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**Leisure Services Delivery Guidance**

**Appendix 2: payment and performance monitoring system template and guidance**

**(Schedule 5 of the Leisure Operating Contract)**

Please note, this document hasn't been amended or reviewed in the context of the Covid-19 pandemic. Given the changing environment, users of this document are asked to consider their specific requirements, seeking advice where necessary from their own advisors.

**SCHEDULE 5**

PAYMENT AND PERFORMANCE MONITORING SYSTEM

1. Definitions
   1. Capitalised terms and expressions used in this Schedule 5 shall, where the context permits or requires, have the same meaning as set out in Clause 1 (Definitions and Interpretation) of this Agreement. In addition, the following words and expressions shall have the meanings set out below:

|  |  |
| --- | --- |
| "**Annual Payment**" | the amount payable [by the Operator to the Authority][[1]](#footnote-1) in respect of each Contract Year, as set out in the table at paragraph [2.6] below and adjusted in accordance with paragraph 3 below |
| "**Indexed Annual Payment**" or "**IAP**" | the Annual Payment as adjusted from time to time in accordance with paragraph 3 below |
| "**Monthly Payment**" | the gross monthly payment to be made by the [Operator to the Authority] as calculated in accordance with paragraph [2.1] below |
| "**Contract Quarter**" | each period of three consecutive Contract Months (or part thereof) in the period from (and including) the Contract Month in which the Commencement Date occurs to (and including) the Contract Month in which the earlier to occur of the Expiry Date and the Termination Date falls |
| "**Facility Performance Failure**" | a failure of the Operator to meet any Performance Standard and/or Operator Commitment Standard set out in Tables 3 and 4 (respectively) of paragraph 6 below |
| "**Logged Time**" | as defined in paragraph [5.7] below |
| "**Quarterly Performance Adjustment Payments**" | the Performance Adjustment Payments to be made in respect of each Contract Quarter, as calculated in accordance with this Schedule 5 |
| "**Performance Adjustment Payments**" | the payments to be made in respect of Facility Performance Failures, as calculated in accordance with this Schedule 5 |
| "**Performance Adjustment Points**" | the points awarded for each Facility Performance Failure, calculated in accordance with this Schedule 5 |
|  |  |

1. Payment Mechanism
   1. The Monthly Payments shall be calculated in accordance with this paragraph 2.1 and paid monthly in arrears in accordance with, and subject to, the provisions of this Schedule and Clause 36 (Payment) of this Agreement:

Monthly Payment (MP) = IAP/12

where IAP = Indexed Annual Payment for the relevant Contract Year.

* 1. Where the Commencement Date occurs, or this Agreement expires or is terminated, part way through a Contract Month, the Monthly Payment shall be calculated pro rata to the number of days in such Contract Month.
  2. Performance Adjustment Points shall be applied in respect of all Facility Performance Failures in each Contract Month.
  3. **[**Quarterly Performance Adjustment Payments**]**[[2]](#footnote-2) in respect of each **[**Contract Quarter**]** shall be calculated in accordance with paragraph [6] below in respect of Facility Performance Failures which are not rectified within the applicable timescales (as identified below) or which fall into Category A1 (as identified below) and which occur or are subsisting in each Contract Month **[**in suchContract Quarter**]**. **[[3]](#footnote-3)**
  4. Subject to Clause 36.4, the QuarterlyPerformance Adjustment Payments, if any, in respect of each **[**Contract Quarter**]** shall be added to the Monthly Payment payable in respect of the **[**second**]** Contract Month of the subsequent **[**Contract Quarter**]** and such **[**Quarterly Performance Adjustment Payments**]** (where applicable) will be paid by the Operator in accordance with Clause 36 (Payment).
  5. The Annual Payment at the Commencement Date is [£X,000][[4]](#footnote-4). [The profiled Annual Payment throughout the Contract Period will be as follows][[5]](#footnote-5):‑ [The profiled Annual Payment is based on an assumed Services Availability Date of [X January 20XX] in relation to [X Facility].][[6]](#footnote-6).

|  |  |
| --- | --- |
| **Contract Year** | **Annual Payment** |
| Year 1 | [£                    ] |
| Year 2 | [£                    ] |
| Year 3 | [£                    ] |
| Year 4 onwards | [£                    ] |

1. Indexation[[7]](#footnote-7)
   1. The Annual Payment shall be adjusted in accordance with indexation on each anniversary of the Commencement Date ("**Current Indexation Date**") in accordance with the formula at paragraph 3.2 below.
   2. The Indexed Annual Payment shall be calculated as follows:‑

I = X/Y;

IAP = I x Annual Payment;

where:‑

X = [Index] at Current Indexation Date; and

Y = [Index] at the Base Date (as defined in Clause 1.4 of this Agreement).

