

THIS AGREEMENT is made the

2021

Between

(1) **THIRSK AND SOWERBY SWIMMING BATHS CHARITY** (Charity Registration No. 701662) C/o Secretary of Thirsk and Sowerby Swimming Baths Charity Civic Centre Stone Cross Rotary Way Northallerton North Yorkshire DL6 2UU (“the Charity”) and

(2) **HAMBLETON DISTRICT COUNCIL** of Civic Centre Stone Cross Rotary Way Northallerton North Yorkshire DL6 2UU (“the Contractor”)

WHEREAS

1. The Charity is responsible for provision of leisure services at the Thirsk and Sowerby Leisure Centre, Chapel Street, Thirsk, North Yorkshire YO7 1LU.
2. The Charity wishes to have provided the Services set out in the Agreement; and
3. The Contractor is willing to perform such Services in accordance with the provisions of the Agreement as appended hereto at Appendix A.

NOW IT IS HEREBY AGREED between the Charity and the Contractor as follows:

1. This Agreement constitutes the sole contract or agreement between the Charity and the Contractor for the performance by the Contractor of the Services.
2. The Contractor shall provide the Services in accordance with the provisions of the Agreement and to the satisfaction of the Charity for the Contract Period.
3. So long as the Contractor shall continue to provide the Services in accordance with the provisions of the Agreement and to the satisfaction of the Charity, the Charity shall make to the Contractor the payments provided by the Agreement.

This Agreement has been entered into on the date stated at the beginning of it.

THE COMMON SEAL of)
HAMBLETON DISTRICT COUNCIL was)
hereunto affixed in the)
presence of)

Authorised Signatory

SIGNED AS A DEED)
for and on behalf of)
THIRSK AND SOWERBY SWIMMING)
BATHS CHARITY)
In the presence of)
.....

Chairman of Trustees

THIRSK AND SOWERBY SWIMMING BATHS CHARITY

Conditions of Contract for Sports and Leisure Management

CONTENTS

1. Definitions
2. Contract Period
3. The Services
4. Standard of Service
5. Personnel
6. Assignment
7. Indemnity and Insurance
8. Payments
9. Income and Charges
10. VAT
11. Ordering of Goods and Services
12. Authorised Officer
13. Prevention of Bribery
14. Termination
15. Force majeure
16. Consequences of termination or expiry
17. Premises
18. Deduction
19. Discrepancies
20. Severance
21. Arbitration
22. Waiver
23. Partnership or Agency
24. Third Party Rights
25. Entire Agreement
26. Law

CONDITIONS OF CONTRACT

Definitions

- 1.1 In this Agreement the following expressions shall have the following meanings
- (a) **“the Act”** shall mean the Local Government Act 1988 or any re-enactment or amendment thereof.
 - (b) **“the Agreement”** shall include these Conditions of Contract and the Specification.
 - (c) **“Authorised Officer”** shall be the Secretary of the Thirsk and Sowerby Swimming Baths Charity Trust or such other person nominated in writing from time to time by the Charity.
 - (d) **“Bribery Act”** shall mean the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
 - (e) **“Charity”** shall mean the Thirsk and Sowerby Swimming Baths Charity.
 - (f) **“Contractor”** shall mean Hambleton District Council.
 - (g) **“Centre”** shall mean the Thirsk and Sowerby Leisure Centre, Chapel Street, Thirsk, North Yorkshire YO7 1LU.
 - (h) **“Contract Period”** shall mean the period specified in Condition 2 and during which this Agreement remains in force.
 - (i) **“Contractor Personnel”** shall mean all employees, staff, other workers, agents and consultants of the Contractor who are engaged in the provision of the Services from time to time.
 - (j) **“Charges”** shall mean the charges set out in the Specification approved from time to time by the Charity or officers of the Contractor under arrangements approved by the Charity.
 - (k) **“Exit Management Plan”** shall mean a plan agreed by the parties (in writing) to facilitate the transition of Services to the Charity or replacement supplier.
 - (l) **“Financial Year”** shall mean the 12 months beginning with 1 April in each year.
 - (m) **“Income”** shall mean all income (including the value of benefits in kind) received in respect of the Charges.
 - (n) **“Month”** shall mean a calendar month.
 - (o) **“Prohibited Act”**: the following constitute Prohibited Acts:
 - i. to directly or indirectly offer, promise or give any person working for or engaged by the Charity a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;

