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Wealden Leisure Ltd (trading as Freedom)  
1-6 The Paddock  
Carriers Way  
East Hoathly  
East Sussex  
BN8 6AG

27 August 2020

Our Ref: RW/hp

Dear Sirs

**Leisure Operating Contract dated 31<sup>st</sup> March 2016 (as amended by a Letter Variation dated 8<sup>th</sup> May 2020 ("First Covid Variation"), Letter Variation dated 1<sup>st</sup> November 2017, Letter Variation dated 18<sup>th</sup> January 2018, Letter Variation dated 27<sup>th</sup> April 2018 and a Deed of Variation dated 23<sup>rd</sup> July 2019 ) between (1) Arun District Council (the "Authority) and (2) Wealden Leisure Ltd (the "Supplier") in respect of Littlehampton Swimming and Sports Centre, Arun Leisure Centre, Bersted Park Community Centre and Windmill Theatre & Cinema (the "Contract")**

We refer to the Contract. Unless otherwise defined, terms defined in the Contract and used in this letter variation ("Second Covid Variation") shall have the meaning set out in the Contract.

## 1 Background

- 1.1 The purpose of this Second Covid Variation is for the Authority to (i) give further relief to the Supplier to secure the orderly re-opening and operation of the facilities on the terms of this Variation and (ii) clarify and amend provisions in the Letter Variation of the 8<sup>th</sup> May 2020 with regard to waiver of payment of the Net Monthly Payment of the Annual Payment (as provided therein) which is not recoverable as provided for in the Contract amending as necessary the relief given under the First Covid Variation.
- 1.2 The Supplier has requested further financial support from the Authority to which the Authority is minded to agree on the terms of this Agreement estimated details of which are included in the Excel Spreadsheet 'Reactivation Summary' provided to the Authority by the Supplier which shows:

1.2.1 Month 1 (July) £67,326

1.2.2 Month 2 (August) £95,244

1.2.3 Month 3 (September) £104,388

Provided that the Authority shall be entitled to keep under review the basis of its agreement to provide such financial support including the performance of the Supplier in meeting the objectives of this Second Covid Variation and shall be entitled to seek recovery of any sums paid to the Supplier or any sums deferred or waived if the Supplier is in breach of its obligations to the Authority and the Authority shall not be obliged in any circumstance make payment in aggregate in respect of such period in excess of £270,000.

- 1.3 The Authority and the Supplier acknowledge that the relief is given in accordance with the policy set out in PPN 02/20 and that both parties shall act in good faith and work together towards the principles set out in PPN 02/20. The Supplier acknowledges that any relief given to it is subject to the terms of this Second Covid Variation and is at all times subject to the sole discretion of the Authority.
- 1.4 The Authority reasonably anticipates that the Procurement Regulations will apply to this Second Covid Variation and the Parties shall ensure that there is lawful basis for agreeing this further variation under the Public Contracts Regulations 2015 and/or any applicable procurement rules. Due to the current COVID-19 pandemic, this may include in particular justifications under Regulation 72 and Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provision.
- 1.5 The Contract, including any previous variations, will remain effective and unaltered except as further amended by or to give effect to this Second Covid Variation.

2 Variation

- 2.1 The following terms shall have the meaning as set out below and shall be incorporated into the Contract:

**“Covid Related Hardship”** means that as a result of the COVID-19 pandemic the Supplier’s ability to meet its contractual obligations under the Contract have been adversely affected.

