not as an arbitrator;
- 10.5.2** Shall be entitled to such information and documentation from the parties as he shall reasonably request;
- 10.5.3** Shall give a decision in writing stating its reasons which shall be final and binding on the Parties (save in the event misconduct fraud or error in law); and
- 10.5.4** Shall determine which of the Parties shall be responsible for his costs or in the absence of such determination the Parties shall share his costs equally.

11. EMPLOYEES

- 11.1** The parties acknowledge and agree that (unless and save to such extent as may be determined otherwise by any court or tribunal of competent jurisdiction), pursuant to TUPE, the contracts of employment between HLT and the Employees will have effect after termination or expiry of this Agreement as if originally made between the Operator and the Employees.

- 11.2 The Operator shall indemnify HLT (and HLT shall indemnify the Operator) against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) as a result of any failure by the other of them to comply with any of their obligations under TUPE.
- 11.3 Upon or as soon as practicable after termination or expiry of this Agreement HLT and the Operator shall jointly give the Employees a notice in the approved form.
- 11.4 All wages and salaries of the Employees shall be discharged by HLT in respect of the period up to and including termination or expiry of this Agreement
- 11.5 The Operator shall be responsible for all emoluments and outgoings in respect of the Employees (including without limitation all wages, bonuses, commissions, PAYE, national insurance contributions and pension contributions) in respect of the period after termination or expiry of this Agreement and shall indemnify HLT against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) in respect of the same.
- 11.6 Nothing in this Clause shall have the effect of imposing on HLT any liability to the Operator in respect of any claims by the Employees in connection with the termination of their employment by the Operator on or after termination or expiry of this Agreement and nothing in this clause shall have the effect of imposing any similar liability on the Operator to HLT in respect of such claims preceding termination or expiry of this Agreement.
- 11.7 The Operator shall indemnify HLT against any liabilities, costs, claims and expenses incurred by or made against HLT in respect of the employment of any Employee or former employee at the Centre relating to the period commencing on the termination of this Agreement.
- 11.8 HLT shall indemnify the Operator against any liabilities costs claims and expenses incurred by or made against the Operator in respect of the employment of any Employee or former employee at the Centres relating to the period up to the termination or expiry of this Agreement.
- 11.9 HLT shall provide to the Operator and/or HBC such information as they reasonably require in relation to the Employees prior to the termination or expiry of this Agreement, subject to the Operator/HBC complying with the Data Protection Act 1998 in relation thereto, and provided that the provision of such information shall not place HLT in breach of any law (including without limitation the Data Protection Act 1998).

12. GENERAL

- 12.1 This Agreement and the documents referred to in it constitute the entire agreement between the parties. No variation shall be effective unless it is implemented in accordance with the Change Control Procedure.
- 12.2 This Agreement will remain in full force and effect after the date of this Agreement in respect of any matters, which have not been performed in full at the date of this Agreement and after termination in respect of any matters which have not been performed in full on termination of this Agreement.
- 12.3 Notices

12.3.1 Any notice required under this Agreement is to be in writing signed by or on behalf of the party giving it. The notice may be served by leaving it at or sending it by prepaid recorded delivery or registered post to the address of the party concerned in this Agreement or such other address as either party may notify to the other from time to time or by facsimile transmission to such number as shall be specified by each party on or as soon as reasonably practicable after the Effective Date.

12.3.2 Any notice so served is deemed to have been received:

12.3.2.1 In the case of personal service upon delivery;

12.3.2.2 In the case of special delivery forty-eight hours from the date of posting; or

12.3.2.3 In the case of facsimile transmission upon receipt of a transmission report indicating successful delivery;

12.3.2.4 In the case of electronic mail on the acknowledgment of receipt;

12.3.3 For notices sent by post it will be sufficient in proving service to establish that the envelope containing the notice was properly addressed and posted.