- ii. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function of activity in connection with this Agreement;
 - iii. committing any offence: (a) under the Bribery Act; (b) under legislation or common law concerning fraudulent acts; or (c) of defrauding, attempting to defraud or conspiring to defraud the Charity.
- (p) **“Relevant Requirements”** shall mean all applicable law relating to bribery, corruption and fraud including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
- (q) **“Services”** shall mean the management and other functions relating to Sport and Leisure facilities to be provided by the Contractor under this Agreement and in accordance with the Specification.
- (r) **“Specification”** shall mean the specification together with annexes attached at Appendix B to these conditions and forming part of this Agreement.
- 1.2 In this Agreement unless the contrary intention appears
- (a) words importing the masculine gender include the feminine
 - (b) words in singular include the plural and words in the plural include the singular
 - (c) references to Conditions and Appendices are references to the Conditions and Appendices of these Conditions and references to Clauses and Schedules are references to the clauses and schedules in the Specification
 - (d) references to time shall be construed during the period of summer time to be British Summer Time or its authorised replacement and otherwise to be Greenwich Mean Time
 - (e) references to any building whether by name description address or otherwise shall be construed as including the curtilage of that building
 - (f) references to “personnel” shall be construed as including all employees
- 1.3 Stipulations as to time of payment are not of the essence of this Agreement. Other stipulations as to time are of the essence of this Agreement.
- 1.4 Any notices required to be given to the Contractor made under this Agreement shall be in writing and may be served:
- (a) by delivering the notice to or leaving the notice for the Contractor at the Contractor’s last known place business in which case the notice shall be deemed to have been duly served at the time it is so delivered or left or

- (b) by posting the notice in a prepaid envelope addressed to the Contractor at the Contractor's last known place of business in which case the notice shall be deemed to have been duly served at the time of delivery in ordinary course of post.
- 1.5 Except as otherwise expressly provided the contract documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Authorised Officer who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions.
- 1.6 The headings to any part of this Agreement shall not affect the interpretation thereof.
- 1.7 In the event of any inconsistency between these Conditions and any provision in any of the other contract documents these Conditions shall prevail.

CONTRACT PERIOD

2. Subject to the provisions of Condition 14 this Agreement shall remain in force from 1 April 2021 until 31 March 2031.

THE SERVICES

- 3.1 The Contractor shall during the Contract Period provide in accordance with the terms of this Agreement the Services at the Centre as is indicated in these Conditions and the Specification attached to these Conditions
- 3.2 Without prejudice and in addition to the generality of the obligations imposed by this Agreement at any time during the Contract Period the Contractor shall immediately deal with all day to day minor exigencies and contingencies that occur. The Contractor shall maintain an acceptable communication system with the Authorised Officer to provide a 24 hours a day contact for each and every day of the Contract Period. In the event of emergencies for whatever cause a member of the Contractor's personnel shall be on site within one hour of being requested to be so by the Authorised Officer regardless of the time of year or day. Should the Contractor for any reason fail to respond to call out within the stipulated time the Charity shall arrange for itself or another contractor to undertake any necessary works. In the event of such an occurrence any excess cost incurred by the Charity shall be deducted from monies due to the Contractor.

STANDARD OF SERVICE

- 4.1 The Services shall be provided to the standard required by the terms of this Agreement including the Specification attached to these Conditions
- 4.2 In addition to any more specific obligations imposed by the terms of this Agreement it shall be the duty of the Contractor to provide the Services to a standard which is in all respects to the reasonable satisfaction of the Authorised Officer
- 4.3 The Contractor in providing the Services shall comply with any policies rules and procedures of the Contractor which will be provided to the Charity on written request.

PERSONNEL

- 5.1 At all times the Contractor shall ensure that:
 - a) each of the Contractor Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - b) there is an adequate number of Contractor Personnel to provide the Services properly;
 - c) only those people who are authorised by the Contractor are involved in providing the Services;
 - d) all of the Contractor's Personnel shall comply with all relevant policies rules procedures and standards of the Charity and the Contractor; and
 - e) all of the Contractor's Personnel shall comply with all relevant rules and procedures concerning health and safety at work.
- 5.2 The Contractor shall employ in and about the provision of the Services only such persons as are careful skilled properly qualified and experienced and are medically fit for the duties they are to perform so that the work can be carried out in a manner which is safe
- 5.3 The Contractor shall ensure that every person employed by the Contractor in and about the provision of the Services is made aware of:
 - (a) all tasks that that person has to perform;
 - (b) all relevant provisions of this Agreement;
 - (c) all relevant policies rules procedures and standards of the Charity and the Contractor; and
 - (d) all relevant rules and procedures concerning health and safety at work.

