

**Subject:** Stadium Concession Competition  
**Agenda Item:** Private item 19  
**Report No:** 12  
**Meeting date:** 19 February 2013  
**Report to:** LLDC Board  
**Report of:** Duncan Innes, Executive Director of Real Estate

FOR DECISION

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**This report will be considered in private**

Subject to the decision of the Board under item 11 on the agenda for this meeting, this report is exempt and is therefore not for publication to the public or press by virtue of part 1, paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains 'Information relating to the financial or business affairs of any particular person (including the authority holding that information).'

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**1. SUMMARY**

- 1.1. On 5 December 2012 the LLDC Board confirmed West Ham United FC (WHU or "the club") as the first ranked bidder on the Stadium Competition. The Board recommended that LLDC should enter into negotiations with WHU in order to reach an agreement on a Concession. It attached a number of conditions on negotiations, including the following: the completion of additional due diligence on WHU; agreement of the key commercial and legal terms to ensure LLDC takes into account the full financial benefit for WHU in moving to the Stadium; agreeing the design/specification of the transformation works with WHU; agreeing a funding solution; planning permission being secured for the full transformation scheme; obtaining relevant governing body approvals; and the agreed form contractual documentation (including on the commercial terms and a stadium premium arrangement to protect the taxpayers' investment in the Stadium upon change of control).
- 1.2. The Board approved the ranking of the University College of Football and Business (UCFB) as second ranked bidder and of Leyton Orient FC and Intelligent Transport Services (who proposed hosting a Formula One race in the South Park, utilising the Stadium) as third and fourth ranked bidders respectively. The LLDC Board recommended, on the basis of the Evaluation Reports provided, that LLDC should not enter into negotiations for a Concession with either Leyton Orient or Intelligent Transport Services.
- 1.3. UCFB informed LLDC on 25 January 2013 that it was withdrawing its bid to take space in the Stadium due to its delayed re-opening; UCFB's expansion plans, they have told us since they bid, require an earlier opening date for its London campus than is currently on offer and so they are looking elsewhere.

- 1.4. During December 2012 and January 2013 LLDC entered into detailed discussions with WHU as to whether the key commercial terms could be improved. Negotiations, on key terms have now concluded but finalising legal documentation is ongoing and could reopen issues. This report provides the Board with details on the key commercial terms, an update on the preparation of final legal documents and next steps in relation to the signing of those documents and concurrent finalisation of legal arrangements with the E20 Stadium LLP (“the LLP”).
- 1.5. The Board should also note that LLDC launched the procurement for a Shell and Core contractor to carry out the main transformation works to the Stadium on 19 December 2012. The PQQ return date was 29 January 2013 and responses have been received from six firms interested in the opportunity. An ITT is to be launched in March 2013 based on the Stage D design currently being concluded by Populous and Buro Happold. The procurement of a contractor to undertake fit-out works (e.g. to the hospitality areas of the Stadium) and an operator for the Stadium will be launched at the beginning of March. LLDC believes that by offering parties the chance to bid for both contracts we will ensure the design and operational arrangements are fully integrated. LLDC is currently working with advisors and representatives of the Rugby World Cup to ascertain whether the programme of works could be managed to allow Rugby World Cup matches to take place in September and October 2015. A decision on this is likely to be required in the next few weeks.
- 1.6. The Stage D design for the Stadium has been predicated on achieving an acceptable outcome in negotiations with WHU and therefore that the Stadium will have a permanent football club in residence. The cost of the scheme including contingency is estimated at £190m and is based on a 60,000 seat multi-use Stadium that is capable of holding both field of play sports and athletics, along with concerts and other major one-off events of a sporting or cultural nature. The design incorporates retractable/relocatable seating along all four sides of the field of play to ensure optimum viewing distances for field sports (the capacity in pitch sport mode is 54,000 due to viewing distance guidelines), along with a new roof covering all seats in the Stadium. The design also provides 255 accessible seats in football mode, an amount above the Accessible Stadia Guidelines.
- 1.7. LLDC has also undertaken planning and design work on ‘Option B’, a transformation scheme of reduced scope (and therefore cost) which provides a Stadium suitable for certain field of play sports, one-off major events and community use. It does not however provide the significant opportunities for revenue generation or year-round use of the preferred scheme.