12.4 For the avoidance of any doubt this Agreement shall not be construed or taken as forming a partnership between the parties within the meaning of the Partnership Act 1890

12.5 Confidentiality/Freedom of Information

12.5.1 The contents of this Agreement and all documents which relate to it or are connected with it shall remain private and confidential and the contents thereof shall not be disclosed or released to any third party without the prior written consent of both parties save as may be required by Legislation, or by any court or tribunal of competent jurisdiction, or where such information is in the public domain as at the Effective Date or comes into the public domain without default by the disclosing Party or is disclosed in accordance with Clause 12.5.3.

12.5.2 It is agreed by the parties that this Agreement and its contents may be disclosed or released to the National Audit Commission provided that the National Audit Commission keeps such information private and confidential (save as may be required by law or by any court or tribunal of competent jurisdiction).

12.5.3 In this sub-clause 12.5.3:

"Exemption" means an exemption or exception to disclosure under the FOI Legislation, under which HBC may lawfully withhold information requested under the FOI Legislation from disclosure.

"FOIA" means the Freedom of Information Act 2000.

"FOI Legislation" means the FOIA, the Environmental Information Regulations 2004 and any other applicable legislation or codes under which HBC is obliged at law to release information.

(a) HLT recognises that HBC is subject to legal duties which may require the release of information under the FOI Legislation and that HBC may be under an obligation to

provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.

- (b) HLT is responsible for identifying any information contained within this Agreement that it believes to be subject to an Exemption and producing a Schedule of such information to HBC at the time the Agreement is entered into. The Schedule must include the grounds on which HLT believes the information to be subject to an Exemption. For the avoidance of doubt, a piece of information that has been requested under the FOI Legislation and that has been supplied by or which relates to HLT, shall be withheld if an Exemption applies, notwithstanding that HLT may not have identified that piece of information in the Schedule as being subject to an Exemption. For the avoidance of doubt, HLT considers the following information in this Agreement to be subject to the commercial interest Exemption on the basis that its disclosure would, or would be likely to, prejudice the commercial interests of HLT:
- Attendance data other than summary
 - Income figures other than summary
 - Churn rates
 - Customer information on catchments and complaints
 - Plans of changes and new facilities before the chosen release dates
 - Staffing issues on pay and conditions
 - Personal information on employees
- (c) Notwithstanding anything in this Agreement to the contrary, in the event that HBC receives a request for information under the FOI Legislation, HBC shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOI Legislation, save that in relation to any such information that is requested under the FOI, HBC shall use reasonable endeavours to consult HLT as soon as reasonably practicable and shall not disclose the information requested, if in HBC's opinion (having taken into account the views of HLT and having regard to all relevant circumstances) an Exemption is, or may be applicable in accordance with the relevant section of the FOI Legislation.
- (d) In any event HBC shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of information that HBC is obliged to disclose under the FOI Legislation.
- (e) HLT will assist HBC where strictly necessary to enable HBC to comply with its obligations under the FOI Legislation. In the event that HBC receives a request for information under the FOI Legislation, and requires HLT's assistance in obtaining the information that is held by HLT on HBC's behalf and therefore required to be disclosed under the FOI Legislation, HLT will respond to any such request for assistance from HBC at its own cost and promptly and in any event within 10 working days of receiving HBC's request.
- (f) In any event, the decision as to whether a piece of information or documentation shall be released under the FOI Legislation shall be at HBC's absolute discretion.

12.6 This Agreement and the documents referred to in it shall not be construed or taken as forming an agency or create an agent and principal relationship between the parties.

12.7 HBC may assign all or any of its rights under this Agreement to any successor in title in relation to its interest in the Centres but HLT shall not be permitted to assign such

rights, which shall be personal to them in each case.

12.8 If any provision of this Agreement shall be held illegal or unenforceable, the enforceability of the remainder of this Agreement shall not be affected.

12.9 This Agreement shall be governed by English Law. The parties agree to submit to the exclusive jurisdiction of the English Courts.