ASSIGNMENT

6. The Contractor shall not transfer or assign this Agreement or any part thereof. The Contractor shall not sub-contract or franchise or allow any other person to carry out all or any part of the provision of the Services except by prior written agreement with the Charity

INDEMNITY AND INSURANCE

- 7.1 The Contractor shall indemnify and keep indemnified the Charity against injury to or death of any person or loss of or damage to any property arising out of any act default or negligence of the Contractor its employees or agents and against all actions claims demands proceedings damages costs charges or expenses whatsoever in respect thereof or in relation thereto provided that the Contractor shall not be liable for nor be required to indemnify the Charity against any compensation or damages for or in respect of injuries death loss or damage to property which arises out of the negligence of the Charity its employees or agents not being the Contractor or employed by the Contractor
- 7.2 The Contractor shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Charity as shall fully insure and indemnify the Contractor against liability
 - i) To the Charity and to any employee of the Charity
 - ii) To the employees of the Contractor
 - iii) To any other personin the sum of at least £11,000,000 per occurrence or series of occurrences consequent upon an original cause such sum to be varied from time to time to comply with any requirements of the Charity or the Charity's insurers
- 7.3 The Contractor shall be liable for and indemnify the Charity against any expense liability loss claim or proceedings in respect of any damage whatsoever to any private property real or personal insofar as such damage arises out of or in the course of or by reason of the carrying out of the Services and is due to any negligence omission or default of the Contractor or any person for whom the Contractor is responsible or of any sub-contractor or person for whom the sub-contractor is responsible
- 7.4 The Contractor shall prior to the commencement of the Contract Period and thereafter annually and at such other times as the Authorised Officer may require supply the Authorised Officer with copies of all insurance policies cover notes premium receipts and other documents necessary to comply with Condition 7.2 above

- 7.5 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Contractor to effect such insurances as will so comply. Upon receipt of such notice the Contractor shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may himself cause such insurance to be effected whereupon the Contractor shall pay to the Charity as liquidated damages such sum as the Authorised Officer shall certify as being the cost to the Charity of effecting such insurance

PAYMENTS

- 8.1 Subject to the other provisions of this Agreement the Charity shall pay to the Contractor for the provision of the Services on 30 June 31 September 31 December and 31 March a sum equal to the Income received in relation to the Charges in the 3 months immediately preceding that date
- 8.2 In addition to the sums specified in Condition 8.1 the Charity shall pay to the Contractor such Value Added Tax (if any) as may properly be chargeable by the Contractor under the legislation from time to time in force upon the provision of the Services and the Contractor shall issue a Tax Invoice in respect thereof
- 8.3 The only sums payable by the Charity for the provision of the Services shall be the sums specified in Conditions 8.1 and 8.2. All other costs charges fees and expenses of whatever kind for or arising out of or in connection with the provision of the Services shall be paid by the Contractor PROVIDED that the Charity shall be responsible for payment of any national non domestic rates in respect of the Centre
- 8.4 If for any reason this Agreement ends or is terminated otherwise than at the end of a monthly instalment period the sum payable by the Charity under Condition 8.1 in respect of the partly completed month shall be duly apportioned as at the date the Agreement ends or is terminated and proper a proportion paid in accordance with the terms thereof

INCOME AND CHARGES

- 9.1 The Charges shall apply to the Centre and the Contractor shall collect the Charges for the use of the Centre
- 9.2 All Income received during the Contract Period shall be the property of the Charity

- 9.3 The Contractor or the Charity may request that any of the Charges be varied for any period of time and if such variation of the Charges is agreed in writing by both parties then for the period agreed the Charges shall be so varied
- 9.4 At the end of the period agreed under Condition 9.3 above the varied charges shall revert to the amounts which they would have been at the end of that period had there been no agreement to vary them
- 9.5 As part of the agreement under Condition 9.3 to vary the Charges the Contractor and the Charity may agree an additional sum or sums to be paid to the Contractor or to be retained by the Charity from a sum or sums due to the Contractor and the sum or sums due to the Contractor during the period agreed shall be so varied

