



The City of Edinburgh Council

Schedule B - Terms and Conditions of Contract

FOR THE USE OF THE MEADOWS

FOR THE EDINBURGH FESTIVAL PERIOD OF 2015

**WITH AN OPTION TO EXTEND FOR THE EDINBURGH
FESTIVAL PERIOD OF 2016**

THE CITY OF EDINBURGH COUNCIL'S CONDITIONS OF CONTRACT

These Conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Council.

1. DEFINITIONS

In these Conditions:

'*Council*' means the City of Edinburgh Council, a local authority constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG;

'*Contract*' means the contract between the Council and the Contractor consisting of the Form of Contract, the Specification, these Conditions, and the Schedule in six parts;

'*Contractor*' means the person, firm or company to whom the Contract is issued;

'*Services*' means the services to be provided as specified in the Specification and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'*Site*' means the location where the Services are to be performed, as specified in the Specification;

'*Specification*' means the document setting out the Council's requirements for the Contract as detailed in Schedule A.

2. CHANGE TO CONTRACT REQUIREMENTS

- 2.1 The Council and the Contractor shall be entitled to propose variations to the Services and/ or this Contract.
- 2.2 Any such variation shall be communicated in writing by the party proposing the variation to the other party.
- 2.3 In the event that the parties are unable to agree a variation, then either party may serve notice on the other outlining the terms of the dispute. Such notice shall propose a time and place for a meeting between the parties' representatives where they shall attempt to resolve the dispute. The other party shall respond to such a notice within five working days of receipt.
- 2.4 If the matter is not resolved within ten working days of the service of the notice, the matter may be referred by either party to the appropriate

senior officer in the Council and the appropriate senior officer in the Contractor's organisation for resolution. If the dispute is not resolved within a further ten working days the matter may be referred by either party to a mutually acceptable third party whom failing a third party appointed by the President of the Law Society of Scotland on the application of either party. If the parties are unable to resolve the dispute within a further ten working days of the third party being appointed, then the proposed variation will lapse.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

- 3.1 The Contractor is deemed to have inspected the Site before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.
- 3.2 The Council shall, at the request of the Contractor, grant such access to the Contractor as may be reasonable for the purpose of providing the Services at the Site but subject to the Contractor entering into the licence for the Site as set out in Schedule D.

4. CONTRACTOR'S STATUS

- 4.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council. Accordingly:
 - (a) the Contractor shall not say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Council, or is able to enter into any contract on behalf of the Council or in any way to bind the Council to the performance, variation, release or discharge of any obligation; and
 - (b) nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council, or the Council's staff or agents; and
 - (c)

(c) nothing in this Contract shall constitute a contract of Service.

5. CONTRACTOR'S PERSONNEL

- 5.1 The Contractor shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Site. If the Council gives the Contractor notice that any person is not to be admitted to or is to be removed from the Site or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Council the Contractor shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered. The Council is required to give a valid and reasonable reason for giving such notice and the Council will act reasonably and properly in making the decision to have the person removed before informing the Contractor of its decision to do so.
- 5.2 If and when instructed by the Council, the Contractor shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.
- 5.3 The decision of the Council shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Site or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of the Contractor by this Condition. The Council is required to give a valid and reasonable reason for making its decisions and the Council will act reasonably and properly in doing so.
- 5.4 The Contractor shall bear the cost of any notice, instruction or decision of the Council where the Council is acting reasonably and properly under this Condition.
- 5.5 If the Council serves notice under this Condition 5 and a person is removed from the Site or removed from being involved in the performance of the Contract, then the Contractor shall be relieved from the performance of its obligations under this Contract only to the extent that the relevant person was responsible for the performance of those obligations, and until such time as the Contractor is able to replace the relevant person with an alternate person. In replacing the

person, the Contractor shall always act as reasonably practicable in doing so.

6. MANNER OF CARRYING OUT THE SERVICES

- 6.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Site without obtaining the Council's prior consent.
- 6.2 Where third parties have access to the Site (as specified in the Specification), then the Contractor shall carry out the Services concurrently with the execution of work by those third parties and the Contractor shall co-operate with such others as the Council may reasonably require.
- 6.3 The Council grants the Contractor the exclusive right and licence to provide the Services to the Council, in the City of Edinburgh, on the terms and conditions of this Contract. The parties acknowledge that the nature of the Services is seasonal to the Edinburgh Festival period and the Council agrees to keep the Contractor fully and properly informed and in good time of any other activities it is involved in for the marking and celebration of the Edinburgh Festival period for the general public.
- 6.4 The Council shall have the power at any time during the progress of the Services to order in writing:
- (a) the removal from the Site of any materials which in the opinion of the Council are either hazardous or noxious;
 - (b) the substitution of proper and suitable materials; and/or
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract, subject to the Council always acting reasonably and providing its reason to the Contractor and, in any event, only applying this provision to materials (or workmanship) provided by the Contractor (or its sub-contractors) and subject further to the Council allowing the Contractor a reasonable period of time within which to remedy the Services concerned before the Council would make such an order.
- 6.5 The Contractor shall forthwith comply with any order made under Condition 6.4.
- 6.6 On completion of the Services the Contractor shall no later than 2 September 2015 remove the Contractor's plant, equipment and unused materials and shall clear away from the Site all

rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

- 6.7 In the event of extension of the Contract for the Festival Period of 2016, the parties shall agree relevant dates.

7. HEALTH AND SAFETY

- 7.1 The Contractor shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Council, whether specifically or generally. The Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition except where any claim arises from any action, negligence or omission of the Council.

8. TERM AND TIME OF PERFORMANCE

- 8.1 The Contractor shall begin performing the Services on the date stated in the Specification and shall complete the Services by the date stated in the Specification or continue to perform them for the period stated in the Specification (whichever is applicable).
- 8.2 The Contract shall take effect on the last date of its signature and shall expire on the performance by both parties of their respective obligations under this Contract as regards the Edinburgh Festival 2015 unless it is extended for the Festival Period of 2016, or otherwise terminated in accordance with the provisions of the Contract or otherwise lawfully terminated or extended.
- 8.3 In the event of extension of the Contract for the Festival Period of 2016, the parties shall agree relevant dates.

9. PAYMENT

- 9.1 The Contractor shall pay the Fees to the Council as set out in Schedule C on the terms contained therein.