## 2. RECOMMENDATIONS

- 2.1. The Board is invited to **NOTE** the commercial proposals in section 4 of this paper and to **APPROVE** the key commercial terms as the basis for finalising a Concession Agreement with WHU.
- 2.2. The Board is invited to **AGREE** that the LLDC Stadium team should finalise legal terms on the basis of the commercial proposals.
- 2.3. The Board is invited to **ENDORSE** E20 Stadium LLP to enter into a Concession Agreement with WHU on the terms set out in this paper, subject to the commercial proposals being legally incorporated in the final terms of the Concession Agreement.
- 2.4. The Board is invited to **DELEGATE** authority to the Chief Executive of LLDC to enter into the Agreement for Lease and Lease with the LLP on the terms set out in Appendix B to this paper.

### 3. TIMING

- 3.1. There are a number of merging strands which mean a decision from the Board is **PRESSING** to allow finalisation of the legal documents and agreements between the LLP and LLDC. In the first instance, LLDC needs a decision on whether the Stadium will host Premier League football in order to inform the transformation scope because:
- 3.1.1. LLDC has received responses to the PQQ for the Shell and Core contractor procurement and an ITT will need to be issued in March, for which there needs to be a high degree of certainty on the scope of the transformation works to be procured to avoid significant abortive design costs and claims from interested contractors; and
  - 3.1.2. LLDC also needs to launch the PQQ for the Fit-out works contractor by early March to ensure a contractor is procured by September 2013 and to allow for potential cost efficiencies with the Shell and Core contractor. The Fit-out works PQQ also needs to run concurrently with the procurement of an operator for the Stadium, the PQQ for which is also to be launched in early March.
  - 3.1.3. The current hybrid planning application will be upgraded to reflect the changes in the latest Stage D design referred to in paragraph 1.6 of this paper. The revised information will be submitted for consideration by the Planning Decisions Team in early March.

### 4. COMMERCIAL TERMS

- 4.1. The Agreed principal terms of the proposed deal with WHU are as follows (any references to payments to LLDC should be read as payments to the Grantor/LLP):
- 4.1.1. The term of the Agreement will be for 99 years; WHU will use the Stadium as their home ground for all home football matches, including league, cup competitions, friendly games and Premier League u-21 matches if applicable;
  - 4.1.2. WHU will pay a Usage Fee of £2.5m pa (index linked) when playing in the Premier League, and £1.25m (index linked) when playing in any league lower than the Premier League;
  - 4.1.3. On Stadium Naming Rights, LLDC will retain the first £4m with any amount above that figure split 50:50 with WHU. WHU's share is to be capped at a figure equivalent to its yearly Usage Fee although any naming rights bonus payments that are attributable to the club's first team playing performance (e.g. an additional payment should the club play in a European competition) will be paid directly to the club. LLDC will lead the procurement of a Naming rights sponsor but work with WHU to maximise the income from Stadium Naming Rights. [REDACTED]  
[REDACTED]  
[REDACTED]  
LLDC will procure an agent to secure naming rights to the Stadium, working alongside WHU in order to ensure value is maximised.
  - 4.1.4. A stadium premium arrangement clause has been agreed with WHU to protect the taxpayer should the club or some or all of the shareholdings of the owners (including any shares that are currently under option to purchase) be sold in the 10 years after the date that the Concession Agreement is signed. Rothschild have advised LLDC

in this matter and a current value of shareholdings agreed taking into account increased broadcast revenues etc. If the shares or part thereof are sold above this base threshold value then LLDC share in the uplift in value on a sliding scale.

- 4.1.5. It should be noted that this arrangement does not apply to the Enterprise Value of the club, but rather the consideration a purchaser would pay for the Club's shares. That is, any debt owed by the club will not be added to the club's valuation as would be the case under an Enterprise Value. For example, if there is £50m of debt in the club and a buyer pays £180m to repay all debt and for 100% of the shares, the equity value (i.e. the cash sum payable) of the club would be £130m. It is on this figure that the stadium premium arrangement clause would be activated. This has been assessed in detail by Rothschild on behalf of LLDC and we consider the valuation threshold to be a sensible outcome from the commercial negotiations with the club's shareholders which represents a suitable protection to the taxpayer in the event of a future sale of the club. The Board should note that the stadium premium arrangement clause will apply only to the sale of shares in the club, and the value attributable to those shares, held by David Gold and David Sullivan, the majority shareholders (who currently own c. 65% of the club but have an option to acquire a further 30% of the club shares).
- 4.1.6. The principle behind a clawback for the public sector from any sale is as follows: if 100% of the equity value of the club is sold, LLDC will receive a percentage above the base threshold value:
- 7.5% of the receipts on the first £25m of any sale over the base threshold value;
  - 10% of the receipts on the next £50m of value over the base threshold value;
  - 20% for the first 5 years and 12.5% for years 6 to 10 on the next £100m; and
  - 30% for the first 5 years and 20% for years 6 to 10 on the value of any sale £175m above of the base threshold value.
- 4.1.7. The stadium premium arrangement clause will fall away 10 years after the date of the Concession Agreement, and if LLDC sells the Stadium to a private entity. The LLDC can have multiple payments over the ten year period if the shares are sold in parcels. The Concession Agreement will contain clauses that ensure any circumvention of the arrangement by using shareholder loans or special dividends.
- 4.1.8. The thresholds are cumulative; LLDC therefore receives a percentage at each incremental step rather than a percentage on the total value in excess of the threshold.
- 4.1.9. As the Change of Control is only applicable to the shares held by David Gold and David Sullivan, any payment to LLDC is pro-rata to the shares they hold; if they own 65% of the shares, they pay 65% of the relevant amount, or if they own 95% of the shares in the club, they pay 95% of the relevant amount.
- 4.1.10. A revenue sharing mechanism to protect the taxpayer should WHU's move to the Stadium result in higher performance levels than currently envisaged by the Club has also been agreed. There has been negotiation over the mechanism for delivering a share to LLDC, which has centred on how any upside over WHU's base business planning