VAT

- 10.1 The following provisions shall apply to VAT
- (a) Sums payable to the Contractor pursuant to this Agreement are exclusive of Value Added Tax (“VAT”)
 - (b) The Charity shall pay to the Contractor in the manner hereinafter set out any VAT properly chargeable on the supply by the Contractor of the Services at the appropriate rate
 - (c) The Contractor shall not later than the date for the issue of the monthly certificate in accordance with the Conditions inform the Charity in writing in respect of the Services performed during that period
 - (i) which part or parts of such Services are exempt from VAT
 - (ii) which part or parts of such Services bear a Zero rate of VAT
 - (iii) which part or parts of such Services bear a rate of VAT greater than Zero – in each case specifying the exact rate chargeable
 - (d) Upon receipt of the Contractor’s written notice under (c) unless the Charity objects to any part of such notice the Charity shall calculate the amount of VAT due in accordance with the contents of such notice and shall so certify pursuant to the Conditions
 - (e) Upon receipt by the Contractor of any payment made by the Charity pursuant to the Conditions being a payment including VAT the Contractor shall forthwith issue to the Charity an authenticated receipt in such form as may be required by the Value Added Tax Act 1994 (“the 1994 Act”) or any amendment or re-enactment thereof or by any Regulations made thereunder

- (f) If the Charity objects to any part of such notice and such objection cannot be resolved by the parties by agreement the Charity may require the Contractor to refer to the Commissioners of Customs and Excise (“the Commissioners”) any dispute difference or question in relation to any of the matter specified in Section 83 of the 1994 Act
- (g) If the Contractor refers the matter to the Commissioners (whether or not under (f) hereof) and the Charity is dissatisfied with their decision on the matter to a Value Added Tax Tribunal by way of appeal under Section 83 of the 1994 Act whether the Contractor is so dissatisfied or not. Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under Section 84 of the 1994 Act the Charity shall pay an equivalent sum to the Contractor. The Charity shall further reimburse the Contractor any costs or expenses reasonably and properly incurred in marking the reference (less any costs awarded to the Contractor by the Tribunal)
- (h) Upon the final adjudication by the Commissioners or in the event of a reference to a Tribunal by the Tribunal the Charity shall pay the amount of the VAT adjudged due to the Contractor. Should the amounts already paid by the Charity either by way of payment of VAT or by way of reimbursement of any money required to be deposited by the Contractor with the Commissioners under (g) exceed the VAT adjudged to be due the Contractor shall forthwith repay such excess to the Charity
- (i) Notwithstanding any provision to the contrary in the Conditions the Charity shall not be obliged to make any further payment to the Contractor if the Contractor is in default in providing the receipt referred to in (e) provided that this Sub-Condition shall only apply where the Charity can show that it requires such receipt to validate any claim for credit for VAT paid or payable which the Charity is entitled to make to the Commissioners

ORDERING OF GOODS AND SERVICES

- 11. The Contractor shall not place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the Charity or any representative of the Charity except with the written approval of the Authorised Officer

AUTHORISED OFFICER

- 12.1 Any notice information or communication given or made to the Authorised Officer shall be deemed to have been given or made to the Charity

- 12.2 The Charity shall forthwith give notice in writing to the Contractor of any subsequent appointment as Authorised Officer. Until notice of a subsequent appointment shall have been given the Contractor shall be entitled to treat as Authorised Officer the person last notified to the Contractor as being the Authorised Officer
- 12.3 From time to time the Authorised Officer may appoint one or more deputies to act for him generally or for a specified period. Immediately any such appointment is made the Authorised Officer shall give written notice to the Contractor. During the periods he is so authorised any such deputy shall have the powers and duties of the Authorised Officer and may be treated in all respects as the Authorised Officer
- 12.4 The Charity shall ensure that the Authorised Officer or a competent deputy duly authorised to act on his behalf is available for consultation with the Contractor at all reasonable times