12.10 Force Majeure

12.10.1 Neither party shall have any liability to the other as a result of an Event of Force Majeure.

12.10.2 If an Event of Force Majeure shall continue to occur for more than twenty-eight days or the effects of an Event of Force Majeure shall continue for more than three months then either HBC or HLT shall be entitled to terminate this Agreement by notice in writing to the other with immediate effect.

12.11 No announcement or information concerning this Agreement or any ancillary matter shall be made, released or authorised to be made or released in any advertising, publicity, promotional or other marketing activities by either party unless it has received the prior written consent of the other party.

12.12 No third party shall have any rights whatsoever to take any action under or in relation to this Agreement and accordingly all rights that are or may be conferred on any such third parties pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby expressly excluded.

SCHEDULE ONE

PART ONE

Horizon Leisure Trust's Service Responsibilities

1. To operate and maintain quality leisure facilities and services at the Centres for the community of Havant and the surrounding area.
2. To ensure that as a minimum the Centres are available for public use during the following core times, herein referred to as Minimum Opening Requirements:

Monday to Friday	09.00 – 21.00 (Excluding Bank Holidays)
Saturday and Sunday	09.00 – 17.00
Bank Holidays	09.00 – 16.30

The Minimum Opening Requirements may be varied by agreement with HBC and will be subject to agreed planned and unplanned closures to facilitate essential maintenance.

3. On Christmas Eve, Christmas Day, Boxing Day and New Years Day the Centres will be closed. On all other Bank Holidays and between 27 December and 31 December the minimum opening times will be those stated for Bank Holidays in 2. above.
4. To procure that the centres will provide a balanced activity programme based upon the following principles:
 - 4.1 Facilitating community participation, performance, club and commercial sport and leisure use that contribute to health and social inclusion outcomes supporting;
 - a) the development of sport from a grass roots level and providing pathways for individuals to achieve their potential;
 - b) maximising sporting and leisure utilisation of the Centre at all times;
 - c) seeking to protect regular users from changes in their programme, other than for approved events.
5. To ensure that community use of the centres shall feature a balanced range of coached/led sessions, links between the centre and clubs/schools, with an element of casual use aimed at converting infrequent users into regular participants where practicable whereby such casual use. 'Pay and play' shall be managed on the basis of HLT programming the centres to ensure that other users of the centres who are pre booked do not have their activities unduly disrupted as a result of adjacent 'pay and play' activities.
6. Where practicable and financially viable, to support the activities of HBC and other sporting agencies in the field of sports development as long as it does not conflict adversely with the aims and objectives of the Trust.
7. To work where practical and financially viable with various agencies on health promotion both in terms of delivering the Trust's social objects, increasing participation and for business development opportunities so long as it does not conflict adversely with the aims and objectives of the Trust.

- 8 To review service delivery and programming in line with the LAA (Local Area Agreements) targets and objectives and the Havant Community Strategy so long as it does not conflict adversely with the aims and objectives of the Trust.

Operational Service delivery requirements

9. To strive for the highest possible standards of service and care.
10. To aim for the highest practical standards of cleanliness and presentation of the Centres.
11. To adopt the recommendations made in the latest Health and Safety Commission's book entitled "Managing health and safety in swimming pools".
12. To employ sufficient qualified and experienced staff to ensure a high standard of service provision and customer care throughout the opening hours.
13. To comply with all statutory licensing requirements.
14. To undertake maintenance of equipment and plant to the manufacturers' recommendations in accordance with the table of responsibilities in Schedule 2.
15. To comply with the requirements of the leases.
16. To provide a balanced programme of activities and where practicable support initiatives of other organisations meeting the Trust's mission statement 'To enable and encourage sport and leisure for all'.
17. To enhance the provision of the service through the effective use of information technology.
18. To report the occurrence of major incidents to HBC's nominated officer as soon as practical after the event.