assumptions can be attributed to the Stadium. This has resulted in a move away from a revenue based mechanism to a more general principle:

- 4.1.11. The suggested mechanism will grant LLDC, in addition to the Usage Fee payment, a performance related payment if WHU finish in positions of 10<sup>th</sup> and upwards in the Premier League as follows:
- 10<sup>th</sup> place, a payment of £25,000;
  - 9<sup>th</sup> place, a payment of £40,000;
  - 8<sup>th</sup> place, a payment of £55,000;
  - 7<sup>th</sup> place, a payment of £70,000;
  - 6<sup>th</sup> place, a payment of £85,000; and
  - In any of the top five places, a payment of £0.1m per place.
  - These amounts are cumulative and index linked so, for example, if WHU finished in 7<sup>th</sup> place, the payment would be £0.19m. If WHU finished in 4<sup>th</sup> place, the payment would be £0.475m.
  - If WHU qualify for the Europa League or Champions League, payments of £0.1m and £0.25m respectively will be made to LLDC (in the case of the Champions League, this is limited to qualification for the Group stage, rather than the qualification rounds themselves). Furthermore, if WHU win either the FA Cup or Europa League, a payment of £0.1m will be made to LLDC. If the club wins the Champions League a payment of £1m will be made to LLDC.
  - All performance-related payments are index linked to RPI from the date of signing the Concession Agreement.
- 4.1.12. This is designed to link the club's likely overall increase in turnover to payments to the Grantor and also to bring the payments into line with wider industry benchmarks
- 4.1.13. While this mechanism may not explicitly link any improved turnover the club enjoys as a result of its relocation, it potentially allows LLDC to share in any performance by the club which is better than its base assumptions as an improved league position can in general terms be linked to increased matchday and commercial revenues.
- 4.1.14. With regards to the capital contribution being made by the club towards the transformation works, it has been agreed as follows: WHU will make a contribution of £15m within seven days of completing on the sale of the Boleyn Ground and the majority shareholders will provide a personal guarantee for this amount.
- 4.1.15. The agreed usage fee covers a total of 25 home league games to be played at the Stadium by WHU when playing in the Premier League and 30 games when in any lower division, with an additional payment of £0.1m per game over the set amount. This is subject to a carry forward-back arrangement, under which the number of home fixtures will be reconciled on a fixed 5-yearly basis and any reconciling payments due are then made.
- 4.1.16. LLDC will retain the first £0.5m of general admission catering revenue for WHU events with any amount above that figure split on a 70:30 basis with WHU in LLDC's favour. WHU will retain all corporate hospitality revenue from their events.

- 4.1.17. It should be noted by the Board that the arrangements between LLDC and WHU regarding catering revenue and the Stadium Naming Rights reflect a revenue sharing arrangement that offers benefits to both parties.
- 4.1.18. The following table shows the improvements negotiated by LLDC on WHU's original offer made in July 2012:

Commercial item	Original position July 2012	Revised position
Usage Fee	<b>£1.5m</b> pa in Premier League <b>£1.0m</b> in a lower league	<b>£2.5m</b> pa in Premier League <b>£1.25m</b> in a lower league
Capital contribution (one off usage fee)	No capital contribution offered	<b>£15m</b> contribution on sale of Boleyn Ground, guaranteed by majority shareholders
Additional payments	No additional payments offered	<b>£0.1m</b> per match over the set number of games and operating costs for u-21/academy matches
Revenue sharing	No revenue sharing mechanism in place	Performance related payments worth up to <b>£0.775m</b> extra pa for Premier League performances plus extra for European Qualification and Cup success
Stadium Naming Rights	<b>£0.25m</b> one-off payment (but part of Usage Fee) and 50% split of net revenue based on WHU disposing of the rights	First <b>£4m</b> kept by LLDC, anything above this split 50:50 with WHU with their share capped at their annual Usage Fee unless clearly attributable to their on-field performance (e.g. bonus payments for European football)  Collaborative working to ensure that the value of the package is maximised
Catering revenue	WHU receives <b>30%</b> of catering revenues, subject to first <b>£0.5m</b> to LLDC; <i>or</i> WHU procures catering and shares revenue <b>65:35</b> with LLDC subject to first <b>£0.3m</b> to WHU	LLDC retains first <b>£0.5m</b> of General Admission catering revenue with remainder split <b>70:30</b> with WHU in LLDC's favour  WHU retain all VIP/hospitality revenue for their events, although LLDC will take a slice by virtue of the contract it agrees with a catering contractor
Number of Matches	All home 1 <sup>st</sup> team fixtures, guaranteed content of 25 games	25 home fixtures per season in the Premier League  30 home fixtures per season in a lower league
Significant conditions	<b>75%</b> reduction in Usage Fee if teamed with another field of play user  Seating within 16.9m of field of play on all sides of the pitch, fully roofed	<b>50%</b> reduction in Usage Fee if WHU must share with a winter field of play user who wishes to use the Stadium as its home ground  Seating arrangements agreed

	All ticketing operated by WHU Sub-lease for office/retail space to include 1 <sup>st</sup> team changing room	with WHU WHU control only ticketing for their events 1 <sup>st</sup> team changing room signage permitted for WHU during football season
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NB All figures in the table are index linked with the exception of the capital contribution.

- 4.2. LLDC consider the commercial terms to represent a significant improvement on those submitted by WHU in its initial bid, and indeed to meet the Board's conditions of 5 December 2012. Furthermore, LLDC believes that these terms, and the wider benefits of having a year-round user of the Stadium such as WHU, will allow the long-term legacy of the Stadium to be secured.

## 5. LEGAL IMPLICATIONS

- 5.1. The detailed contractual terms have not yet been agreed because WHU has refused to meet to discuss the contractual terms until the key commercial terms were agreed. Negotiation meetings are in the process of being arranged. The Concession Agreement is currently in draft form, a summary of which is annexed to this board paper at Appendix A. Further legal due diligence will be required before final agreement can be reached.
- 5.2. The Board should note that LLDC has received a letter from the lawyers from LOFC, threatening judicial review in relation to the decision not to team them with WHU. On the basis of the legal advice received, there are good grounds to defend this potential challenge which should not affect the ability of LLDC to endorse the entry into the Concession Agreement with WHU by the LLP or to commence stadium adaptation works. Further information will be provided via a verbal update at the meeting.

## 6. PRIORITY THEMES

- 6.1. The LLDC is continuing the priority themes set by its predecessor the Olympic Park Legacy Company. These are: promoting convergence and community participation; championing equalities and inclusion; ensuring high quality design; ensuring environmental sustainability.
- 6.2. WHU has committed to a community plan and will use the Stadium to improve and increase its community engagement programmes. WHU has also committed to provide up to 100,000 tickets for their events to Newham as part of their community plan.
- 6.3. Approximately 700 jobs will be created by WHU's relocation to the Stadium; these will be split between event day work, ongoing employment through the club's increasing operational scope and redevelopment work at the Boleyn Ground.

## 7. APPENDICES

- Appendix A: Allen & Overy summary of WHU Concession Agreement
- Appendix B: Stadium Concession Competition – update on associated matters

**List of Background Papers:**

None

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## Summary of the key terms in the draft West Ham United Concession Agreement

This document summarises at a high level the terms of the West Ham United (**WHU**) Concession Agreement (the **Agreement**), it is no substitute for a full review of the draft Agreement dated 21 December 2012. WHU have not confirmed whether they have agreed to the provisions as currently drafted and to date have not been available to discuss the detailed contractual terms.

The key financial terms are set out in Clause 19 of the Agreement ("Usage Fee for Use of the Stadium and Other Payments"), and are summarised at section 4.1 of the Board Paper.