PREVENTION OF BRIBERY

- 13.1 The Contractor represents and warrants that neither it, nor any Contractor Personnel:
- a) has committed a Prohibited Act; or
 - b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a government, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act.
- 13.2 The Contractor shall promptly notify the Charity if, at any time during the Contract Period, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in condition 13.1 at the relevant time.
- 13.3 The Contractor shall (and shall procure that its Contractor Personnel shall) during the Contract Period:
- a) not commit a Prohibited Act; and/or
 - b) not do or omit to do anything that would cause the Charity to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent any occurrence of a Prohibited Act;

- d) notify the Charity (in writing) if it becomes aware of any breach of Condition 13.3(a) or Condition 13.3(b), or has reason to believe that it or any person associated with it has received a request or demand for an undue financial or advantage in connection with performance of this Agreement.
- 13.4 The Contractor shall maintain appropriate and up to date records showing all payments made by the Contractor in connection with this Agreement and the steps taken to comply with its obligations under Condition 13.3.
- 13.5 The Contractor shall allow the Charity and its third party representatives to audit any of the Contractor's records and any other relevant documentation in connection with this Agreement.
- 13.6 If the Contractor is in default under Conditions 13.3(a) or 13.3(b) the Charity shall be entitled to determine this Agreement.

TERMINATION

- 14.1 Either party may terminate this Agreement on 31 March 2030 (but not before) by giving not less than 6 months written notice to the other party.
- 14.2 In the event of this Agreement being determined whether by effluxion of time notice breach or otherwise the Charity may without prejudice to any of its other remedies under this Agreement and without prejudice to any rights of action which shall accrue or shall have already accrued to the Charity suspend payment to the Contractor retain any amounts due to the Contractor hereunder or otherwise from the Charity.
- 14.3 Upon such termination in addition to such consequences as are set out in the other provisions of this Agreement
- i) The Contractor shall forthwith cease to perform any of the Services
 - ii) The Contractor shall fully and promptly indemnify the Charity in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract period to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing such Services. The Charity shall be at liberty to have such Services performed by any persons (whether or not the servants of the Charity) as the Charity shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having such Services performed

- iii) The Charity shall be under no obligation to make any further payment to the Contractor and shall not be entitled to retain in its hands any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Charity all sums due under this Agreement or to deduct therefrom any sum due from the Contractor to the Charity under this Contract

FORCE MAJEURE

- 15.1 Provided it has complied with the remaining provisions of this Condition 15, if a party ("Affected Party"), is prevented, hindered or delayed in or from performing any of its obligations under this Agreement as a result of events, circumstances or causes beyond its reasonable control ("Force Majeure Event") the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 15.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.
- 15.3 The Affected Party shall:
 - a) as soon as reasonably practical after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 15.4 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

CONSEQUENCES OF TERMINATION OR EXPIRY

- 16.1 On the expiry of the Contract Period or if this Agreement is terminated for any reason, the provisions of the Exit Management Plan shall come into effect.
- 16.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry including Condition 7 (Indemnity and Insurance), Condition 14 (Termination) and this Clause 16 (Consequences of termination) shall remain in full force and effect.

PREMISES

17. The Contractor will occupy the Centre for the purposes of the Contract and for the avoidance of doubt it is hereby agreed and confirmed that this Contract does not create or purport to create any tenancy or lease of the Centre

DEDUCTION

18. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other Agreement with the Charity

DISCREPANCIES

19. Any discrepancies in the wording of this Agreement and accompanying Specification and Annexes shall be explained and resolved by the Authorised Officer.

SEVERANCE

20. If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect

ARBITRATION

21. Any dispute difference or question between the parties to this Agreement with respect to any matter or thing arising out of or relating to this Agreement which cannot be resolved by negotiation within a reasonable time (being no more than 28 days) and except insofar as may be otherwise provided in this Agreement shall be referred to Arbitration under the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof by a single arbitrator to be appointed by agreement between the parties or in default of agreement by the President for the time being of the Chartered Institute for the Management of Sport and Physical Activity. The award of such arbitrator shall be final and binding upon the Parties.

WAIVER

22. Failure by the Charity at any time to enforce the provisions of the Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part thereof or the right of the Charity to enforce any provision in accordance with its terms

PARTNERSHIP OR AGENCY

- 23.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

THIRD PARTY RIGHTS

24. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

ENTIRE AGREEMENT

25. This Agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

LAW

26. This Agreement shall be governed by and construed according to the law of England and Wales.