* 1. For the purposes of paragraph 3.1 above the [Index] at the Current Indexation Date means the [Index] most recently published before the Current Indexation Date.
  2. For the purposes of paragraph 3.2 above the value of [Index] at the Base Date is deemed to be [ ].
  3. For the avoidance of doubt, any periodic re‑alignment of the [Index] base should be correctly accounted for in the calculation.

1. Performance Monitoring
   1. The Operator shall regularly monitor and report to the [Strategic Partnership Board] [Authority] on the performance of the Operator under this Agreement in accordance with Section 5 of the Services Specification, paragraph [ ] of the Service Delivery Proposals and Clause 23.2[[8]](#footnote-8)
   2. The Authority's Representative and the Operator's Representative shall meet at a frequency as set out in paragraph 5.2 of the Services Specification. The meetings shall also be the forum for agreeing variation of monitoring activities and procedures as and when necessary.
   3. Without prejudice to paragraph 5.1, the Authority shall have additional monitoring rights as set out in Clause 19.3 of the Agreement .
2. Performance Management Framework
   1. This Performance Management Framework provides a methodology for identifying the Operator's performance against given performance standards set by the Authority and the Service Delivery Proposals. These standards are expressed in the Services Specification [and the Service Delivery Proposals]. The Performance Management Framework thus allows a formal review methodology to assess how the Operator is performing, and whether the Authority is achieving its own aims through the letting of this Agreement.
   2. A measure of performance is undertaken by the use of a Performance Adjustment Points system, which awards Performance Adjustment Points for Facility Performance Failures. Where Facility Performance Failures are not rectified within applicable timescales (as identified below) or fall into Category A1 (as identified below), Performance Adjustment Payments will become payable.
   3. When a Facility Performance Failure is identified it will have a Performance Adjustment Category attached to it as set out in Table 3 (being one of Category A1 to Category E). Category A1 faults result in a Performance Adjustment Payment automatically. Category A to E Facility Performance Failures will automatically attract Performance Adjustment Points and the Operator will be given a Rectification Period by the Authority. If the Facility Performance Failure is rectified within the applicable Rectification Period, the Operator will not be subject to a Performance Adjustment Payment but will still be subject to the applicable Performance Adjustment Points.
   4. The Authority will log all Performance Adjustment Points applied in each Contract Month and cumulatively throughout the term of the Agreement.
   5. The diagram shown in Figure 1 outlines how the Performance Management Framework shall be applied .

Figure 1: Performance Management Framework

Quarterly Performance Adjustment Payments payable

Authority checks threshold for issue of Formal Performance Warning Notice or Termination Notice

Performance Adjustment Points allocated

Category A1

Category C

Fault identified

Performance Adjustment

Category

Rectified within

required period

Provided Authority is satisfied that rectification is complete, no Payment Adjustment Payment is required

Performance Adjustment Points Allocated

Yes

No

Category A,B,C,D,E

Performance Adjustment Payment payable. (failure to complete within further rectification period attracts repeated adjustment points and payments)

* 1. Should a Facility Performance Failure continue after the specified rectification period, then the value of the Performance Adjustment Points to be awarded in respect of such non-rectified Facility Performance Failure for each occurrence shall be increased by 100% of the value set out in Table 2.
  2. Table 1 shows the Rectification Categories and required Rectification Periods (which run in each case from the earlier of:
     1. the time of the Operator's notification of the relevant Facility Performance Failure under paragraph 7 below or, if earlier, the time at which the Operator could reasonably be expected to have notified the Authority of the Facility Performance Failure had it complied with paragraph 7; and
     2. the time on which the relevant Facility Performance Failure is notified to the Operator by the Authority in accordance with paragraph 7, such time being the "Logged Time".