Clause	Summary
<b>Parties and Term</b> <i>Clause 2</i>	<ul style="list-style-type: none"> <li>E20 Stadium LLP (the <b>Grantor</b>); WH Holding Limited (the <b>Concessionaire</b>) and West Ham United Football Club Limited (the <b>Club</b>).</li> <li>99 years.</li> </ul>
<b>Pre-concession works and Commencement Date</b> <i>Clause 3</i>	<ul style="list-style-type: none"> <li>The Grantor must keep the Concessionaire informed on the progress of the Pre-Concession Works and the likely completion date. The Grantor's obligations commence on the Commencement Date (related to completion of the Pre-Concession Works), or, if later, the date on which certain conditions are fulfilled.</li> <li>If the Commencement Date has not occurred by [16 August 2016] (the <b>Estimated Commencement Date</b>), the Grantor must compensate the Concessionaire for all reasonable losses. If the Commencement Date has not occurred by 24 months after the Estimated Commencement Date, the Concessionaire may terminate the agreement by giving 60 days' notice.</li> </ul>
<b>Event Calendar</b> <i>Clause 4</i>	<ul style="list-style-type: none"> <li>The <b>Event Year</b> runs from 1 August to 31 July the following year. The Grantor sets the Event Calendar each year.</li> <li>The Grantor must notify the Concessionaire on, or before, 1st April before each Event Year of the dates on which the Grantor has scheduled to hold events at the Stadium.</li> <li>The Grantor must notify the Concessionaire of the Agreed Event Calendar by 1st August each year for the following Event Year and review the Event Calendar on a quarterly basis.</li> </ul>
<b>Sporting Events</b> <i>Clause 5</i>	<ul style="list-style-type: none"> <li>The Grantor will stage UK Athletics Ltd's (<b>UKA</b>) events, the 2017 IAAF World Athletics Championships and 2017 IPC World Championships at the Stadium.</li> <li>The Concessionaire agrees that UKA's events take precedence during the <b>Athletics Window</b>, which normally commences on the [last Friday] in June and ends on 31st July.</li> </ul>
<b>Concessionaire Events</b> <i>Clause 6</i>	<ul style="list-style-type: none"> <li>The Concessionaire's matches take priority over any other events, subject to the <b>Championship Window</b> for the events in 2017 and the days in the Athletics Window on which UKA is using the Stadium.</li> </ul>
<b>Grantor Covenants</b> <i>Clause 9</i>	<ul style="list-style-type: none"> <li>The Grantor must: <ul style="list-style-type: none"> <li>use reasonable endeavours to ensure that the Pre-Concession Works are completed on, or as soon as is reasonably possible after, the Estimated Commencement Date;</li> <li>provide Concessionaire with certain specified facilities and services; and</li> <li>grant to the Concessionaire and the Club a non-assignable licence to access and occupy the Stadium on certain days.</li> </ul> </li> <li>The Grantor must compensate Concessionaire for reductions in Stadium accommodation (due to the Grantor making improvements or alterations), for all reasonable losses, costs and liabilities incurred as a result of the Stadium having a reduced capacity for a period of more than six continuous weeks during the football season.</li> </ul>
<b>Naming Rights</b> <i>Clause 10</i>	<ul style="list-style-type: none"> <li>The Concessionaire will be provided with the Stadium on a "partially clean" basis, meaning that the Concessionaire has control of some, but not all, advertising and promotional material. The Concessionaire will control advertising and promotional material in relation to the listed <b>Concessionaire Signage Rights</b> for example, grass surface markings, 90% of the pitch-side signage and the LED content of score boards.</li> <li>Both parties must keep each other fully informed of their commercial partners.</li> <li>Until the 20th anniversary of the Commencement Date, the Concessionaire is entitled to 50% of the revenue from the Stadium Naming Rights in excess of £4,000,000 (indexed), provided that the total amount is less than the annual Usage Fee payable by the Concessionaire and any Concessionaire performance related</li> </ul>