- 9.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

10. FREE-ISSUE MATERIALS

Where the Council for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Council. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of the Contractor's servants, agents or sub-Contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Council, the Contractor shall deliver up such materials whether processed or not to the Council on demand. For the purposes of this condition 10, "materials" shall mean those items set out as such in the Specification.

11. AUDIT

- 11.1 The Contractor shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Council of all information required to calculate and verify the requirements for, payment of the Fee to the Council. The Contractor shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with the Contract. The Council shall bear its own costs in carrying out the audit.
- 11.2 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

12. PREVENTION OF CORRUPTION

The Contractor shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010. The Council reserves the right to cancel the Contract without incurring any penalty whatsoever and to recover from the Contractor the amount of loss resulting from such cancellation if the Contractor or his representative (whether with or without the knowledge of the Contractor) shall have acted in a manner contrary to the requirements under the Bribery Act 2010 in respect of any direct or indirect business carried out for the purposes of the Contract with the Council.

13. PATENTS, INFORMATION AND COPYRIGHT

13.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Council, that nothing done by the Contractor in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Contractor shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.

13.2 **Council Pre-Existing Intellectual Property.** The parties agree that all rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs, whether in writing or on magnetic or other media, and other intellectual property rights, including the Council's trade marks, trade names, artwork, designs, copyrights and logos and any other intellectual property including domain names, which relate to the Edinburgh Festival and which existed or which were created prior to the Contractor providing the Services in accordance with this Contract ("**Council Pre-Existing Intellectual Property**") shall be and shall remain the sole and exclusive property of the Council.

13.3 **Contractor Pre-Existing Intellectual Property.** The parties agree that any rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs, whether in writing or on magnetic or other media, and other intellectual property rights, including the Contractor's trade marks, trade names, artwork, designs, copyrights and logos and any other intellectual property including domain names, which are owned by the Contractor, shall be and shall remain the sole and exclusive property of the Contractor ("**Contractor Pre-Existing Intellectual Property**"). The parties agree that the Contractor Pre-Existing Intellectual Property shall not include the Council's Pre-Existing Intellectual Property.

13.4 The Contractor shall not refer to the Council or the Contract in any advertisement without the Council's prior written consent.

14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Council, the Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may

result directly or indirectly from any negligent or wrongful act or omission of the Contractor. The Contractor shall be responsible for the performance, omissions, defaults, failures and neglects of all and any of the Contractor's employees. The Council shall not be held liable in damages or otherwise to the Contractor as a result of this Agreement or the Contractor's use of the Site or as a result of the cancellation of the Edinburgh Festival or events at the Meadows howsoever caused.

14.2 The indemnity contained in Condition 14.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council.

14.3 The Contractor shall indemnify the Council against losses incurred by the Council in the event of cancellation and /or abandonment of the Services or any part of the Services for reasons beyond the control of the Contractor including extreme weather conditions.

14.4 Neither party shall have any liability for any failure to perform its respective obligations under this Contract (or any additional liability for any additional expenses of the other party) other than its obligation under conditions 14.3 (indemnity) and condition 14.6 (insurance) due to any cause beyond the control of the parties to include but not limited to any fire, earthquake, flood, extreme weather conditions, epidemic, explosion, strike, lock out, riot, civil disturbance, act of public enemy, embargo, war, Act of God, the making of any local or central government law or ordinance by any legally constituted authority or the issue of any executive or judicial order ("**Force Majeure Event**"). This Condition shall not operate so as to exclude, restrict or suspend the Contractor's requirement to indemnify the Council pursuant to Condition 14.3 above.

14.5 In the event of a Force Majeure Event or if, in the reasonable opinion of either party, the Site and/or any part of the Site becomes unfit or unsafe for public use, then either party may suspend this Contract and both parties' rights and obligations under this Contract by written notice to the other. At such time as the reason for the suspension in accordance with this Condition is resolved or otherwise no longer relevant to the Site and/ or the Services, then the suspension referred to hereunder will be lifted. Neither party shall have any liability for any failure to perform its respective obligations under this Contract (or any additional liability for any additional expenses of the other party) for the duration of such suspension. This Condition shall not operate so as to exclude, restrict or suspend the Contractor's requirement to indemnify the Council pursuant to Condition 14.3 above.

14.6 The Contractor shall have in force and shall require any relevant sub-Contractor to have in force:

- (a) employer's liability insurance in accordance with any legal requirements for the time being in force; and
- (b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £10 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing;
- (c) such insurance shall be with an insurance company approved by the Council in writing not less than twenty eight days prior to the commencement of the building phase under the Contract, and shall provide indemnity against all claims of the nature hereinbefore described and the Contractor shall pay during the currency of this Contract all premiums and monies necessary to keep the insurance in force and shall exhibit said policy or evidence thereof to the Council no later than twenty one days prior to the commencement of the building phase under the Contract.

14.7 The Contractor shall ensure that the policies of insurance referred to in Condition 14.6 shall have a scope of cover and exceptions/exclusions and be on terms acceptable to the Council, acting reasonably and provided that the scope of cover and exceptions/exclusions shall be deemed to be acceptable to the Council if

the policies of insurance referred to in Condition 14.6 are governed by Scots law and subject to the jurisdiction of the Scottish Courts.

14.8 The policy or policies of insurance referred to in Condition 14.6 shall be shown to the Council whenever the Council requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder and the Council shall be named, at the Council's option, as an assured and/or as a loss payee in relation to any claim under the insurance policies referred to in Conditions 14.6 (b) and (c).

15. EQUAL OPPORTUNITIES/ DISCRIMINATION

15.1 In providing the Services, the Contractor shall comply with Equal Opportunities and the Public Sector Equality Duty and shall ensure compliance with the Council's written policies

on such matters and with all Laws, regulations and guidance from time to time applicable in such regard, provided that the Council makes the Contractor aware of its policies and relevant guidance prior to the Contractor's provision of the relevant Services.

15.2 The Contractor shall provide such information and documentation to the Council as the Council may reasonably require from time to time (except that the Contractor shall anonymise any personal data to be provided to the Council) for the purposes of:

- (a) assessing the Contractor's compliance with its obligations under this clause;
- (b) enabling the Council to review diversity in employment data such as total staff in post, applications for posts, appointments to post, annual gender pay audits, promotions, performance reviews, training, disciplinary matters, grievances, tribunal matters and all other relevant information required for the Council to comply with its Public Sector Equality Duty; and
- (c) enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Contractor's approach to equalities, diversity and human rights.