PART TWO

Havant Borough Council's Service Responsibilities

1. Havant Borough Council is responsible for a number of service areas that will contribute to the delivery and ongoing success of this partnership.
2. These responsibilities include:
 - a) building maintenance, repair and replacement in accordance with Schedule 2 responsibilities;
 - b) development of the Tourism and Leisure Plan;
 - c) development of a life cycle investment plan in conjunction with HLT;
 - d) management of the Havant Leisure Partnership;
 - e) ongoing monitoring and review of this Partnering Agreement;
 - f) ongoing communication and regular liaison with HLT's nominated officer/ officers
 - g) involving HLT in any new HBC, central government and other agency initiatives that will enhance the ongoing delivery and development of the partnership;
 - h) on the basis that HLT undertake litter picking regularly to keep the respective areas (the areas of open land in thin red line on each lease plan) to a high standard of cleanliness HBC will provide grass cutting and shrub bed work and sweeping of the car parks. HBC will endeavour to carry out this work in accordance with the Council's schedules but cannot always guarantee to do so because of the requirement to be flexible to respond to ad-hoc service demands;
 - i) that HBC will consult with the Trust annually or whenever proposals are made to change any aspect of the management of the public car parks at both the Centres.

SCHEDULE TWO

Maintenance and Asset Obligations

1. The clauses within this schedule reflect, supplement and explain the repairing obligations contained in the Leases.
2. These repairing clauses provide that the responsibility for major buildings and plant repairs and replacement rest with HBC on the basis of a Landlord and Tenant arrangement. The Landlord shall comply with its obligations set out in the Maintenance Schedule and allocate sufficient funding in its annual budget provided that if the Landlord has budget constraints then the Maintenance Schedule can be adjusted by agreement between the parties such approval not to be unreasonably withheld or delayed.
3. The items identified for replacement at the end of their Useful Life, and as part of ongoing lifecycle replacement programme are governed by the current most recent condition survey or variation thereof. The current programme is the one produced as part of the McAndrew Martin condition audit completed in 2003. The annual requirements will be agreed as part of the business planning process.
4. HLT shall be responsible for the proper operation, maintenance and repair in accordance with manufacturers' instructions and best practice, of all plant, equipment, fixtures, fittings and machinery installed, incorporated or brought into the Centres for the purposes of providing the services, in accordance with the Table in this Schedule.
5. HBC will be responsible for the procuring, project management, and funding of all the elements of its asset responsibility. Close consultation with HLT and the utilisation of the in-house expertise will be a clear requirement in delivering all works.
6. A transparent reporting and approval process will be initiated by HBC in consultation with HLT as part of this Agreement.
7. The following table identifies the responsibility for maintenance, repair and replacement in all building elements.

LIFE CYCLE PROGRAMME

<i>Building & Plant Element</i>		<i>Mainten- ance and repair HBC</i>	<i>Mainten- ance and repair HLT</i>	<i>Replace- ment responsib- ility HBC</i>	<i>Replace- ment responsib- ility HLT.</i>
A	Main responsibilities				
1.	Structure of the building including the roof covering, gutters and down pipes, insulation, structural steel members, load bearing beams and columns	√		√	
2	External and load bearing walls	√		√	

<i>Building & Plant Element</i>		<i>Maintenance and repair HBC</i>	<i>Maintenance and repair HLT</i>	<i>Replacement responsibility HBC</i>	<i>Replacement responsibility HLT.</i>
3	Swimming pool tanks including pool tanks , wall and floor finishes		√	√	
4	Floors, staircases and ramps both internal and external	√		√	
5	Swimming pool screeds and tiles above and below waterline – at HLC includes steel tank and epoxy lining		√	√	
6	Internal joinery		√		√
7	Sanitary fixtures and fittings including washbasins and showers		√		√
8	Water, gas and electric service supply connections to the buildings	√		√	
9	Water, gas and electric services supply within the centres		√	√	
10	Telephones, computers, etc and circuits		√		√
11	Health and safety fittings and appliances		√		√
12	Internal signs and notices		√		√
13	Fitness equipment		√		√
14	Sports equipment		√		√
15	Any equipment installed by HLT		√		√
16	External signs and notices (installed by HBC)	√		√	
17	External signs and notices (installed by HLT)		√		√
18	External doors, fire doors, and large outside windows		√	√	