Clause	Summary
	<p>payments made pursuant to a contract entered into in relation to the Stadium Naming Rights (the <b>Naming Rights Performance Payments</b>). The Grantor is entitled to any other amounts received for the Stadium Naming Rights.</p> <ul style="list-style-type: none"> <li>[The naming rights procedure is still to be agreed.]</li> </ul>
<b>Refreshments, Catering and Ancillary Services</b> <i>Clause 17</i>	<ul style="list-style-type: none"> <li>The Grantor will arrange for the provision of refreshments, catering and ancillary services and associated personnel.</li> <li>The Grantor retains the first £500,000 of all net revenue received by it from caterers and amounts in excess of this will be divided 70:30 between the Grantor and the Concessionaire (the <b>Catering Revenue Share</b>).</li> </ul>
<b>Admission Charges</b> <i>Clause 18</i>	<ul style="list-style-type: none"> <li>The Concessionaire will decide the ticket pricing strategy. The Concessionaire sells the tickets for its own Events and receives all revenue generated from sale.</li> </ul>
<b>Usage Fee</b> <i>Clause 19</i>	<ul style="list-style-type: none"> <li>Please see section 4.1 of the Board Paper, which sets out the Usage Fee payable by the Concessionaire.</li> </ul>
<b>Leases and Agreement for Retail Space and/or Office Space Underleases</b> <i>Clause 29</i>	<ul style="list-style-type: none"> <li>The Grantor agrees to grant an Agreement for Retail Space and/or Office Space to the Concessionaire, and agrees not to amend any terms of the Headlease, or transfer any of its rights in relation to the Headlease in any manner that could materially and adversely affect the Concessionaire's rights under the Concession Agreement, without the Concessionaire's consent.</li> <li>To the extent that the Concessionaire's rights under the Agreement are adversely affected by the Grantor's acts, or omissions, under the terms of the Headlease, the Grantor must compensate the Concessionaire for all reasonable losses, costs and liabilities.</li> </ul>
<b>Force Majeure</b> <i>Clause 30</i>	<ul style="list-style-type: none"> <li>The party affected by force majeure must notify the non-affected party that they are prevented from fulfilling any obligations under the Concession Agreement and provide their best estimate of the likely extent and duration of the force majeure. The affected party must mitigate the effects of force majeure.</li> </ul>
<b>Termination</b> <i>Clause 31</i>	<ul style="list-style-type: none"> <li>Either party may terminate the Concession Agreement and the Agreement for Retail Space and/or Office Space Underleases (the <b>Concession Documents</b>) by 30 days' notice if the other party commits a repudiatory breach under either document, other than as a result of a force majeure event.</li> </ul> <p><b><u>Concessionaire right to terminate</u></b></p> <ul style="list-style-type: none"> <li>A <b>Grantor Default</b> is: (a) a breach by the Grantor of its Concession Agreement obligations which substantially frustrates or renders it impossible for the Concessionaires to perform their obligations for any [ten] consecutive Events; (b) a breach by the Grantor of the provisions of the Concession Agreement relating to changes to the parties and amendments; or (c) the transfer by the Grantor to a person that is not a public body which has sufficient financial standing or financial resources to perform the obligations of the Grantor.</li> <li>The Concessionaire may terminate the Concession Documents, if a Grantor Default has occurred and the Concessionaire has served a termination notice (specifying the type of Grantor Default that has occurred) on the Grantor within 45 days of becoming aware of the Grantor Default. The Concession Documents will terminate 45 days after the date on which the Grantor receives the termination notice, unless the Grantor Default is capable of remedy and is remedied within 20 business days of the date on which the Grantor receives notice of the Grantor Default.</li> </ul> <p><b><u>Grantor right to terminate</u></b></p> <ul style="list-style-type: none"> <li>The Grantor may terminate on: <ul style="list-style-type: none"> <li>(a) non payment by the Concessionaire which persists: <ul style="list-style-type: none"> <li>(i) for 20 business days (for an amount in excess of [25%] of the annual Usage Fee); or</li> <li>(i) for three months (for an amount less than or equal to [25%] of the annual Usage Fee),</li> </ul> </li> </ul> </li> </ul> <p>after receiving notice of such failure from the Grantor or other relevant payee;</p> <ul style="list-style-type: none"> <li>(b) failure (to a material extent) by the Concessionaire to comply with a provision of the Concession Documents relating to the Reserved Naming and Association Rights, Associated Rights, and/or the Stadium Naming Rights, which is not remedied or acceptably mitigated within [ten] business days after receiving notice of such failure from the Grantor in sufficient detail to enable the Concessionaire to dispute, remedy and/or mitigate such failure, or such failure occurs on more than three occasions in any 30 day period or three times over the course of a calendar year, subject to the Grantor notifying the Concessionaire of each failure to comply;</li> <li>(c) material breach by the Concessionaire of a Concession Document or any action by the Concessionaire resulting in the Grantor, or LLDC, committing a material</li> </ul>

