

**DRAFT HEADS OF TERMS – THE CHELTENHAM TRUST  
CONTRACT AND SUPPORT SERVICES**

**Cheltenham Borough Council & The Cheltenham Trust**

**Commercial Principles and Heads of Terms**

**3 September 2014**

This document sets out the key commercial terms and heads of terms for the development and establishment of a new Leisure and Culture Trust for Cheltenham (TCT), and outlines the basis on which the Council is expecting to transfer the service. The memorandum and articles of association for the new organisation are dealt with separately. The principle agreements determining the relationship will be:

- Contract – sets out the basis of how the Council will fund the Trust and the key outcomes the Trust will deliver in return. Includes a specification of what the Council is seeking and the proposal from the TCT on how this will be delivered
- Leases and Licences – heads of terms for leases are set out in separate document
- Support Services Agreement – the basis on which the GO Shared Services (GOSS) and other providers will continue to supply services to the Trust

We set out in tables below the key principles which would be identified within each of the agreements, including the commercial arrangements.

**1. Contract**

Issue	Agreed Position
Scope of Services	<ul style="list-style-type: none"> <li>• Operation of:               <ul style="list-style-type: none"> <li>○ Leisure@ Cheltenham</li> <li>○ Prince of Wales Stadium</li> <li>○ Town Hall</li> <li>○ Wilson Art Gallery &amp; Museum (including Unit 3 at the Depot for storage of artefacts)</li> <li>○ Pittville Pump Room</li> <li>○ Sports, Play and Healthy Lifestyles Development</li> <li>○ Tourism Services and Tourist Information Centre</li> </ul> </li> </ul>

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Duty to Co-operate	<ul style="list-style-type: none"> <li>• There is an overarching duty for both parties to work in partnership with each other and to collaborate in delivering the services and the outcomes, which are               <ul style="list-style-type: none"> <li>○ People in Cheltenham lead healthier, fulfilling and active lives</li> <li>○ People in Cheltenham are inspired to take part and gain valuable skills and experiences</li> <li>○ Cheltenham is seen as a world class place to live, work, study and visit</li> </ul> </li> <li>• In addition there are a number of partnership principles which both parties will work together to deliver               <ul style="list-style-type: none"> <li>○ <b>Strategic focus:</b> concentrate on maximising the contribution of leisure, culture and tourism to the future success of Cheltenham.</li> <li>○ <b>Supportive relationships:</b> work to encourage and foster positive working relationships with the council as well as local, regional and national partners.</li> <li>○ <b>Creativity:</b> encourage new ideas for improving Cheltenham’s creative offer and quality of life and for projecting its vibrancy.</li> <li>○ <b>Accountability:</b> the Council must be assured that its partner’s services are safe, protect the town’s heritage and provide value-for-money.</li> </ul> </li> </ul>
Services	<ul style="list-style-type: none"> <li>• Management of the facilities, including operation, programming, events, catering, retail, sports and leisure activities, cultural activities, tourism, bookings.</li> <li>• Delivery of the key corporate outcomes – set out in the Specification</li> <li>• Operate in accordance with Good Industry Practice and Legislation</li> <li>• Requirement to continuously improve and deliver Best Value, to be demonstrated in Trust’s Proposal</li> </ul>
Length of Term	<ul style="list-style-type: none"> <li>• Contract to be 10 years, with a review of the funding every 5 years (or at other times if agreed by both parties), as set out below</li> <li>• Both lease and management agreement to be terminated if the other one is terminated.</li> <li>• Potential for the Council to extend the contract by five years</li> <li>• No assignment or sub contracting of the whole of the services (for example a facility) without the Councils approval but can sub contract part (for example, catering) subject to conditions</li> </ul>