15.3 In delivering and reviewing the Services the Contractor shall:

- (a) comply with the Council's Public Sector Equality Duty and shall have regard to any guidance provided by Scottish Ministers for local authorities on the Public Sector Equality Duty (including assisting in or preparing reports in order to secure the Council's compliance with the Public Sector Equality Duty);
- (b) comply with reasonable requests for information or data in respect of the Council's Public Sector Equality Duty including where the Council undertakes an equalities impact assessment.

15.4 The Contractor shall deliver the Services in a non-discriminatory manner that ensures fairness and equality to all users of the Services. The Contractor recognises that the Council has a responsibility to monitor the extent to which the provision of the Services extends to groups who are at risk of social exclusion. The Contractor agrees, where appropriate and practicable, to provide information to the Council in relation to employment and use of the Services by the following criteria:

- (a) age;
 - (b) sex;
 - (c) sexual orientation;
 - (d) disability;
 - (e) religion or belief;
 - (f) race;
 - (g) marriage and civil partnership;
 - (h) pregnancy and maternity; and
 - (i) gender reassignment.
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15.5 The Contractor shall not discriminate directly or indirectly, by way of victimisation or harassment, against any person on grounds of age, sex, sexual orientation, disability, religion or belief, race, marriage and civil partnership; pregnancy and maternity and gender reassignment contrary to the Equality Act 2010.

15.6 The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the legislation contained in the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of this Contract being in contravention of the Equality Act 2010, the Contractor shall free of charge:

- (a) provide any information requested in the timescale allotted;
- (b) attend any meetings as required and permit the Contractor's affected staff to attend;
- (c) promptly allow access to and investigation of any document or data deemed to be relevant;
- (d) allow itself and any staff of the Contractor to appear as witness in any ensuing proceedings; and
- (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Contractor, its agents or subcontractors, or the staff of the Contractor, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment of the Council may have been ordered or required to pay to a third party.

15.7 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010, the Contractor may be subject to the requirement to complete a questionnaire and/or provide information to the Council's officers on the context and quality of the Contractor's equalities and diversity policies and practice. Poor practice in this regard may result in the Council issuing a finding to comply letter describing the nature of the improvement required and associated timescales.

15.8 In the event that the Contractor enters into any subcontract in connection with this Contract, it shall impose obligations on its subcontractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this clause.

16. CONFIDENTIALITY AND FREEDOM OF INFORMATION

16.1 Subject always to the terms of the Freedom of Information (Scotland) Act 2002 (FOISA), both parties shall not and shall ensure that their employees do not without the written consent of the other party during the period of this Contract or at any time thereafter divulge to any third party any information which comes into their possession in the course of providing the Services.

16.2 The Council is committed to meeting its responsibilities under FOISA. Accordingly, all information submitted to the Council may require to be disclosed or published by the Council. If the Contractor considers that specific information provided to the Council is potentially exempt from disclosure under FOISA (where for example it is considered commercially confidential) the Contractor should identify exactly which information it considers to be exempt, state the period of sensitivity and provide justification for its assertions (for example identify what harm may result from disclosure). The Contractor should note that the Council is not bound by the Contractor's view and may in its absolute discretion disclose and / or publish any such information in order to comply with FOISA.

16.3 If the Council receives a request pursuant to FOISA that concerns this Contract, the Contractor or the Services, then, before responding to such request, the Council shall always notify the Contractor of the request and, to the full extent that it is legally able to do so, it shall disclose the details of the request to the Contractor.

16.4 The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

17. TERMINATION

17.1 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:

- (a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or the sequestration of the Contractor's estate or a criminal bankruptcy order is made against the Contractor, or the Contractor is apparently insolvent, or makes any composition or arrangement with or for the

benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Contractor's affairs; or

(b) where the Contractor is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

(c) where the Contractor is a company, if the company passes a resolution for winding-up of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

17.2 On the occurrence of any of the events described in Condition 17.1 or, if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 5 working days of being required by the Council in writing to do so or, where the Contractor is an individual if the Contractor shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect. Thereupon, without prejudice to any other of the Council's rights, the Council may complete the Services or have them completed by a third party, using for that purpose all materials, plant and equipment on the Site belonging to the Contractor, and the Council shall not be liable to make any payment to the Contractor for such, and shall be entitled to recover on demand as a debt from the Contractor the costs thereof incurred by the Council (including the Council's own costs). In any event, the Contractor shall act reasonably and shall minimise the costs incurred by it or its contractors under this Condition.

17.3 Termination under Condition 17.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council and shall not affect the continued operation of Conditions 11, 13 and 16.

17.4 If the Council shall have committed a material breach of this Contract and (if such breach is

capable of remedy) shall have failed to remedy such breach within 5 working days of being required by the Contractor, the Contractor shall be entitled to terminate this Contract by notice to the Council with immediate effect. In such an event, the Council shall be entitled to retain all payments made to the Council by the Contractor in terms of this Contract (and where no payment has yet been made by the Contractor the Contractor shall be liable to make payment to the Council of such payments as may be required to be made to the Council in terms of Schedule A and Schedule C in respect of the period of the Contract up to and including the date of termination.

18. VENDORS, ASSIGNATION AND SUB-CONTRACTING

18.1 The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the Council.

18.2 If the Council reasonably believes that the presence of a person in the capacity of vendor, concessionaire, steward or in any other public-facing capacity relating to the Services referred to in Schedule A would constitute a safety risk to any attendee at the relevant event (the person whose presence constitutes that safety risk being an "Unapproved Person") and the Council notifies the Contractor in writing (including without limitation via an email to the Contractor) that it wishes that Unapproved Person to be removed from any such activity or event then the Contractor shall procure that Unapproved Person's removal as soon as possible and in any event within twenty-four hours.

18.3 The Contractor shall require each person engaged by the Contractor for the purposes of the provision of the Services to complete the following declaration as part of the application by or appointment of any person to work in the provision of the Services referred to in Schedule A: *"I am not aware of any circumstances and I have not committed any act that might bring The City of Edinburgh Council's reputation into disrepute and, as far as I am aware, no member of staff that has committed any act that might bring The City of Edinburgh Council's reputation into disrepute"*.