**“Additional Covid Relief Period”** means the period from the Variation Date until the Relief Expiry Date.

**“Additional Covid Relief Proposals”** means the proposal to:

- waive payment obligations of the Supplier (as irrecoverable) under the Contract in respect of Net Monthly Payment of the Annual Payment due under Clause 28 (Payment of Monthly Payment) of the Contract from and including the month of July 2020 to and including the month of March 2021; and

- amend the Expiry Date by 6 Months so that Contract expires on 31<sup>st</sup> March 2027 and that all other obligations between the parties continue during that period; and
- provide for the Supplier and the Authority to agree, prior to the period of extension to the Contract provided for in the First Covid Variation and this Second Covid Variation, a profile for payment to the Authority (in addition to the Net Monthly Payment due in that period) of a supplementary payment ("Additional Net Monthly Payment") in aggregate equal to such part of the waived Net Monthly Payment (inflated by CPI to the date of actual payment) which the Authority has not recovered pursuant to any Covid related scheme operated by HM Government.

**“Open Book Interim Data”**

means the complete and accurate financial and non-financial information to be provided to the Authority to its reasonable satisfaction by the Supplier within ten (10) Business Days of the end of each month and subject to proper evidencing of invoices and accruals and prompt reconciliation on a quarterly basis or as required by the Authority in addition to and not in substitution for the provisions of Clause 70 (Contractors Records and Open Book Accounting) to enable the Authority to understand all COVID-19 related relief, grants, interventions or other measures received by the Supplier and the appropriateness of the relief given to the Supplier by the Authority in the operation of the Facilities in relation to the following items:

- repairs and maintenance;
- utilities;
- cleaning;
- telephone and ICT;
- insurance;
- finance;
- professional fees;
- irrecoverable VAT

- all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- full details of the payment of employee wages, and
- full details of the payment of Sub-Contractors.

**“Procurement Regulations”**

means the Public Contracts Regulations 2015.

**“PPN 02/20”**

means Procurement Policy Note 02/20 (as updated or amended from time to time) setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist suppliers to combat the impact of COVID-19.

**“Relief Expiry Date”**

means 31<sup>st</sup> March 2021 or such other date as may be notified by the Authority to the Supplier prior to or on 31<sup>st</sup> March 2021.

**“Second Covid Variation”**

means the terms set out in this variation.

**“Variation Date”**

means the date the second party signs this Second Covid Variation.

3 Notwithstanding any other term of the Contract, the Parties agree to vary the Contract by incorporating the following terms into the Contract:

3.1 Where the Supplier is subject to Covid Related Hardship and evidences this to the reasonable satisfaction of the Authority, the Supplier may at any time during the Additional Covid Relief Period, propose a change to the Contract which has the aim of providing interim relief and support to the Supplier, pursuant to the aims and principles set out in PPN 02/20, and

3.2 The Supplier shall provide at the same time as any change proposed under 3.1 above all reasonable details justifying and explaining the basis of such proposal including but not limited to evidence (i) that the Supplier is not in breach of its obligations under the Contract as amended by the First Covid Variation and this Second Covid Variation and (ii) of mitigation by the Supplier.

- 4 Pursuant to the aims and principles set out in PPN 02/20 and subject to this Second Covid Variation, the Supplier and the Authority have at the effective date agreed the Covid Relief Proposals subject to the terms hereof.
- 5 The terms of the First Covid Variation shall be deemed amended from its effective date as follows:
- 5.1 The first bullet point shall be amended as follows:
- 5.2 "waive payment obligations of the Supplier (as irrecoverable) under the Contract in respect of Net Monthly Payment of the Annual Payment due under Clause 28 (Payment of Monthly Payment) of the Contract for the months of April, May and June 2020."
- 5.3 The third bullet shall be amended as follows:
- 5.4 "the Supplier and the Authority shall agree, prior to the period of extension to the Contract provided for in this Variation a profile for payment to the Authority (in addition to the Net Monthly Payment due in that period) of a supplementary payment ("Additional Net Monthly Payment") in aggregate equal to such part of the waived Net Monthly Payment (inflated by CPI to the date of actual payment) which the Authority has not recovered pursuant to any Covid related scheme operated by HM Government."
- 6 The Parties have agreed the Additional Covid Relief Proposals in substitution for and not in addition to any other relief or remedy which the Supplier may otherwise claim under the Contract for Covid Related Hardship. Further, the Supplier shall, subject to using reasonable endeavours to mitigate the consequences of Covid Related Hardship, be entitled to appropriate relief directly arising therefrom namely:
- relief against performance indicators;
  - relief and/or changes to relevant dates, targets or other requirements for performance;
  - relief against termination.
- 7 The Supplier shall:
- 7.1 promptly provide evidence to the reasonable satisfaction of the Authority of the Supplier's actual costs, expenses, cash flow, cash balances, profits and accruals relating to the provision of the Services at the written request of the Authority including without limitation at the end of Month 3 referred to at 1.2 above;
- 7.2 make available to the Authority upon request any information and/or evidence (including the Open Interim Book Data) which the Authority may reasonably require in order to verify and assure that the Supplier:
- has incurred or will incur the costs and expenses specified in the Additional Covid Relief Proposals