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Level of Management Fee	<ul style="list-style-type: none"> <li>• The management fee will be fixed for a five year period from 1 April 2014 and is to be as follows</li> <li>• The management fee is a cash sum and not indexed.</li> <li>• The management fee is fixed as above unless any of the following changes occur               <ul style="list-style-type: none"> <li>○ NNDR relief</li> <li>○ VAT rates change</li> <li>○ Group Personal Pension Contributions</li> <li>○ Any other change in law which has not been reflected in Proposal</li> </ul> </li> </ul>
Funding & Review of Funding	<ul style="list-style-type: none"> <li>• To be fixed for first five year period from 1 April 2014 of the funding agreement prior to review.</li> <li>• Profiled Funding (based on cashflow) would be provided monthly in advance.</li> <li>• The Council will also make available an advance of the management fee of £200,000 in years 1 and 2 to enable the Trust to manage its cash-flow and an overdraft facility of up to £100,000 at 1% above base rate</li> <li>• The funding will be renegotiated in accordance with the following process (during every 5 year process)               <ul style="list-style-type: none"> <li>○ In Year 4 [April] –Council confirms the funding, priorities and areas they wish to deliver for the subsequent 5 year period</li> <li>○ Trust prepares a draft 5 year proposal in response to priorities by [September] in Year 4</li> <li>○ Proposal and funding discussed between parties</li> <li>○ Seek to agree by [December] in Year 4 (15 months prior to end of existing funding period) based upon CBC financial year funding</li> <li>○ Go to dispute resolution</li> <li>○ If no agreement to future funding then Council voluntary terminates the agreement</li> </ul> </li> <li>• Should there be a need to vary the service then the change process will be applied whjch may impact on the management fee.</li> <li>• There would be VAT applied to the management fee</li> </ul>

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Surplus Share	<ul style="list-style-type: none"> <li>• Trust will prepare its Proposal which allows for reserves to be developed over time, which can be used for reinvestment in the service and to support the Trust during poor years.</li> <li>• Any surpluses will be shared between Council and Trust in the proportion of 50:50, annually, (unless the Trust reserves are below £500k, in which case the Trust will retain the first £100k of any surplus prior to sharing equally) based on audited management accounts and subject to the following key parameters               <ul style="list-style-type: none"> <li>○ The definition of the surplus will be set out in the contract which will clearly define that surplus is only linked to the facilities and services within the agreement</li> <li>○ The Trust has the ability to present a business case for the use of the Council's share of the surplus, which the Council would consider before allocating surpluses elsewhere</li> </ul> </li> </ul>
Insurance	<ul style="list-style-type: none"> <li>• Council responsible for organising and paying for Building Insurance and Arts Collections Insurance</li> <li>• Trust responsible for organising and paying for Employers Liability, Public Liability, contents (including cover for transferred assets), all risks insurance for specific and valuable items, business interruption, engineering insurances, money and directors insurance</li> </ul>
Opening Hours (as reflected in specification and proposal)	<ul style="list-style-type: none"> <li>• Minimum opening hours will be specified in the agreement, broadly based upon the existing opening hours</li> <li>• Variations to the availability of facilities can only be made with the agreement of Council [so worded in spec because refers to opening hours <i>and</i> availability of sections within buildings, eg temp/permanent closure of the gym, swimming pool]</li> </ul>
Programming and Bookings (as reflected in specification and proposal)	<ul style="list-style-type: none"> <li>• Protected bookings to be identified, which could include protection of casual use at certain facilities and other groups rather than purely clubs. Schedule is identified in the Specification (Appendix 4)</li> <li>• Programmes of use to be reviewed and agreed annually by Council with any significant variations to this to be agreed by Council</li> </ul>
Pricing (as reflected in specification and proposal)	<ul style="list-style-type: none"> <li>• A list of core prices to be agreed by Council on an annual basis. These are prices which are for protected bookings and activities and are in the Specification (Appendix 4). This will include free car parking for customers.</li> <li>• Any other price increases – the Council should be informed and consulted with but there is no need to gain agreement from the Council</li> </ul>
Council Use of Facilities	<ul style="list-style-type: none"> <li>• All facilities have the potential to be emergency rest centres and Council to be able to use (Currently Leisure@ is the primary facility used)</li> <li>• Centres also to be available for use in line with Council's business continuity plan, with compensation being paid for loss of income (mitigated by any cost savings)</li> <li>• All facilities may be required for use at elections, mayor making (Town Hall) and for other meetings with the use to be paid for at the standard rate (or community rate for meetings)</li> <li>• Other use will be paid for at prevailing rate</li> </ul>