18.4 Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract or these Conditions.

19. LIMITATION OF LIABILITY

19.1 Except with respect to Condition 14.1 (where the Contractor's total liability for the injury to

any person shall be unlimited) the Contractor's total liability shall be limited as follows:

- (i) for damage to property the Contractor's liability shall be limited to £5million for any one incident;
- (ii) for cancellation or abandonment of the provision of the Services referred to in Schedule A for reasons other than breach of any of the Contractor's obligations under this Contract the Contractor's liability shall be limited to the total of any costs incurred by the Council in supplying the Services itself or via a third party;
- (iii) if any of the Services referred to in Schedule A do not take place or are curtailed, restricted or foreshortened because of a breach of any of the Contractor's obligations under this Contract the Contractor's liability shall be limited to the total of any costs incurred by the Council in supplying the Services itself or via a third party.

19.2 The Council's total liability to the Contractor in respect of any claims (whether in contract, negligence or otherwise) under or in connection with this Contract shall be limited to direct losses suffered by the Contractor and shall not exceed the total amount payable by the Contractor to the Council under the Contract, SAVE that the Council's total liability shall be unlimited in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Council.

20. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Specification, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

21. DISPUTES

21.1 In the event of any dispute between the parties relating to the terms and conditions of this Contract or the provision of the Services either party may serve notice on the other outlining the terms of the dispute. Such notice

shall propose a time and place for a meeting between the parties' representatives where they shall attempt to resolve the dispute. The other party shall respond to such a notice within five working days of receipt.

21.2 If the matter is not resolved within ten working days of the service of the notice, the matter may be referred by either party to the appropriate senior officer in the Council and the appropriate senior officer in the Contractor's organisation for resolution. If the dispute is not resolved within a further ten working days the matter may be referred by either party to a mutually acceptable third party whom failing a third party appointed by the President of the Law Society of Scotland on the application of either party. If the parties are unable to resolve the dispute within a further ten working days of the third party being appointed, then either party shall be entitled to commence proceedings against the other.

22. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the parties. The Contract supersedes all prior negotiations between the parties and all representations and undertakings made by one party to the other, whether written or oral, except that this Condition shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

23. DATA PROTECTION

Each party warrants to the other that it shall comply with all the requirements of the Data Protection Act 1998, and shall offer reasonable assistance to the other party in order to ensure compliance by that party in this regard

24. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Contractor hereby irrevocably submits to the jurisdiction of the Scottish courts.

25. SPECIAL CONDITIONS

25.1 The Contractor (in cases where the Contractor is itself to perform Security Industry Services (Security Industry Services are defined in section 25(1) of the Private Security Industry Act 2001 (hereinafter referred to as "the Act")) and any sub-contractor(s) of the Contractor (in cases where such sub-contractors(s) is to perform the Security Industry Services) shall be registered with the Security Industry Authority (SIA) in terms of section 14 of the Act as an approved provider of security industry services.

25.2 All event stewarding and crowd safety services must be in accordance with BS 8406 or

equivalent accreditation and to the satisfaction of the Event Planning Operations Group (EPOG).

25.3 The Contractor will enter into the Council's standard form licence /lease agreement (which is not subject to further negotiation) immediately on request by the Council. Further, the Contractor will ensure that any sub-contractor(s) as permitted in terms of this contract also enter into the Council's standard form licence/lease agreement (which again is not subject to negotiation) as detailed in Schedule D. In the event the Council exercises its rights referred to in Condition 25.4 the standard form licence/lease agreement will provide that the agreement is assigned from the Contractor to the Council (and can be re-assigned from the Council to the Contractor, at the Council's instruction).

25.4 The Contractor shall neither be relieved of its obligations to provide the Services in accordance with the provisions of the Contract nor be entitled to any payment from the Council as a result of:

(a) a general change in law (means a change in law which comes into effect after the commencement date of the Contract where the change is of a general legislative nature (including taxes or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services); or

(b) a specific change in law where the effect of that specific change in law on the Services is known at the commencement date of the this Contract (meaning a change in law which comes after the commencement date of the Contract) that relates specifically to the business of the Contractor, and which would not affect a comparable supply of services of the same or similar nature to the supply of the Services.

25.5 At the termination of the Contract (and howsoever arising) the Contractor shall deliver to the Council upon request all the Council's property (including but not limited to materials, documents, information and access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors.

25.6 The Contractor shall not in any way prevent, impede or hinder the Council or its servants or agents (including without prejudice to the foregoing generality, all and any users of any part of the Site during the period of this Contract) from carrying on their duties in the site.

25.7 The Council shall be entitled to continuously inspect all or any part of the Site at any time during the currency of the Contract to ensure that the Contractor is complying with the terms of this Contract or for any other reasonable purpose. Should any site be found by the Council to be in a dangerous condition or be subject to any dangerous practice, the Council may take such steps as it considers necessary to minimise or remove the danger and the cost thereby incurred shall be due and payable to the Council by the Contractor.

This is the Schedule D referred to in the foregoing Contract between The City of Edinburgh Council and the Contractor.

Schedule D Council's - Standard Form Licence/Lease Agreement

This Licence is entered into between:

(1) THE CITY OF EDINBURGH COUNCIL, a local authority constituted in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh (hereinafter referred to as the "Council"); and

(2) [THE CONTRACTOR], [INSERT CONTRACTOR DETAILS] (hereinafter referred to as "Contractor")

Definitions and Interpretation

1.1 Definitions

In this Licence:-

"Business Day" means a day on which clearing banks in Edinburgh and Glasgow are open for normal business;

"Consents" means all necessary consents whether by statutes, regulations, laws and others and which may apply to the Event and the Venue land on which it is situated, including without limitation the Land Reform (Scotland) Act 2003, the public entertainment agreement or licence issued or to be issued by the Council in respect of the Event in terms of the Civic Government (Scotland) Act 1982 and any licence issued in terms of the Licensing (Scotland) Act 2005;

"Contract" means the contract for the Use of The Meadows for the Edinburgh Festival Period of 2015 (with an option to extend for the Festival Period of 2016) between The City of Edinburgh Council and the Contractor (Ref No: []);

"Date of Entry" means 4 August 2015 or such other date as may be mutually agreed between the Parties;

"Date of Termination" means the date upon which this Licence terminates;