- continues to meet its payment obligations to Sub-Contractors and supply chain immediately on receipt, including copies of accounts, ledgers, cash--flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence;
- Makes proper and prompt payment of monies due to employees.

7.3 maintain full records and a written audit trail of all activity during the Additional Covid Relief Period in accordance with the general financial records provisions in the Contract (and such records shall be made available promptly to the Authority on reasonable request);

7.4 The Supplier shall not be entitled to combine the Additional Covid Relief Proposals with any other government or public sector COVID-19 related relief, grant, intervention or other measure which results in the Supplier receiving more than one benefit/relief for the same underlying cash-flow issue. The Supplier shall promptly give written notice to the Authority of any such reliefs which the Supplier considers may be available to it and shall use its best endeavours to secure such and regularly inform the Authority as to progress thereof.

8 The Authority may at any time and in its sole discretion designate one or more additional Covid Relief Periods (each an Additional Covid Relief Period) by notice to the Supplier from time to time. Any such notice shall specify which, if any, PPN contains the applicable rules and principles for the relevant Additional Covid Relief Period and provide for the Supplier's Additional Covid Relief Proposals.

9 If, in the reasonable opinion of the Authority, the Supplier:

9.1 fails to meet any obligation set out in this Second Covid Variation or the Contract;

9.2 receives any payment and fails to apply it so as to meet its obligations under this Second Covid Variation or Contract;

9.3 takes undue advantage of any relief; or

9.4 fails to act transparently and with integrity,

the Authority may take all action necessary to recover any payments made to the Supplier during the relevant Additional Covid Relief Period, including without limitation recovering all or part of the amount waived or by retaining or setting--off payment of any amount it owes to the Supplier at any time under the Contract or any other contract, to the extent that clauses 8.1 – 8.4 apply to such payments.

10 Miscellaneous

10.1 The terms of this Second Covid Variation shall be effective from the Variation Date.

10.2 Except to the extent set out in this Second Covid Variation, this Second Covid Variation shall not constitute a waiver of any right or remedy of the Authority or the Supplier arising before, during or after this Second Covid Variation.

10.3 The Authority and the Supplier agree that without prejudice to any relief provided herein any event arising from COVID--19 shall not give rise to any force majeure, Compensation Event, Change in Law, Relief Event, Relevant Event or frustration rights set out in the Contract.

10.4 If there is an inconsistency between any of the provisions of this Second Covid Variation and the provisions of the Contract, the provisions of this Second Covid Variation shall prevail.

Please confirm your acceptance of the Second Covid Variation countersigning this letter and returning a scanned copy to robin.wickham@arun.gov.uk.

If you have any queries, please contact Robin Wickham.

Yours faithfully,



Robin Wickham  
Group Head of Community Wellbeing  
Directorate of Services

For and on behalf of the Authority

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We hereby acknowledge receipt and accept the terms of this Second Covid Variation.

Signed:           Ian Morley          

For and on behalf of the Supplier

Name:           IAN MORLEY          

Position:           BUSINESS DEVELOPMENT DIRECTOR          

Date:           2/9/2020