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Utilities	<ul style="list-style-type: none"> <li>• Council will pay for utilities and this will be outside of the Trust responsibility</li> <li>• The specification also includes a requirement for the Trust to work with the Council to develop an environmental strategy and action plan, which will include energy management, which the Trust will be responsible for implementation and monitoring</li> </ul>
Service Development	<ul style="list-style-type: none"> <li>• Trust is responsible for the delivery of its proposal made in response to Council specification</li> <li>• The Proposal presented by the Trust will outline how the outcomes specified are delivered</li> <li>• Performance is monitored and reported monthly.</li> <li>• Annual performance report to be prepared and presented to CBC setting out how Trust has delivered against the outcomes and any improvements proposed including meeting with the CBC Leadership</li> </ul>
Quality of Service	<ul style="list-style-type: none"> <li>• Trust will be required to retain full Museum Accreditation, Designation Status for Arts and Crafts Collection and any other designation subsequently awarded and accreditation appropriate to the leisure sector</li> <li>• Compliance with standards will be reviewed by the Council</li> </ul>
Customer Service	<ul style="list-style-type: none"> <li>• The Trust must establish a customer relations policy and process which meet, as a minimum, the standards set in the council's Customer Service Standards Policy</li> </ul>
Health & Safety	<ul style="list-style-type: none"> <li>• Trust to be responsible for Health and Safety and will provide its initial H&amp;S policy and operating plans and annual updates, which will be reviewed by Council</li> <li>• Trust to provide evidence of access to competent advice as required by section 7 of The Management of Health and Safety at Work Regulations 1999</li> <li>• Trust to provide the Council with a quarterly report on health and safety performance (performance objectives to be agreed)</li> </ul>
Marketing and Use of Council Logo	<ul style="list-style-type: none"> <li>• Council logo required on some literature and '[Trust] working in partnership with Council' wording required in accordance with Council branding policy</li> <li>• The exact location and application to the marketing material to be discussed between the Parties</li> </ul>
Change in Law	<ul style="list-style-type: none"> <li>• Changes in Law to be discussed between both parties and a way forward to be agreed</li> </ul>
Change Procedure	<ul style="list-style-type: none"> <li>• Council can request change – Trust must respond with costs and if agreed then implemented with cost implications. If not agreed then dispute resolution or third party</li> <li>• Trust can request change with a business case– Council absolute discretion whether agreed or not</li> </ul>

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Monitoring & Performance	<ul style="list-style-type: none"> <li>• Trust to report on the Proposal and progress on delivery of the agreed proposal, including against KPI's and Council to be able to monitor performance. Reports to be presented in a monthly report, the format of which is to be agreed.</li> <li>• Regular monthly meetings of officers (Client Officer: Relationship Manager) to monitor performance and cash flow and feed into</li> <li>• Formal six monthly Partnership Board meetings (Portfolio holder/Authorised Officer: Chief Executive/Chair)</li> <li>• Annual review of performance and delivery against outcomes – preparation of Proposal and service development</li> <li>• Deductions from funding possible if Trust fails to perform – through performance monitoring system. This would be linked to delivery of outcomes and allow Trust the opportunity to rectify performance failures, through improvement notices and potential defaults</li> <li>• Trust may need to attend Members presentations and meetings</li> <li>• Client Officer (Council) and Relationship Manager (Trust) will collaborate on operational and day to day issues</li> </ul>
Contracting Outside of Council boundaries	<ul style="list-style-type: none"> <li>• Trust allowed to contract outside of Council boundaries</li> </ul>
Dispute Resolution	<ul style="list-style-type: none"> <li>• Procedure as follows after negotiations between the parties at officer level <ul style="list-style-type: none"> <li>○ Trust Relationship Manager and Council Client Officer seek to agree</li> <li>○ Chief Executive of Trust and Authorised Officer of Council seek to agree with reference to the Partnership Board]</li> <li>○ Third Party determines through mediation</li> <li>○ Going to court can only be implemented if mediation fails</li> </ul> </li> </ul>
Termination	<ul style="list-style-type: none"> <li>• Can be terminated by either party based on default by the other party which would include the following <ul style="list-style-type: none"> <li>○ Trust default – material breach, insolvency, breach of deduction thresholds within the deduction regime</li> <li>○ Council default – material breach, non payment of funding</li> </ul> </li> <li>• Consequences of termination <ul style="list-style-type: none"> <li>○ To follow the requirements under exit and handover (see below)</li> <li>○ Compensation <ul style="list-style-type: none"> <li>▪ Trust default – no compensation payable, except outstanding capital sums which Trust have invested</li> <li>▪ Council default (and Voluntary Termination) – compensation for costs of Trust less losses deductible</li> </ul> </li> </ul> </li> </ul>
Exit and Handover	<ul style="list-style-type: none"> <li>• Trust will be required to <ul style="list-style-type: none"> <li>○ Deliver the assets associated with the service back to the Council (in the agreed state of repair)</li> <li>○ Provide TUPE information</li> <li>○ Apportion the costs/income</li> <li>○ Cooperate with the Council including facilitation of handover of relevant information, eg membership, marketing data</li> </ul> </li> </ul>