Building & Plant Element		Maintenance and repair HBC	Maintenance and repair HLT	Replacement responsibility HBC	Replacement responsibility HLT
19	The specialist screeds and playing surfaces		√	√	
20	All external drain pipework and related fittings below ground	√		√	
21	Internal lighting, associated fixed fittings and electrical equipment (incl. CCTV)		√	√	
22	External lighting, associated fixed fittings and CCTV		√	√	
23	Artificial sub-structure ceiling		√	√	
24	Pool water dosing and monitoring equipment, chemical storage systems, ozone generation and delivery systems		√	√	
25	Pressure gauges and thermostats		√	√	
26	Air handling units to include control systems, supply and extract connections between boilers and heat exchangers		√	√	
27	Fans and air conditioning to include control and monitoring systems		√	√	
28	Electrical circuits		√	√	
29	Lifts at Havant Leisure Centre		√	√	
30	Car parking spaces allocated for centre use and car park hard standing	√		√	
31	Grounds maintenance	√		√	
B	Items where HBC will make every effort to fund any repair with a works/contract cost over £1,000 per item				
32	Filter vessels and associated fitting (excluding media)		√	√	

<i>Building & Plant Element</i>		<i>Maintenance and repair HBC</i>	<i>Maintenance and repair HLT</i>	<i>Replacement responsibility HBC</i>	<i>Replacement responsibility HLT.</i>
33	Primary heating systems and associated fitting		√	√	

Supporting Information

Responsibility	Description
Repairs HBC	<p>HBC is responsible for funding and repairing broken, damaged or faulty items (including day to day maintenance as reasonably required and agreed servicing). An item is classified as a repair if the cost of repair and future estimated repairs within an accepted time period of life for that item is less than the cost of replacement. If the cost of repair or subsequent repairs within an accepted time period is greater than replacement, the item should be replaced subject to its prioritised status.</p> <p>HBC will pay for the works and arrange for them to be carried out in agreement with HLT to minimise costs, loss of revenue and disruption to customers.</p>
Repairs HLT	<p>HLT is responsible for repairing broken, damaged or faulty items (including day to day maintenance as reasonably required and agreed servicing). An item is classified as a repair if the cost of repair and future estimated repairs within an accepted time period of life for that item is less than the cost of replacement. If the cost of repair or subsequent repairs within an accepted time period is greater than replacement, the item should be replaced subject to its prioritised status.</p> <p>HLT will arrange for the works to be carried out to minimise costs, loss of revenue and disruption to customers</p>
Replacement responsibility HBC	<p>HBC in agreement with HLT and subject to available resources will fund and arrange for the replacement of an item.</p> <p>HBC will arrange for the works to be carried out in agreement with HLT to minimise costs, loss of revenue and disruption to customers.</p>
Replacement responsibility HLT	<p>HLT in agreement with HBC and subject to available resources will fund and arrange for the replacement of an item.</p> <p>HLT will arrange for the works to be carried out to minimise costs, loss of revenue and disruption to customers</p>

8. Subject to the schedule in paragraph 7 above, HLT shall be responsible for the

general operation of the centres in such a way as to minimise vandalism, excessive wear and tear and other degradation and HLT shall be responsible for the repair and/or replacement of any elements which are damaged through vandalism or misuse. HLT shall not be responsible for any element of the Centres provided by HBC, maintained and/or managed in accordance with manufacturers' instructions and/or best practice, which fails as a result of faults in design and/or construction.