Clause	Summary
	<p>breach of the UKA Access Agreement and/or the headlease, which is not remedied or acceptably mitigated within 30 days after receiving notice of such breach or failure from the Grantor;</p> <ul style="list-style-type: none"> <li>• The Concessionaire has a 30 day grace period from receiving notice of a breach or failure under (b) or (c) above to remedy the breach or failure. The Grantor will have no termination right under Clause 31.4(b)-(d) if the breach or failure under the Concession Documents is capable of remedy and is remedied within 30 days of the Concessionaire receiving notice of such breach or failure.</li> <li>• The Grantor may also terminate on 20 business days' notice if: <ul style="list-style-type: none"> <li>(a) a change of control occurs in relation to any of the Concessionaire and the Grantor determines (acting reasonably) that a Concessionaire is no longer in compliance with either the financial standing requirement or the technical standing requirement under the Concession Agreement;</li> <li>(b) a Concessionaire is the subject of an insolvency; or</li> <li>(c) the Club is sold.</li> </ul> </li> </ul>
<p><b>Effect of Termination</b> <i>Clause 32</i></p>	<ul style="list-style-type: none"> <li>• On termination by the Grantor, the Concessionaire's rights under the Concession Agreement cease immediately. The Concessionaire must pay to the Grantor the <b>Grantor Termination Sum</b> (a set percentage of the cost of providing the retractable seating), the full amount of any TUPE liability and meet all relevant employment taxes.</li> <li>• On termination of any Concession Documents, the Concessionaire must co-operate fully with the Grantor and any other concessionaires, remove all property from the Stadium as soon as possible (within 40 business days), deliver keys to the Grantor and fully compensate the Grantor for the costs of reinstatement to any part of the Stadium where damage was caused by the Concessionaire (except fair wear and tear).</li> </ul>
<p><b>Indemnities</b> <i>Clause 43</i></p>	<ul style="list-style-type: none"> <li>• The Concessionaire provides indemnities to cover: (i) action/inactions of any Concessionaire Parties; (ii) actions of members of the public on the Event Dates in excess of £2,500 (indexed) per single event; (iii) any TUPE related liabilities; (iv) unauthorised use of the Stadium Marks by any third parties; (v) the Stadium Naming Rights; (vi) use of the media rights; and (vii) postponements and cancellations.</li> <li>• The Grantor provides indemnities in relation to death or injury caused by negligence or wilful default of the Grantor.</li> </ul>



**Stadium Concession Competition – update on associated matters**

**1. FUNDING AND PLANNING**

- 1.1. LLDC, in collaboration with the design team and Mace PMP, has undertaken significant design work on the transformation scheme for the Stadium to now reach Stage D. LLDC has briefed Newham Legacy Investments (NLI)/London Borough of Newham (LBN) (as a member of the E20 Stadium LLP) and incorporated comments into the wider feedback to its design team. The Stage D design has been predicated on achieving an acceptable outcome to the negotiations with WHU and therefore that the Stadium will have a permanent football club in residence.
- 1.2. The Stage D design is based on a 60,000 seat multi-use Stadium that is capable of holding both field of play sports and athletics, along with concerts and other major one-off events of a sporting or cultural nature. The design incorporates retractable/relocatable seating along all four sides of the field of play to ensure optimum viewing distances for field sports (the capacity in pitch sport mode is 54,000 due to viewing distance guidelines), along with a new roof covering all seats in the Stadium. Significant additional hospitality provision to a total of 3,400 VIP/sponsor seats including corporate boxes is also provided. New food and beverage kiosks will be provided on the Stadium island along with a turnstile line which will allow access to the Stadium island throughout the year. The Stadium will have a 9-lane athletics track, a newly laid Desso field of play with undersoil heating and will meet UEFA Category 4 and IAAF Category 1 requirements. The adjacent £3.5m community track is included in the design, planning and procurement work
- 1.3. The capital cost of the scheme is £190m. Funding for the scheme is split as follows (please note this is subject to final approvals):

Source	Amount of funding contribution
LLDC	£52.6m
PSFP	£38.7m (Original Olympic Delivery Authority Budget for Transformation)
NLI	£40m
Bidder	£15m (on sale of current stadium site)
NLI	£18.7m
<b>Total</b>	<b>£165m</b>

- 1.4. If the above funding was secured it provides £165m of the £190m in the current transformation work cost plan. The funding gap of £25m is the subject of further negotiations between LLDC and central government, at the highest levels. Any

Concession Agreement signed with WHU will be conditional on a resolution to the funding gap.

