

## GUIDANCE NOTES FOR MODEL SERVICES AGREEMENT BETWEEN LOCAL AUTHORITY AND A TENNIS OPERATOR COMPANY OR INDIVIDUAL

### **Explanatory Note**

*These guidance notes are to be used alongside the model agreement for use by Local Authorities when engaging a tennis operator company or individual for the provision of services. They should be used when preparing the corresponding model agreement on the LTA website and following discussion with your Partnership Development Partner. If you require or wish to cover more unusual terms and conditions or need guidance on tailoring the agreement, then you should discuss this with your Partnership Development Partner and take separate independent legal advice. Professional advice is also necessary if you wish to use this model in order to update or revise existing agreements.*

*The agreement and these Guidance Notes give an overview of various forms that the agreement could take. For advice and guidance on using the model agreement to put together an agreement that best suits your situation, please discuss the agreement with your Partnership Development Partner.*

### **Notes on using this model contract**

*Square brackets [ ] containing text highlighted green are used to show where you must make a choice, or delete an option or clause.*

*Braces { } containing text highlighted yellow are used to show where you must insert text.*

Agreement Area	Guidance Notes
AGREEMENT DETAILS	These fields must be completed thoroughly and accurately to ensure that the correct parties are entering into the agreement.
Execution blocks	These fields must be completed to ensure that the agreement is legally binding on both parties. The agreement <u>must not</u> be dated before it is signed by both parties.
1	<p>The defined terms should be used consistently throughout the document, so any additions/amendments should be drafted with reference to this clause.</p> <p>If the Local Authority is to charge the Operator for use of/access to the applicable Tennis Courts then the second option here should be selected and the “Services Charges” and “Usage Charges” definition should remain. If there is to be no charge then the first option should be selected and the additional definitions of “Services Charges” and “Usage Charges” should be deleted.</p>
2.1	<p>If the parties wish to enter the agreement <i>before</i> the date when the Services are due to commence, then the ‘Services Start Date’ should be defined and used here.</p> <p>If the parties intend on the Services commencing concurrently with them entering the agreement, the agreement should start when it has been signed by all parties.</p>
4	This clause sets out that the Local Authority is giving the Operator the right to use the Tennis Courts in order to provide the Services. If the Operator is to

	<p>have sole use of the Tennis Courts, then the “exclusive” option should be selected. If this is not the case, then the “non-exclusive” option should be selected.</p> <p>If the parties agrees that the Local Authority is going to do/be responsible for anything else under this Agreement then details of this should be set out here.</p>
5	<p>In many cases, the Local Authority is responsible for the long-term renovation of the facilities – this approach ensures that any money generated sits with the L.A. adding financial security. We have drafted this clause so that it is flexible and can be tailored to suit arrangements on a case-by-case basis.</p> <p>The parties should tailor these provisions so that they accurately reflect the responsibilities that each party shall bear in respect of tennis court/venue maintenance and refurbishment, including in relation to cost.</p>
5.9 and 5.10	<p>All Local Authorities must complete LTA Venue Registration for any parks sites they operate and complete any payment required. However the cost of doing so may either be built in to or charged in addition to the fees laid out in Schedule 2.</p>
6	<p>This clause governs how the parties will manage any personal data that is collected, processed and/or shared in the course of carrying out the Services and/or in the course of fulfilling their obligations under the agreement.</p> <p>The first option, drafted as clauses 6.1 and 6.2, should be used where no personal data will be shared between the parties in respect of the agreement/Services.</p> <p>The second option, drafted as clauses 6.3 to 6.13 (inclusive) and inclusive of Schedule 4, should be used where the parties will be sharing personal data and/or the Operator will be processing personal data on behalf of the Client.</p> <p><b>IMPORTANT: If you are unsure about whether Clause 6 (‘Data protection’) reflects how the parties are to share personal data, we advise you to seek professional, independent legal advice.</b></p>
9	<p>This clause limits each party’s liability. Limiting liability is a two-stage process – firstly, the clause tries to exclude as much liability as possible, and then, if any liability does arise, then it limits it to something “reasonable”. That specific limit is set out at clause 9.3, which states that each party’s liability will be limited to a specific figure which is yet to be confirmed. What is “reasonable” is not clearly defined at law, so you will need to consider this and insert an appropriate figure.</p> <p>A good starting point is often to look at the amount of money changing hands. However, thought should also be given to what risks are involved and possible liabilities, and, most importantly, any insurance cover the parties</p>

	have.
11	This clause sets out the circumstances in which the parties may terminate the agreement. The parties may wish to amend these rights so that “material breaches” are explicitly identified, such as in clause 11.3.
12	These are standard, ‘boilerplate’ clauses covering miscellaneous matters, e.g. varying the terms of the agreement (clause 12.5) and expressly excluding any third parties from the agreement (clause 12.9).
Schedule 1	<p>This Schedule is drafted so that the parties have full flexibility to detail the specific services the agreement will relate to.</p> <p>Some suggestions have been included here but the parties are free to ultimately decide what “Services” the Operator is to provide and set this out in this Schedule accordingly.</p>
Schedule 2	<p>We appreciate that the charges payable can vary drastically depending on the management model used, and whether the Operator has the potential to generate income from pay and play court bookings and season ticket sales, or only from the delivery of a coaching programme.</p> <p>It is not possible for suggestions to be inserted for the many possible payment arrangement that might be agreed. Two options have been set out here based on charges being payable for the Services provided by the Operator and the charges (if any) that shall be payable by the Operator for the use of the Tennis Courts. If there are to be no charges for the Operator’s use, then the first option set out here should be used.</p> <p>When determining the charges, the Client may also need to consider who is financially responsible for the replacement or renovation of the courts in the long term, and budget for this accordingly. The LTA recommends a sinking fund is built of £1,200/annum per non-floodlit court, and £1,800/annum per floodlit court. This sinking fund should accumulate enough to cover the costs of all ongoing maintenance and replacement/renovation works required</p>
Schedule 3	If the Local Authority has any mandatory policies that it requires the Operator to comply with then they should be inserted into the Agreement here.
Schedule 4	If the parties are to share personal data, then this Schedule will need to be completed to set out details relating to the sharing of such personal data.