Table 1 Service Rectification Categories

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Rectification Category** | **Category** | **Rectification Period** | **Repeat Period following expiry of the Initial Rectification Period** |
| 1. | Emergency | Immediate | Immediate |
| 2. | Urgent | Within 3 hours of the Logged Time | Within 3 hours of the Logged Time |
| 3. | Necessary | End of the business day following the day during which the Logged Time falls | End of the business day following the day during which the Logged Time falls |
| 4. | Routine | Within 72 hours of the Logged Time | Within 72 hours of the Logged Time |
| 5. | Not Urgent | Within 1 week of the Logged Time | Within 1 week of the Logged Time |

* 1. Performance Adjustment Points and Performance Adjustment Payments are allocated according to six different Performance Adjustment Categories which reflect the seriousness of the Facility Performance Failure.
  2. Table 2 shows the Performance Adjustment Categories and corresponding Performance Adjustment Points and Performance Adjustment Payment.[[9]](#footnote-9)

Table 2 Performance Adjustment Categories

|  |  |  |
| --- | --- | --- |
| **Performance Adjustment Category** | **Performance Adjustment Payment (index linked)** | **Performance Adjustment Points** |
| A1. | £5,000 | 5,000 |
| A. | £1,000 | 1,000 |
| B. | £350 | 350 |
| C. | £200 | 200 |
| D. | £100 | 100 |
| E. | £50 | 50 |

1. Performance Standards
   1. Table 3 shows key Performance Standards from the Services Specification to be achieved by the Operator and the Performance Adjustment Points and resultant Performance Adjustment Payments to be applied in the event of Facility Performance Failure in relation to them. It also shows the monitoring methodology or how the Authority will monitor the Operator's performance against the Performance Standards.

Table 3 Performance Standards

| **Specification Reference** | **Performance Standard (examples)** | **Performance Adjustment Category and Payment** | **Monitoring Methodology** |
| --- | --- | --- | --- |
| XX | The Operator has opened any Facility late or closed any Facility early by fifteen (15) minutes or less. | E  50 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to display up to date information to Users or potential Users at sites and via websites. | E  50 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Staff are not dressed in accordance with the requirements set out in the Services Specification | E  50 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Staff are found to be smoking at the Facilities | E  50 pounds and points per occurrence. | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to maintain equipment at any of the Facilities for Users.  This includes, but is not limited to, vending machines and other coin operating machines. | E  50 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to provide notification to the public of any changes to any of the Facilities | D  100 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to maintain a record of complaints | D  100 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | The Operator has failed to maintain the cleanliness of any part of any Facility | D  100 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to operate an adequate booking system for Users through receptions, telephone and online. | D  100 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to carry out routine maintenance of minor plant and equipment at any Facility | D  100 pounds and points per occurrence | Operator reporting  Client inspection  User complaint  Maintenance audits |
| XX | The Operator has opened any Facility late or closed any Facility early by more than one (1) hour | C  200 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | There has been an incident of abuse by Staff towards a member of the public | C  200 pounds and points per occurrence. | Operator reporting  Client inspection  User complaint |
| XX | The Operator has had to close any part or all of any Facility as a result of inadequate safety in place for Users | C  200 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator has failed to set any burglar alarm or fire alarm at any Facility | C  200 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | The Operator has failed to carry out routine maintenance of any major plant or equipment at any Facility | C  200 pounds and points per occurrence | Operator reporting  Client inspection  Maintenance audits |
| XX | The Operator has failed to carry out a pest control programme | C  200 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | The Operator has failed to observe necessary safety precautions for the provision of the Services | C  200 pounds and points per occurrence | Operator reporting  Client inspection  User complaint  Quest report |
| XX | The Operator has failed to have a Duty officer and a designated first aid at work member of staff during each Facility's opening hours to Users. | C  200 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | The Operator has failed to supply reports as set out in the Services Specification. | C  200 pounds and points per occurrence | Operator reporting |
| XX | The Operator has failed to have sufficient and suitably qualified Staff on duty to meet its health and safety obligations | C  200 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | The Operator has failed to open any part of any Facility for one (1) or more days | B  350 pounds and points per occurrence | Operator reporting  Client inspection  User complaint |
| XX | The Operator and its Staff have failed to respond to a burglar alarm or fire alarm at any Facility | B  350 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | The Operator has failed to open all of any one or more Facilities for one (1) or more days | A  1000 pounds and points per occurrence | Operator reporting  Client inspection |

* 1. In addition to the Performance Standards identified through the Services Specification, key deliverables from the Service Delivery Proposals shall form "Operator Commitment Standards".
  2. Table 4 contains these Operator Commitment Standards, and the Performance Adjustment Points and resultant Performance Adjustment Payments to be applied in the event of Facility Performance Failure in relation to them. It also shows the monitoring methodology or how the Authority will monitor the Operator's performance against the Operator Commitment Standards.