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Assets	<ul style="list-style-type: none"> <li>• To be confirmed but expected to include               <ul style="list-style-type: none"> <li>○ Equipment</li> <li>○ Membership Data</li> <li>○ ICT</li> <li>○ Stock</li> <li>○ Intellectual Property (if appropriate)</li> </ul> </li> <li>• Principle is that Council would transfer assets (either through licence or title transfer) with expectation of assets returned in a similar condition (subject to any agreed changes)</li> <li>• Apportionment of income and expenditure allocations at the transfer date to be agreed with a long stop date of [2] months after date of transfer.</li> <li>• Joint stock take to be undertaken the day before transfer to agree valuation of stock.</li> <li>• Any payments for stock and apportionments to be made within 3 months of transfer.</li> </ul>
Local Government Pension Scheme	<ul style="list-style-type: none"> <li>• Trust to obtain admitted body status</li> <li>• Council to act as guarantor</li> <li>• The Pension scheme contribution rate will assume a fully funded scheme</li> <li>• Trust pays pension contribution to GCC and invoices CBC for the cost monthly. CBC assumes risk of contribution rate increase.</li> <li>• Scheme to be a closed scheme</li> <li>• Council will be responsible for any deficit on the pension scheme on exit from the scheme or contract</li> <li>• Trust not to do anything that would increase pension contributions without CBC consent</li> </ul>
Existing Service Contracts	<ul style="list-style-type: none"> <li>• Will be novated to Trust, including the existing catering contract</li> <li>• Consider if there are any contracts to be retained by Council</li> </ul>
Staff	<ul style="list-style-type: none"> <li>• Transferred under TUPE</li> <li>• Both parties will have a legal obligation to consult</li> <li>• An indemnity will exist in relation to existing liabilities</li> <li>• Council will meet all remuneration costs up to the point of transfer</li> <li>• The Trust will be required to recognise Unions</li> </ul>
Liabilities	<ul style="list-style-type: none"> <li>• Existing debts and liabilities will be excluded from the Transfer</li> </ul>
Policies	<ul style="list-style-type: none"> <li>• Comply with certain council policies (list of policies to be defined)</li> <li>• Comply with Council obligations to other Funders (eg Lottery Fund)</li> <li>• Ensure other policies are in place covering certain subjects (list of subjects to be defined)</li> </ul>

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## 2. Support Services Agreement

Issue	Agreed Position
Services	<p>The following services to be provided (to be confirmed)</p> <ul style="list-style-type: none"> <li>• [Financial Services (including accountancy, purchase and sales ledgers)</li> <li>• HR including payroll</li> <li>• Legal Services (to be confirmed)</li> <li>• IT Management</li> <li>• Health and Safety (to be confirmed)</li> <li>• Internal Audit (to be confirmed)</li> <li>• Property Services (not including Council responsibilities)</li> <li>• Learning and Organisational Development (to be confirmed)</li> </ul> <p>Services to be provided by Council or its partners to be set out in specification with appropriate KPIs</p> <p>Services can only be provided where there is no conflict of interest.</p>
Cost of Service	<ul style="list-style-type: none"> <li>• The overall cost of the support services is ring fenced in management fee</li> </ul>
Length of Agreement	<ul style="list-style-type: none"> <li>• 2 years – initial term</li> <li>• Potential to extend on agreement of both parties, with the need for 6 months notice if agreement is terminated</li> <li>• There is a break clause after 12 months</li> </ul>
Termination	<ul style="list-style-type: none"> <li>• During the initial term the agreement can only be terminated by either party through default on performance, except for the break clause</li> <li>• Trust can terminate if KPIs not delivered</li> <li>• GOSS (or other provider) can terminate for non payment of fees</li> <li>• Costs of termination to be borne by the party terminating</li> </ul>
Charges & Payment	<ul style="list-style-type: none"> <li>• The charges will be as specified in the pricing schedule, subject to review and subject to indexation (CPI)</li> <li>• Payment will include VAT</li> <li>• Timing of payment to be agreed</li> </ul>
Dispute Resolution	<ul style="list-style-type: none"> <li>• Procedure to be the same as that set out in the Management Agreement</li> </ul>
Review	<ul style="list-style-type: none"> <li>• To be reviewed as part of annual review process</li> </ul>