"Event" means the provision of a ticketed venue for either a cultural, concert or live performance event or events on The Meadows for the Edinburgh Festival for 2015 (and for 2016, subject to extension) and to be held at the Venue for the Term in accordance with the Contract;

"Final Day of Operational Use" means the following date: 30 August 2015;

"Interest" means interest on the sum in question at the rate 4 per cent per annum above the base rate from time to time of the Clydesdale Bank plc from the date that the sum is due for payment or, if there is no such date specified, the date of demand for the sum until it is paid;

"Operator Agreement" means the draft Agreement comprised in Part 1 of the Schedule;

"Parties" means the Council and the Contractor and "Party" refers to either of them as the context requires;

"Permitted Use" means occupation of the Venue for the purposes of organising and delivering the Event;

"Plan" means the plan comprised in Part 2 of the Schedule;

"Reinstatement Costs" means the Council's proper and reasonable estimate of the sums likely to be incurred by the Council in making good damage to the Venue to include without prejudice to the generality the grass, footpaths, path edges, trees, shrubs or other planted material, reinstatement of any damage to walls, gates, piers, fencing, bins, walkways, statues, the replacement of flower beds which have been removed in advance of the Date of Entry to facilitate the Event, clean-up costs, gardeners costs, park patrol costs and park ranger costs;

"Schedule" means the schedule in two parts annexed and signed as relative hereto;

“Schedule of Condition” means the full and accurate photographic schedule of condition to be prepared by the Council prior to the Date of Entry to evidence the condition of the Venue and signed as approved by the Contractor prior to the Date of Entry, which photographic schedule shall be deemed to evidence the condition of the Venue as at the Date of Entry, both the Contractor and the Council shall be obliged to act reasonably and in good faith in preparing and approving the schedule of condition of the Venue, which the Parties will each sign in duplicate and retain one copy of. The Council and the Contractor shall be deemed to have agreed and accepted the Schedule of Condition as an accurate record of the state of repair and condition of the Venue as at the Date of Entry once it is signed as aforesaid;

“Term” means the period from the Date of Entry until 2 September 2015 or such earlier termination or expiry in terms of this Licence; and

“Venue” means that area of ground in The Meadows, Edinburgh, and shown hatched in blue on the Plan.

1.2 Interpretation

Save to the extent that the context or the express provisions otherwise requires, in this Licence:-

- 1.2.1 words importing any gender include all other genders;
- 1.2.2 words importing the singular number only include the plural number and vice versa;
- 1.2.3 words which import the whole are to be treated as including reference to any part of the whole;
- 1.2.4 obligations contained in this Licence undertaken by more than one person shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 1.2.5 words importing individuals include legal persons and vice versa;
- 1.2.6 reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and includes any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision; and
- 1.2.7 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

1.3 Headings

The headings in this Licence are included for convenience only and are to be ignored in construing this Licence.

1.4 Statutory duties

For the avoidance of doubt, nothing herein contained or implied or done in terms of this Licence shall prejudice or affect the powers, rights, duties and obligations of The City of Edinburgh Council or its statutory successors as local authority, Planning Authority, Building Control Authority, Roads Authority or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve the Contractor of the necessity of obtaining from The City of Edinburgh Council or its statutory successors in said capacity all consents, permissions, warrants or approvals as may be requisite under or by virtue of any such public or local Act or others.

2 Grant of Licence

- 2.1 Subject to due compliance by the Contractor with their obligations under this Licence and payment of the sums due hereunder, the Council will permit the Contractor to occupy and use the Venue for the Permitted Use for the Term in its present condition as evidenced by the Schedule of Condition and the Council will be put to no expense now or in the future on account of this permission to occupy (other than as provided for in the Contract).

- 2.2 The Contractor will occupy the Venue as mere licensee only and acknowledges that possession of the Venue is retained by the Council subject to the rights created by the Licence.
- 2.3 The Parties agree that the Licence is not a lease and does not confer any tenancy rights on the Contractor.
- 3 Rent
- No rent will be payable by the Contractor to the Council in relation to the use of the Venue for the Term.
- 4 Contractor's Obligations to Pay
- 4.1 The Contractor shall pay any and all local taxes and other public burdens in respect of the Venue.
- 4.2 The Contractor shall not be entitled to install, supply or use any electrical, gas, oil or telephone appliances in the Venue without the prior written consent of the Council, and any approved cabling so installed shall be above ground level and installed to the satisfaction of the Council. The Contractor must pay all costs in connection with the supply and use of all electricity, gas, water, telecommunications, data, sewage and other services and utilities to or from the Venue during the Term and for the removal of all such services and utilities insofar as they have been specifically installed by the Contractor.
- 4.3 The Contractor shall relieve the Council of all claims, demands and actions in any respect whatsoever arising out of the Contractor's occupation and use of the Venue and any access thereto, except where such claims or actions arise from an act, omission, negligence or wilful misconduct of the Council.
- 5 Use
- 5.1 The Contractor will use the Venue for the Permitted Use and for no other purpose.
- 5.2 For the avoidance of doubt the Council gives no warranty that the Venue is suitable for the Permitted Use; or the Permitted Use is or will remain the permitted use of the Venue within the provisions of the planning or other relevant legislation from time to time.
- 5.3 The Contractor will comply with all statutes, regulations, laws and others which apply to the Event and the Venue, as well as the Consents and will obtain at its own cost any permits or Consents required in connection with the delivery of the Event.
- 5.4 The Contractor shall not permit or bring in or upon the Venue anything which may put thereon any weight or strain in excess of that which such item is calculated to bear with due regard to a margin of safety.
- 5.5 The Contractor shall enclose the Venue with suitable barriers or fences only if so required by the Council or, in the Contractor's opinion, if required for the safety and welfare of its employees, agents or subcontractors or the general public and shall maintain the barriers and fences, in good repair and condition, all to the satisfaction of and free of expense to the Council.
- 5.6 The Contractor must provide the Council with a copy of the fire risk assessment which it prepares for the Venue and the records that it keeps in accordance with the current fire regulations. The Contractor shall observe all fire and other safety precautions relating to the Venue and in particular it shall ensure that all temporary fittings installed by the Contractor are fireproofed to the satisfaction of the Chief Fire Officer, Scottish Fire and Rescue Service.
- 5.7 No nuisance (including vermin infestation) shall be permitted or created on the Venue, which may cause annoyance or disturbance to the Council, its tenants or neighbouring proprietors or tenants and of such nuisance the Council shall be sole judge (and in the event of such nuisance, then the Council shall inform the Contractor and the Council shall grant the Contractor a reasonable period of time in which to remove or otherwise remedy the nuisance). The Contractor shall at all times comply with the requirements laid down by the Council's Department of Services for Communities with regards to noise levels for the Event.
- 5.8 The Contractor must ensure that all proper precautions must be taken to prevent any spillages of fuel or cooking oils etc. at the Venue. All metal tent pegs and other objects must be removed from the Venue and adjoining ground following the Event.