Table 4 – Operator Commitment Standards

| **Bid/Method Statement Reference** | **Operator Commitment Standard (example)** | **Performance Adjustment Category and Payment** | **Monitoring Methodology** |
| --- | --- | --- | --- |
| Operator Service Standards[[10]](#footnote-10) | | | |
| XXX | Failure to deliver capital proposal detailed in method statement XXX within specified time | A1  5,000 pounds and points per occurrence | Operator reporting  Client inspection |
| XXX | Failure to deliver health intervention programmes detailed in method statement XXX | A1  5,000 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | Failure to deliver targeted intervention programme on time as detailed in method statement XXX | A1  5,000 pounds and points per occurrence | Operator reporting  Client inspection |
| XX | Failure to achieve quality assurance standards and specified Quest accreditation | A  1,000 pounds and points per occurrence | Operator reporting  Client inspection  Quest report |
| XX | Failure to implement maintenance and lifecycle replacement programme as supplied by the Operator | A  1,000 pounds and points per occurrence | Operator reporting  Client inspection |
| xx | Failure to install specified ICT systems and associated performance reports. | A  1,000 pounds and points per occurrence | Operator reporting  Client inspection |

* 1. A running total of Performance Adjustment Points shall be kept and used to determine whether an Operator Default has occurred and/or whether there are grounds for issue of a Formal Performance Warning Notice (see paragraph 8 below).
  2. The Performance Management Framework shall apply in full for the duration of the Contract Period unless otherwise agreed by both parties.

1. Notification and Reporting[[11]](#footnote-11)
   1. The Operator shall notify the Authority immediately on becoming aware of any Facility Performance Failure, in such detail as might reasonably be required. The Authority shall also have the ability to notify the Operator of any Facility Performance Failure of which it becomes aware from time to time.
   2. Without prejudice to the Operator's obligations under paragraph 7.1, the Operator shall ensure that the:
      1. [Quarterly Performance Report] to be provided in accordance with paragraph [5] of the Services Specification identifies:
         1. the Operator's performance of the Services against the Performance Standards and Operator Commitment Standards identified in Tables 3 and 4 (respectively) of paragraph 6 above;
         2. all Facility Performance Failures during each Contract Month in the relevant Contract Quarter (including the Logged Time in relation to each such failure)
         3. the Performance Adjustment Points to be made in respect of each such Facility Performance Failure.
   3. Table 5 shows the reporting requirements of the Operator in response to identified performance failures.

Table 5 Facility Performance Failure Reporting

|  |  |  |  |
| --- | --- | --- | --- |
| **Report Level** | **Points Awarded During Previous Quarter** | **Report Type** | **Requirement** |
| **1.** | Up to 750 | Verbal | Explanation of circumstances leading to the reported failures, remedial action taken and details of action to prevent recurrence. |
| **2.** | 751 – 1199 | Written with general verbal support | Detailed explanation plus remedial action taken to bring performance within the 750 point tolerance and details of action to prevent recurrence. |
| **3.** | 1200 – 1499 | Written plus formal presentation/meeting | Detailed written explanation of performance failures plus details of action taken to prevent recurrence. This is expected to include reference to resource shifting, or resource increases. |
| **4.** | Above 1500 | Written plus formal presentation/meeting plus Remediation Plan | Detailed written explanation of performance failures plus details of action taken to prevent recurrence.  Remediation Plan to include reference to additional resourcing allocation to remedy failures. |

1. Formal Performance Warning Notice[[12]](#footnote-12)
   1. The Authority may issue the Operator with a Formal Performance Warning Notice detailing the failure or failures applicable where the Operator incurs in excess of [2,000] Performance Adjustment Points in any rolling six (6) consecutive month period.
   2. The issue of a Formal Performance Warning Notice against the Operator under paragraph 8.1 shall automatically trigger a level four (4) report to the next quarterly meeting with the Operator.
2. Termination[[13]](#footnote-13)
   1. An Operator Default will occur where:

* [The Operator incurs in excess of [4,000] Performance Adjustment Points in any rolling twelve (12) consecutive month period
* in each and every month of any [six (6)] consecutive month period the Operator has incurred [                    ] or more Performance Adjustment Points
* The Operator incurs in excess of [12,000) cumulative Performance Adjustment Points during the contract period.]
* The Authority reserves the right to terminate the Contract in the event of there being [                    ] Adjustment Points in a contract year.