9. HLT shall maintain records of any plant, machinery or equipment failure, damage and disrepair and any remedial action taken, such records being made available for inspection by the Authorised Officer. Statutory inspections and service reports will be copied to the Authorised Officer.
10. HLT shall report, with actions taken to date and plans for rectification, any major plant, machinery, electrical or equipment failure, damage or disrepair that has an implication for the Health and Safety of customers and staff and or affects the provision of the advertised services to HBC within four hours of discovery.
11. HLT may enter into direct servicing/maintenance contracts in respect of specialist items of plant, machinery and equipment. HLT shall make all payments in connection with these contracts.
12. HLT will ensure that the Centres comply with, and are operated in accordance with, all relevant legislation and good practice guidance. HLT shall make regular tests of all emergency systems in accordance with Health and Safety guidance/regulations and their Health and Safety Management system.
13. Three months before the end of the Partnering Agreement, or as soon as reasonably practical in the case of either party giving formal notice to the other party that it is terminating the Partnering Agreement; HBC shall undertake a survey of the centres. The survey will determine the state and condition of the Centres at the end of the Contract. Where it is evident that HLT have not maintained elements of their asset responsibility, as detailed in Schedule 2, they would be liable for the associated replacement costs.
14. HLT will be responsible for all statutory inspections and periodic servicing of plant and equipment. The inspections required for Licensing will also be the responsibility of HLT.
15. As part of Health and Safety Management, HLT will be required to identify the responsible persons and ensure full compliance with the Regulatory Reform (Fire Safety) Order 2005, Control of Legionella (contained in COSHH Regulations 1999), and Control of Asbestos at Work (CAW) Regulations 2002. The management plans for these areas and the nominated officer (s) responsible will be provided to HBC. Plans to be reviewed and updated at no more than annual intervals and to suit changing use(s) of the centres.
16. HLT will at all time keep the Cultural Services Team Leader informed of current Centre key holders and members of staff responsible for out-of-hours call out.
17. HLT will be responsible for ensuring that both buildings comply with, and are operated in accordance with, the Disability Discrimination Act 2005. HLT will need to provide HBC with update reports on issues relating to the DDA at no more than 6

monthly intervals and immediately upon completion of any alterations to the buildings.



SCHEDULE THREE

Payment Mechanism

Financial Arrangements for Partnering Agreement Delivery

1. The basis of delivering the service in accordance with the requirements and conditions set out in this Agreement are on £nil management fee basis.
2. This agreement requires HLT in every year to prepare and agree with HBC the annual life cycle programme by 30 September and submit its business plan to HBC for consideration by the end of February, in advance of the following Local Authority financial year, which commences 1 April.
3. The requirements of this business plan submission are to deliver the services as required within this agreement, based on the principles of the partnership's Philosophy of Use and specifically, in relation to all the Service Responsibilities identified in Schedule 1 Part One.
4. The business plan will be for 3 financial years supported by the identified service delivery plan for the same duration clearly showing how the Service Responsibilities in Schedule 1 are to be delivered.
5. The business plan will need to comprise a financial and service delivery plan, incorporating the following key elements as a minimum:

Financial

- ◆ Summary revenue account – 3 future years
- ◆ Detailed income and expenditure forecasts by budget head – 3 future years
- ◆ Previous 2 years detail actual income and expenditure
- ◆ Current and previous 2 years reserves position
- ◆ Investment proposals (HLT)
- ◆ Joint development investment proposals (HBC and HLT)
- ◆ Trading company profit and loss
- ◆ Assumptions to support any variation greater or less than an inflationary change
- ◆ Contingency plans.

Service Delivery Plan

- Delivery of Schedule 4 responsibilities
- Structure and human resource plan
- Marketing strategy and delivery plan
- Core pricing proposals (to be submitted 4 weeks prior to implementation)
- Life cycle programme
- Quality system –development and accreditation
- Customer Services policies
- Programming review and development
- Health and safety policies
- Business development.