5.9 Tracking must be laid by the Contractor to allow vehicle movement without any damage to the grass whether at the Venue or on adjoining property. Only fork lift and designated small vehicles will be entitled to work on the grass.

5.10 In the event that the Contractor requires to oversail any of the Council's property for installation of equipment at the Venue, then the Contractor shall do so in terms of an Oversail Agreement to be entered into in advance of any such works in a form to be specified by the Council. In the event that the Contractor requires to oversail any property not belonging to the Council, then in such an event the Contractor shall undertake to enter into an oversail agreement with the relevant property owner and if necessary the tenant, and shall indemnify the Council against all claims arising from such oversail.

6 Alterations

No building or other permanent structures will be erected on the Venue without the prior written consent of the Council. The Contractor will be obliged to obtain any necessary Consents for any structures to be erected on the Venue.

7 Maintenance

7.1 The Contractor will at its own expense maintain, repair and renew any structures or erections placed by it on the Venue, together with the drains, water, gas, electrical and other services relative thereto and installed by it in good and substantial repair and to the satisfaction of the Council.

7.2 Notwithstanding any rule of common law, the Council shall not be obliged to carry out any works of repair or otherwise to the Venue except in cases of emergency when the Council is hereby permitted to do so in the interests of making the Venue safe and secure.

7.3 The Contractor will be liable for any damage caused to any footpaths, verges, roads in exercise of the rights of access granted in terms of this Licence or otherwise. The Contractor will at the request of the Council carry out such repairs immediately as directed by the Council and to the Council's reasonable satisfaction.

8 Removal and reinstatement

8.1 At the expiry or sooner termination of this Licence, without warning or process of removing, the Contractor shall remove all fences, barriers and other structures placed by the Contractor on the Venue and any adjoining ground and shall restore and leave the ground void and redd to the satisfaction of and free of expense to the Council.

8.2 The Contractor shall commence the breakdown/remove process from the Venue on the Final Day of Operational Use or the following day (or such other date as agreed with the Council), provided that the Council may request a delay to the breakdown/remove process, having regard to exceptional weather conditions on the day, traffic management issues and any other relevant events taking place at the Venue or the vicinity of the Venue. In any event, the Council shall always act promptly and properly to allow the Contractor to expedite the breakdown/remove process.

8.3 In terms of this Licence, the Contractor is responsible for all works in maintaining, repairing and renewing the Venue to the condition as at the Date of Entry as evidenced by the Schedule of Condition at its sole cost (unless any damage is caused by the act, omission, negligence or wilful misconduct of the Council). In the event that the reinstatement works are not carried out to the Council's satisfaction prior to expiry of the Term and to the extent that full reinstatement cannot be achieved prior to expiry of the Term, the Council will be entitled to recover from the Contractor on demand as a debt the Reinstatement Costs in respect of the delivery of the Event.

8.4 In the event that the Reinstatement Costs recovered by the Council and/or paid by the Contractor to the Council exceed the sums actually incurred in reinstatement of the Venue (it being understood between the Parties that the full extent of the costs is unlikely to be ascertained until such time as it becomes apparent whether any re-seeding of grass areas has been successful or whether re-turfing will be required), then any surplus sum not having been incurred but included in the estimate of Reinstatement Costs will be reimbursed to the Contractor by the Council.

8.5 The Council shall use all reasonable endeavours to minimise the Reinstatement Costs incurred by the Council and where the Council has more than one method of reinstatement of the damage to the Venue, it shall employ the method with the least cost, provided that to the reasonable satisfaction of the Council, that method will reinstate the damage to the Venue.

9 Shared Occupation

9.1 Subject to clause 9.2 below, the Contractor shall not be entitled to assign this Licence or sub-let the Venue in whole or part without the prior written consent of the Council.

9.2 The Council grants permission to the Contractor to sub-contract the right to third party operators required for the provisions of the Services (as "Services" are defined in the Contract between the parties dated []) as part of the Event, subject to:-

9.2.1 such operator not acquiring any rights in terms of this Licence;

9.2.2 the Contractor being obliged to procure that the relevant operator enters into an agreement which incorporates or appends the terms of the Operator Agreement; and

9.2.3 the Contractor providing the Council with a copy of any such Operator Agreement duly executed by the Contractor and the relevant operator as soon as reasonably practicable after entering into the same and in any event prior to the Date of Entry.

10 Council's Reserved Rights

10.1 The Contractor shall not in any way prevent, impede or hinder the Council or its servants or agents (including without prejudice to the foregoing generality, all and any users of any part of the Venue during the Term) from carrying on their duties in the Venue. On reasonable notice, the Contractor shall allow the Council to inspect all or any part of the Venue at any time during the Term to ensure that the Contractor is complying with the terms of this Licence or for any other reasonable purpose. Should any part of the Venue be found by the Council to be in a dangerous condition or be subject to any dangerous practice (other than where such dangerous condition or dangerous practice is caused by the act, omission, negligence or wilful misconduct of the Council), the Council may take such steps as it considers necessary to minimise or remove the danger and the cost thereby incurred shall be due and payable to the Council by the Contractor.

10.2 The Council reserves the right to its agents, officers, servants and workmen to enter and view the condition of the Venue all reasonable times or without notice in the event of an emergency, such inspections to be subject to site safety rules.

10.3 In the event of a danger to public safety, if the Council acting reasonably and taking account of inclement weather conditions requires the removal of any equipment from the Venue, it shall instruct the Contractor to remove or decommission such equipment all to the Council's satisfaction and as may be carried out reasonably and safely. In the event that the Contractor does not commence such removal as soon as reasonably practicable or otherwise the Council reasonably considers there is an emergency situation requiring immediate removal because of a danger to public safety (which cannot be resolved by evacuating the general public and other persons), then the Council shall be entitled to remove equipment from the Venue and generally make safe and secure and if necessary recover any properly incurred costs in so doing from the Contractor who shall pay such costs to the Council on demand.