1. Drafting assumes a "Surplus Annual Payment" throughout the term. Where there is a Deficit Annual Payment at the outset, adjust drafting accordingly to read "by the Authority to the Operator". On a case by case basis, it may be appropriate to adjust the drafting (in line with amendments to be made at Clause 36 (Payment) to allow for both Surplus and Deficit Annual Payments. [↑](#footnote-ref-1)
2. The drafting assumes that while Performance Adjustment Points will be reported and applied on a monthly basis, the calculation of Performance Adjustment Payments will take place quarterly. If Authorities wish to apply monthly Performance Adjustment Payments, drafting will need to be adjusted accordingly. [↑](#footnote-ref-2)
3. Procuring Authorities will need to consider whether a cap should be included, on value for money grounds. Where such a cap is accepted, it should be made clear whether the Performance Adjustment Points that give rise to any Performance Adjustment Payments beyond the cap are still relevant for the purposes of limbs (i), (j) and (k) of the definition of Operator Default. [↑](#footnote-ref-3)
4. Figure to be inserted at financial close. [↑](#footnote-ref-4)
5. Profiled figures to be inserted at financial close, where appropriate. This additional drafting is only required where a profiled Annual Payment has been agreed over the (for instance) first 1–3 years of the Contract Period prior to a fixed Annual Payment for the remainder of the Contract Period rather than a fixed Annual Payment, subject to indexation. For some projects a profiled Annual Payment throughout the Contract Period may be more appropriate, and the table should be amended to reflect the agreed payment each Contract Year. [↑](#footnote-ref-5)
6. This drafting is only required where it is envisaged that a new facility will be coming on line following the Commencement Date (where the Operator is not responsible for the design and build and therefore does not take the risk of achieving the Service Availability Date that has been assumed in the financial model). [↑](#footnote-ref-6)
7. Note that, in Surplus Annual Payment schemes, it is not recommended that Authorities seek to pass all inflation risk to the Operator, and accordingly the Annual Payment should be adjusted annually to account for the effects of inflation. This drafting assumes that the Annual Payment will be subject to adjustment in accordance with movements in the same Index that applies for general purposes pursuant to Clause 1.4 of this Agreement. The Authority may prefer to adopt a different indexation mechanism for the annual payment, for example a "basket" of indices. Indexation adjustment is considered to be the appropriate mechanism to address general market issues which may affect the costs of the Operator in performing its obligations under this Agreement, including the impact of any changes in minimum wage legislation over time. Changes in minimum wage would not constitute a Qualifying Change in Law under the Agreement. [↑](#footnote-ref-7)
8. See Clause 19.2 of the Agreement [↑](#footnote-ref-8)
9. In both deficit and surplus schemes, the level of Performance Adjustment Payments needs to be reasonable and strike a balance between incentivising and not being too painful for the Operator. Performance Adjustment Payment levels should be no more than an agreed percentage of the Operator's profit margin and should not be seen to bite into the cost of the provision of the Services as it is recognised that the Operator will still be incurring running/ staffing costs during any period of Facility Performance Failure while potentially losing revenue. The Performance Monitoring System should not be used by an Authority as a tool for generating revenue, it is intended to be a performance based form of monitoring tool. The Performance Adjustment levels will need to be calibrated appropriately based on the proposed Annual Payment. The adjustment level could be measured against the value of the leisure service to the community i.e. the cost of providing the service (irrelevant of the level of income achievable for a particular Facility in a particular condition in a particular catchment) as that is what the Authority has awarded the contract to the successful Operator for. The payment and performance monitoring system will need to be aligned to ensure that any amounts set out for adjustments in relation to poor performance are calculated in the context of being proportionate to the legitimate interests of the Authority and not capable of being construed as exorbitant, extravagant or unreasonable. [↑](#footnote-ref-9)
10. Authorities to insert Operator Service Standards extracted from the Operator’s bid (method statements). This is to ensure that the Authority can include commitments made in the Operator’s bid within the performance mechanism. [↑](#footnote-ref-10)
11. Local authorities should set out the approved communications modes for reporting failures e.g. telephone followed by email. [↑](#footnote-ref-11)
12. Authorities to set warning notice thresholds. [↑](#footnote-ref-12)
13. Authorities to set termination thresholds and to ensure these are aligned with the definition of Operator Default – see limbs (i), (j) and (k) of the definition. [↑](#footnote-ref-13)