Gain Share Payment Mechanism

6. In recognition of the payments made by the Council to the Trust for the management of the Havant and Waterlooville Leisure Centres since 1 October 1997 any share of surpluses will be treated as discount to the management charges raised by the Trust since 1 October 1997.
7. Payment of surpluses through a Gain Share mechanism to HBC will be applicable in the following circumstances:
 - after two successive years of surplus a gain share payment will be made based on the first year's surplus. The second year's surplus will then become the first years surplus to which will be added the outcome of the following year's outturn. Should a deficit be made in any one year then there will be no gain share payment for two years.
 - after HLT's reserves policy requirements, as recommended by external auditors, have been met
8. Gain share within this arrangement will be dependant on HLT overachieving on its agreed business plan performance. It will be based on an element of the surplus generated and declared following the end of year production and formal auditing of HLT's accounts. Surplus in this context relates to the cash/management accounts surplus and not the accounting surplus as reported in HLT's accounts and annual report. Payment will be made within one calendar month of the approval of the accounts and annual report by HLT's Board of Management.
9. The gain share element paid to HBC will be based on the following % of surplus generated on an incremental basis:

Surplus generated	Gain share payment to HBC
£0 - £29,999	0%
£30,000 -£49,999	10%
£50,000 - £74,999	20%
£75,000 +	40%

10. HLT's external auditors will be required to confirm the gain share contribution paid to HBC in accordance with these conditions.

HLT's Loss of Surplus

11. HBC will not provide income protection to HLT in the normal course of its service delivery. HBC will, where it fails to act with due diligence and agrees that its actions in carrying out its maintenance responsibilities have resulted in loss of profit, reimburse HLT.
12. The loss of profit payment will be the net position of revenue lost minus variable costs saved. A financial analysis providing detailed evidence of revenue loss, and costs saved for the duration of the closure or facility being out of use, will need to be provided by HLT to support any potential claim. If there is a net saving to HLT during such a closure no contra payment will be required.
13. The scheduling of maintenance works by HBC will limit the impact on HLT's service delivery financial position, and any prolonged works will be scheduled with HLT's appropriate officer.

14. The loss of net revenue claim process will take effect after 1 day with a planned closure and after 2 days of an enforced unplanned closure.
15. Loss of net revenue claims will not be made on any closures as a result of any facility enhancement or improvement.

HLT's Extra-ordinary Costs

16. This clause is included to lessen the impact on the financial position of HLT following any future excessive increases in the market costs of utilities.
17. Leisure centres are high energy users and the increased price of utilities has in recent years put huge pressures on the Leisure Industry.
18. As part of the business planning process, a projected percentage increase based on the Retail Prices Index (R.P.I) for September of each year will be used by the Trust to estimate the utilities budget for the following budgetary period. If during that following budgetary period, actual utilities charges increase above the R.P.I percentage by more than 5%, then provided the Trust had reasonably sought best value HBC will fund 50% of any increase above R.P.I plus 5% provided that if HBC has budget constraints then the Maintenance Schedule can be adjusted by agreement between the parties such approval not to be unreasonably withheld or delayed. Such reimbursal to be made by HBC on six-monthly basis in September and March.
19. HLT will demonstrate through its service delivery plan energy saving opportunities and provide HBC analysis of energy usage to support any future claim of this nature.

SCHEDULE FOUR

Monitoring of Service Requirements

Introduction

1. This Partnering Agreement supports a collaborative relationship. Due to the nature of the arrangements, it is imperative that formal monitoring of the performance of HLT takes place, but focusing on critical success factors that HLT will be reviewing as part of the day to day operation.
2. Initially, quarterly operational and half yearly strategic reporting to HBC is required and reflects the close working relationship of the partnership.

