**Appendix H – Template legal and contractual issues list**

**Legal and Contractual Issues List ("Legal List")**[[1]](#footnote-1)

**Introduction:** The Authority has prepared a draft [DBOM/Leisure Operating Contract] (the "**Contract**") which it considers reflects typical market positions in the leisure sector. The Authority therefore only [intends to discuss and dialogue on] [requires responses from bidders on] key issues within the Contract (as listed below) and Bidders are required as part of their submissions to provide a response on these issues only. The Authority does not envisage that a mark-up of the Contract will be required [during the dialogue stage], but reserves the right to ask for a mark-up of the particular clauses/areas [which are the subject of dialogue], if it considers that this is necessary.

Bidders are asked as part of their submission to complete this Legal List. Bidders may attach appendices to this List to provide further details in relation to their responses.

| **LEGAL/CONTRACTUAL ISSUE** | **BIDDER RESPONSE** |
| --- | --- |
| **1. Structure and Protections for the Authority** |  |
| 1.1 Please explain (with a diagram if necessary) your proposed structure. Please explain how this structure will bring benefits to the Authority (for example in relation to reliefs claimed).**[*Drafting Note: If a bidder has indicated that they will be using a SPV structure, it may be advisable for the Authority to request additional information and specify any additional requirements to ensure that there is adequate protection should the SPV default.]*** |  |
| 1.2 Please provide heads of terms for any Sub-Contracts (as defined in the Contract) you intend to put in place as part of your structure. Such heads of terms should include any caps on liability, scope of pass down of obligations from the Contract and any profit payable to the Sub-Contractor on termination of the relevant sub-contract. |  |
| 1.3 Please confirm that any Sub-Contractors will provide warranties in the form included at Schedule 7 of the Contract. |  |
| 1.4 Please confirm whether the proposed Contractor and/or Sub-Contractors in your proposed structure have a parent company, and if that they will provide the Parent Company Guarantee [in the form attached at Appendix 1 to this List]. |  |
| 1.5 Please confirm that if required, you will provide a bond reflecting the requirements set out at Appendix 2 to this List, the price of such bond and the proposed surety. |  |
| **2. Maintenance, Lifecycle and Defects** |  |
| ***[Drafting note: Authority to include any required areas.]*** |  |
| **3.** **Title and Property** |  |
| The Contract provides for the Authority giving a title warranty and then disclosing items against that warranty in respect of the Facilities.Please confirm that this position is accepted and that there are no issues that you wish to raise in relation to title and/or property. |  |
| **4.** **Third Party Arrangements** |  |
| ***[Drafting note: Authority to include any required areas.]*** |  |
| **5. Insurance** |  |
| 5.1 [The Authority requires bidders to price for all of the insurances listed at Schedule 14 (Insurances).][The Authority intends to retain buildings insurance for the Facilities (as set out at Schedule 14 Part 1) with the Contractor to take out all the remaining insurances listed at Schedule 14 Part 2 of the Contract. Therefore, please provide a price for the Authority retaining buildings insurance (with the bidder to take out the insurances listed at Schedule 14 Part 2 of the Contract).] |  |
| 5.2 Please could bidders also confirm any proposed amendments to Schedule 14 (Insurances) of the Contract and confirm their proposed details for the text in square brackets. |  |
| **6. Termination triggers/Service Improvement** |  |
| 6.1 Please confirm your proposals for the appropriate trigger for limb (b) of "Authority Default" – this would be a sum of money that, if the Authority fails to pay it, despite a formal request from the Contractor, could lead to the Contractor terminating the Contract for an Authority Default. |  |
| 6.2 Please confirm your proposals for the termination triggers for "Contractor Default" limbs which are in square brackets. These are triggers linked to Performance Adjustments under the Payment and Performance Monitoring System. If the Contractor meets these triggers, the Contract could be terminated for Contractor Default. |  |
| **7. Compensation on termination** |  |
| 7.1 Please confirm your proposals for the definition of "Profit Payment" – this would provide a cap on profit payable to the Contractor on Authority Default/Authority Voluntary termination. |  |
| 7.2 Please confirm your proposals for inclusion within the definition of "Capital Costs" or "Forward Funded Amounts" (if any). This would reflect any sums which the Contractor feels it should be paid in certain termination scenarios in respect of:1. capital sums the Contractor has invested/financing costs the Contractor has incurred;
2. amounts the Contractor has forward funded to arrive at a smooth profiled Annual Payment,

which it may not have recouped at the time of such early termination. |  |
| **8. Caps on liability** |  |
| Please provide your proposal for a cap on liability for breach of statutory duty as set out at clause [ ].***[Drafting note: Authority to also include request for bidders' proposals over other caps on liability if the Authority is willing to accept other caps on liability.]*** |  |
| **9. Commercially Sensitive Information** |  |
| Please confirm your proposals for Schedule [ ] (Commercially Sensitive Information). |  |
| **10. Schedule 23 (Loss of Revenue)** |  |
| This schedule is to be used to calculate the loss of revenue the Contractor can claim.Please complete and submit this table. |  |
| **11. Schedule 24 (Change Protocol)** |  |
| Please confirm your proposals for Paragraph 8 of Part 5 – this is the sharing of any cost savings pursuant to a change instigated by the Contractor.[***Drafting Note: This may only be applicable where it is a Deficit Annual Payment contract***]  |  |
| **12. Other areas relating to price or risk** |  |
| The Authority does not anticipate that any other issues relating to price and/or risk will need to be [dialogued on/responded to]. However, the Authority reserves its position to add further items to this List and/or adjust this List. In such event, all Bidders which are still part of the procurement process will be notified of each such addition or adjustment. |  |
| **[Authority may also wish to invite responses on the following areas:** |  |
| Payment and Performance Monitoring System |  |
| Benchmarking |  |
| Surplus Share] |  |

**Annex 1 – Parent Company Guarantee**

***[Drafting note: Authority to include required form of PCG/heads of terms for PCG.]***

**Annex 2 – Bond Requirements**

The bond given should cover the following points:

***[Drafting note: The Authority can include their bond requirements – but please note that if a bond is required, then it is usual for a Bondsman's standard draft to be used. These can vary from bond provider to bond provider.]***

1. This list is for information purposes only and, if a similar approach is to be used, should be amended to reflect the nature/requirements of the Project/procurement in question. [↑](#footnote-ref-1)