11 Insurance

11.1 The Contractor shall forthwith insure for the full reinstatement value and keep insured at all times during the Term all erections and other structures or equipment erected or to be erected on the Venue by the Contractor against loss or damage by fire, storm, riot, explosion and malicious damage and such other risks as shall from time to time be reasonably required by the Council with a reputable insurance company. The policy and receipts for premiums payable thereunder shall be made available to the Council when called upon for inspection.

11.2 On or before the Date of Entry, the Contractor will effect and throughout the Term maintain insurance cover for third party and owners liability risks for a sum not less than £5,000,000 (Five Million Pounds Sterling) for any one occurrence and unlimited liability during the Term. The Contractor will exhibit to the Council, if required, the policy of such insurance and evidence of the payment of the premium.

12 Termination for Default

The Council may terminate this Licence, without prejudice to any right of action or remedy in respect of any antecedent breach of any of the Contractor's obligations, in the events that:-

12.1 any sums payable under the Contract are not paid on the due date, and shall have failed to pay such sums within 5 Business Days of being required by the Council in writing to do so or;

12.2 the Contractor is in material breach of any of its obligations under this Licence, and (if such breach is capable of remedy) shall have failed to remedy such breach within 5 Business Days of being required by the Council in writing to do so or;

12.3 the Contractor ceases to carry on business; or

12.4 the Contractor becomes apparently insolvent or die or sign a trust deed for behoof of creditors or are sequestrated or a liquidator, receiver or administrator is appointed to the Contractor.

13 Indemnity

13.1 The Contractor shall be bound to free and relieve and indemnify the Council, its servants and agents from and against all claims and liabilities from personal injury (whether fatal or otherwise), loss of or damage to property and any other injury, loss, damage, costs and expenses of whatsoever nature howsoever arising out of the Contractor's occupancy and use of both Venue and any other land over which the Contractor has rights except to the extent such claims and liabilities arise from the act, omission, negligence or wilful misconduct of the Council.

13.2 The Council shall not be liable to the Contractor in damages or otherwise as a result of this Licence or the Contractor's use of the Venue or as a result of the cancellation of the Event or any part thereof howsoever caused, save where due to the act, omission, neglect or default or wilful misconduct of the Council.

14 Notices

Any notice, demand, request or certificate required by this Licence will be in writing and may be delivered personally, sent by post or transmitted by fax to the relevant Party. Any notice, demand, request or certificate will be deemed to be received if delivered personally, (with proof of delivery) at the time of delivery; if sent by recorded delivery post, 48 hours after the date of posting; and in the case of fax, at the time when the sender's fax machine confirms transmission; provided that if, in the case of personal delivery or transmission by fax, such delivery or transmission occurs outwith normal business hours on a Business Day or on a day which is not a Business Day, delivery will be deemed to occur on the next Business Day.

15 Consent to registration

The Parties consent to registration of these presents for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding [] pages and the Schedule annexed are executed as follows:

They are signed for and on behalf of the Contractor by

..... Director/Company Secretary

Name.....

At.....(place of signing)

On(date of signing)

In the presence of:

Signature of Witness.....

Name

Address

.....

They are signed for and on behalf of the City of Edinburgh Council by

.....
Proper Officer

At Edinburgh

On(date of signing)

In the presence of:

Signature of Witness

Name

Of Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG

PART 1

DRAFT OPERATOR AGREEMENT

OPERATOR AGREEMENT

between

(1) XXXX , a company incorporated under the Companies Act (Company number XXXX) and having its registered office at XXXX (hereinafter or in substitution their permitted successors or assignees in terms of the Agreements with the Council in respect of the Event (which successors may include the Council) referred to as the "Contractor")

and

(2) [INSERT DESIGNATION OF OPERATOR] (hereinafter referred to as the "Operator")

WHEREAS:-

(A) The Contractor has a right to occupy and operate the Event from the Venue in accordance with Agreements entered into by the Contractor with the Council.

(B) The Parties have agreed to enter into an agreement in respect of the Operator's use of the Site on the conditions set out below.

IT IS AGREED by the Parties as follows:-

1 Definitions

1.1 Definitions

In this Agreement:-

"Business Day" means a day on which clearing banks in Edinburgh and Glasgow are open for normal business;

"Council" means The City of Edinburgh Council, a local authority constituted in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh;

"Date of Entry" means xxxx;

"Deposit" means £●;

"Event" means the provision of a ticketed venue for either a cultural, concert or live performance event or events on The Meadows for the Edinburgh Festival for 2015 (and for 2016, subject to extension) and to be held at the Venue for the Term in accordance with the Contract

"Fee" means the fee of £● payable in advance prior to the Date of Entry;

"Interest" means interest on the sum in question at the rate 4 per cent per annum above the base rate from time to time of the Clydesdale Bank plc from the date that the sum is due for payment or, if there is no such date specified, the date of demand for the sum until it is paid;

"Parties" means the Contractor and the Operator and "Party" refers to either of them as the context requires;

"Permitted Use" means the provision of a ticketed venue for either a cultural, concert or live performance event or events on the Site in connection with the Event;

"Rights Granted" means the right for the Operator in common with the Contractor and all other persons having a similar right, of (1) pedestrian access to and egress from the Site at all times that the Event is operating or such hours specified by the Contractor for setting up or clearing up before or after the Event and otherwise on arrangement outwith those hours over and along the designated access routes and (2)

vehicular access to and egress from the Site only being permitted on prior arrangement over routes agreed in advance at times agreed in advance with the Contractor;

"Rights Reserved" means the right for the Contractor or the Council and those authorised by either of them to take access to the Site for inspection and maintenance or other necessary purposes;

"Site" means that area of ground shown edged in [colour] on the Plan; and

"Term" means the period from the Date of Entry to 5 September 2015.