Quarterly Operational Monitoring Requirements

3. HLT will be required to meet with HBC's Cultural Services Team Leader on a quarterly basis to review the performance of HLT. Where practical papers need to be distributed to HBC ten working days before the meeting.
4. The main purpose of the meeting will be to review the previous quarter's information reports, provide a forum for formal monitoring of service delivery and the discussion of any operational issues that have or will affect performance.
5. The report will include the following items, however, HLT is invited to augment this with other items of relevance at the time. HBC reserves the right to request changes to the format of this report template in consultation with HLT.

Issues to be reported on	Notes
Income and expenditure broken down into key activities and expenditure items – e.g. staffing, energy costs, marketing etc compared against target.	HBC will require to see quarterly financial reports based on actual performance, performance to date and performance against target.
Membership numbers broken down by category. Centre attendance broken down over main activity areas (including swimming course enrolments).	HLT shall monitor data that enables them to improve their performance in providing for targeted groups.
Information on the type of activities and events that have taken place in the last quarter and those planned for the next quarter List of any changes to the main programme of activities.	
Complaints and comments broken down into type and number, supplemented by a trend analysis and action plan. Where practical minutes and actions from User Group meetings.	

Issues to be reported on	Notes
Report on accidents and incidents by Centre and type of injury. Other health and safety related issues including near misses, inspection reports, system reviews, and any building related H & S issues.	
Review of progress on the Life Cycle Programme with summary of repairs including costs.	HBC to provide a summary of actual expenditure to date. HLT/HBC to review projects to be undertaken in the next quarter and the projected year end position.
Quarterly update on implementing Quest.	HLT/HBC to review progress in implementing Quest at respective organisations. When available, HLT to provide Quest Self Assessment Validation or Quest Assessment scores and reports.

Half Yearly Strategic Partnership Review Meetings

6. Havant Leisure Partnership (two HBC Executive Members, two HLT Trustees plus officers as required) to meet twice yearly to consider strategic partnership issues including:
- Life cycle repairs and budget
 - Business plans
 - Quest
 - Car park charges consultation
 - Havant Tourism and Leisure Plan implementation updates
 - Strategic development update e.g. Campdown
 - Proposed alterations to the Trusts charitable status or objectives
 - Review of the Partnership Agreement
 - Summary of annual performance.


SCHEDULE FIVE

Change Control Procedure

1. HLT and HBC recognise that the Partnering Agreement is a working document which will need to evolve over time to reflect changes in business requirements.
2. If HLT or HBC wishes to propose any change to the Partnering Agreement it shall notify the other Parties in writing of the proposed change and the Authorised Officers of the Parties shall meet to discuss the proposed change as soon as reasonably practicable thereafter and shall either approve the written request for a change or agree not to proceed further with the proposal (in which event no further action shall be required).
3. Unless and until such amendment is made in accordance with this Schedule, no such change shall be considered effective and this Agreement shall not in any way be considered to have been amended as a result of such change.
4. If the written request for the change is approved by the Authorised Officers of the Parties in accordance with paragraph 2, a change control note ("CCN") will be prepared by HBC within 10 working days.
5. Each CCN shall contain:-
 - (a) the title of the change and sequential number;
 - (b) the originator and date of the request or recommendation for the change;
 - (c) the reason for the change and if appropriate the impact of the change on other aspects of this Agreement;
 - (d) full details of the change;
 - (e) if appropriate a timetable for implementation together with any proposals for monitoring the effectiveness of the change;
 - (f) provision for signature by HLT and HBC;
 - (g) if applicable a schedule of any additional or reduced costs resulting from the change.
6. Following the signature of the CCN by all Parties, such change shall be incorporated as an amendment to this Agreement.

SIGNED BY
Duly authorised to sign for and on
behalf of Havant Borough Council

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SOLICITOR TO THE
COUNCIL

SIGNED BY
Duly authorised to sign for and on
behalf of Horizon Leisure Trust

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)
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CHIEF EXECUTIVE