1.2 Interpretation

Save to the extent that the context or the express provisions otherwise requires, in this Agreement:-

- 1.2.1 words importing any gender include all other genders;
- 1.2.2 words importing the singular number only include the plural number and vice versa;
- 1.2.3 words which import the whole are to be treated as including reference to any part of the whole;
- 1.2.4 obligations contained in this Agreement undertaken by more than one person shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 1.2.5 words importing individuals include legal persons and vice versa;
- 1.2.6 reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and includes any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision; and
- 1.2.7 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

1.3 Headings

The headings in this Agreement are included for convenience only and are to be ignored in construing this Agreement.

2 Grant of Licence

The Contractor in consideration of the Fee and other obligations contained in this Agreement GRANTS to the Operator a non-exclusive right to use and occupy the Site for TOGETHER WITH the Rights Granted but RESERVING always to the Contractor the Rights Reserved AND THAT for the Term SUBJECT TO all rights, servitudes, privileges, restrictions, burdens and stipulations of whatever nature affecting the Site FOR WHICH CAUSES the Operator undertakes to pay to the Contractor the Fee and other sums due, and to perform and fulfil the other obligations undertaken by them, in terms of this Agreement.

3 Deposit

- 3.1 The Operator shall pay the Deposit to the Contractor on or before the Date of Entry.
- 3.2 The Contractor shall hold the Deposit as security for the performance of the Operator's obligations under this Agreement.

4 Operator's Obligations to Pay

The Operator shall pay:-

- 4.1 to the Contractor the Fee on or before to the Date of Entry (or as otherwise agreed with the Contractor);
- 4.2 to the Contractor, in addition to the Fee and any other sums payable or reimbursable by the Operator to the Contractor, any Value Added Tax properly payable on the Fee and those sums in return, where the same may properly be issued, for a Value Added Tax invoice;

- 4.3 to the Contractor on demand an equitable share (determined by the Contractor) of any reinstatement costs incurred by the Contractor or otherwise due to the Council;
 - 4.4 to the Contractor on demand an equitable share (determined by the Contractor) of any utility costs incurred by the Contractor;
 - 4.5 to the Contractor on demand a sum equivalent to any insurance monies wholly or partially irrecoverable because of any act or default of the Operator; and
 - 4.6 Interest on any sum not paid on the date that such sum is due for payment until such sum is paid.
- 5 Operator's Other Obligations

The Operator shall:-

- 5.1 not assign or sub-license the Operator's interest in the Site;
- 5.2 permit any third party to occupy the Site;
- 5.3 use the Site only for the Permitted Use and in accordance with any regulations and directions issued by the Contractor or the Council in respect of the Event;
- 5.4 make no alterations to the Site;
- 5.5 comply with all relevant statutes, regulations and local authority notices in respect of the Site;
- 5.6 make good any damage to the Site caused by the Operator;
- 5.7 shall keep the Site free of rubbish and any other obstruction;
- 5.8 permit to the Contractor and those authorised by the Contractor to exercise the Rights Reserved;
- 5.9 vacate the Site at the end of the Term leaving the Site in no worse condition than at the Date of Entry; and
- 5.10 indemnify the Contractor against any liability in respect of any injury to, or death of, any person or damage to any Site arising from any negligence on the part of the Operator and from any loss, damage or liability arising from the Operator's breach of this Agreement.

6 Insurance

6.1 The Operator shall:-

- 6.1.1 insure any equipment used at the Site to its full value;
 - 6.1.2 effect and maintain insurance for public liability and, where appropriate, employers' liability insurance for such amounts as adequately cover the risks involved, subject to such increase as the Contractor may reasonably request;
 - 6.1.3 punctually pay the premiums of such insurances;
 - 6.1.4 exhibit the policy documents and premium receipts to the Contractor upon request;
 - 6.1.5 indemnify and keep indemnified the Contractor against any liability arising out of the Operator's failure to effect such insurance or the risks covered by such insurance.
- 6.2 The Operator shall be responsible for arranging any other insurances which the Operator may consider necessary.
- 6.3 The Contractor shall have no liability for any loss or damage suffered by the Operator using the Site.

7 End of this Agreement

- 7.1 At the end of this Agreement, the Operator shall leave the Site in no worse condition than at Date of Entry, subject only to fair wear and tear. In the event that the Operator fails to do that, the

Contractor may use the Deposit to return the Site to that condition and shall also be entitled to deduct from the Deposit the reinstatement costs due in terms of Clause 4.3 of this Agreement.

7.2 If the Operator leaves any items in the Site at the end of this Agreement, the Contractor may dispose of them without paying for them or accounting for any proceeds.

8 Termination for Default

The Contractor may terminate this Agreement, without prejudice to any right of action or remedy in respect of any antecedent breach of any of the Operator's obligations, in the events that:-

8.1 any sums payable under this Agreement are not paid on the due date;

8.2 the Operator is in breach of any of its obligations under this Agreement;

8.3 the Operator ceases to carry on business; or

8.4 the Operator becomes apparently insolvent or die or sign a trust deed for behoof of creditors or are sequestrated or a liquidator, receiver or administrator is appointed to the Operator.

9 Costs

The Operator shall pay to the Contractor on demand all reasonable costs, fees, charges, outlays and expenses incurred by the Contractor, in relation to or incidental to the enforcement or protection of any of the rights of the Contractor under this Agreement including the recovery or attempted recovery of arrears of the Fee or other sums due from the Operator.

10 Notices

10.1 Any notice, demand, request or certificate required by this Agreement will be in writing and may be delivered personally, sent by post or transmitted by fax to the relevant Party.

10.2 Any notice, demand, request or certificate will be deemed to be received:-

10.2.1 if delivered personally, (with proof of delivery) at the time of delivery;

10.2.2 if sent by recorded delivery post, 48 hours after the date of posting; and

10.2.3 in the case of fax, at the time when the sender's fax machine confirms transmission;

provided that if, in the case of personal delivery or transmission by fax, such delivery or transmission occurs outwith normal business hours on a Business Day or on a day which is not a Business Day, delivery will be deemed to occur on the next Business Day.

11 Consent to Registration

The Parties consent to the registration of this Agreement for preservation and execution: IN WITNESS WHEREOF these presents printed on this and the [] preceding pages together with the Plan annexed are executed as follows:-

THEY are subscribed by the Contractor at

(place) on

2014 by:-

Director

THEY are subscribed by the Operator at
the witness subscribing:-

(place) on

[

Director/Secretary

] before

WITNESS:

Signature: _____

Full Name: _____

Address: _____

PLAN OF VENUE