- 1.5. As a result of NLI taking on additional funding liabilities, it is proposed to adjust the shareholding in the LLP and surplus distributions as follows:
  - 1.5.1. LLDC will now own 51% of the shareholdings in the LLP, with NLI holding 49%. LLDC will retain its 3:2 majority on the Board.
  - 1.5.2. The first £2.9m of any surplus generated by the LLP will be distributed to NLI.
  - 1.5.3. The next £3m will be distributed to LLDC.
  - 1.5.4. The next £0.5m split equally between the Newham Legacy Trust and The Legacy List.
  - 1.5.5. Any further surplus split equally 51:49 between LLDC and NLI.
  - 1.5.6. It should be noted that a reserve fund of £1.45m will be created from the first year(s) during which a surplus greater than £2.9m is generated by the LLP. This fund can be drawn upon by NLI in order to make its loan repayments in any year that a surplus less than £2.9m is generated. LLDC will therefore not receive any surplus until the £1.45m reserve is built up.
- 1.6. A hybrid planning application has been made by LLDC on behalf of the LLP which intends to secure the Stadium as a 60,000 seat, multi-use venue. It is intended that a further planning application will be made in March 2013 when there is clarity over the users, final transformation specification and at which point the reserved matters can be fully addressed. This is scheduled to be approved by July 2013 allowing transformation works to commence in September 2013.

## **2. OPTION B**

- 2.1. Without the confirmed usage of a long-term concessionaire, a business case cannot be made for the capital expenditure of £190m required to fund the extensive transformation of the Stadium into a multi-use venue capable of hosting Premier League football. Therefore, as part of its contingency planning, the team has looked at a number of options for the transformation and ongoing use of the Stadium should a suitable deal not be agreed with WHU.
- 2.2. Under this scenario, the aim is for the Stadium to be available to host events in summer 2014 (notwithstanding the events already scheduled for summer 2013); and to host the 2017 IPC and IAAF World Athletics Championships, which have been secured and commitments given that they will be held at the Stadium. Furthermore, the Stadium is on the long list of venues to host 2015 Rugby World Cup matches. There is also the expectation that the venue will host concerts, community events and other major one-off sporting and cultural events; the Stadium must therefore retain the capability to accommodate large numbers of spectators and be compliant with relevant International Sports Federation(s) regulations and guidelines.
- 2.3. LLDC has been analysing possible transformation options under this scenario, as part of the contingency planning being undertaken. Early indications are that an option with a capital cost of c. £48m offers the best opportunity to secure the long-term future of the Stadium. It delivers sufficient capital works to allow the Stadium to host significant one-off events and generate revenues from them; it also reduces planning risks by bringing the Stadium's secure line deep on to the Stadium island enabling the podium to be treated as part of the overall Park. Finally the spectator concessions are permanent structures and will have a

design life of 20 years or more. However, all options will need to be considered in detail by the LLP Board should it prove not possible to agree a Concession Agreement with WHU.

- 2.4. It should be noted that under any Option B scenario the Games-time roof (which provides coverage of the upper bowl) would be retained and not extended to cover the entire seating bowl (should a concession be signed with WHU, the full transformation scheme would provide a roof over all spectator seating). This would mean the Stadium could not be used year-round for any field of play sport due to licensing issues, with a knock-on effect on potential revenue streams and activity in the Stadium during winter months. This results in a forecast annual deficit of c. £0.7-1m before lifecycle costs. In addition, the roof cables have an expected safe life of 10 years and this means the roof will need to be replaced c.2020 at an estimated cost of c. £40m.

### 3. AGREEMENT FOR LEASE AND LEASE

- 3.1. LLDC, as freeholder of the Stadium Island Site, has negotiated the following three documents with E20 Stadium LLP ("the LLP"):
  - 3.1.1. An Agreement for Lease for the Stadium island site and community track;
  - 3.1.2. A Lease for the Stadium Island site excluding the community track; and
  - 3.1.3. A Lease for the community track.
- 3.2. The documents are in advanced but not final form. LLDC will also provide the LLP with a title certificate for the sites to be leased to it, the form of which is currently being negotiated. The community track is subject to a separate lease as it needs to include a "lift and shift" provision required to meet the facility funding arrangements with the London Marathon Trust (this will allow the track to be moved to an alternative location should the land to the south of the Stadium be required for development). The two leases, in other respects, are on substantially similar terms (other than as to permitted use).
- 3.3. The lease documents have been developed to ensure both LLP and LLDC interests are appropriately addressed. The documents do not, however, seek to duplicate or overlap with matters dealt with in other legal documents governing the overall relationship (e.g. the Members' Agreement). They are therefore relatively light touch and straight forward, reflecting the nature of the partnership between the two public bodies involved. For example, the agreement for lease contains a planning condition which is deliberately short and simple and relies on LLDC and LLP resolving planning issues by negotiation.
- 3.4. During the lease negotiations the main issues discussed have been:
  - 3.4.1. **The term of the leases:** This is currently set at 99 years. LLDC have indicated that this may be extended in the final documents to a 102/103 year-long lease to ensure it is coterminous with any concession agreement signed with WHU should negotiations be successful. The WHU agreement is based on 99 years after occupation in 2016. The LLP will not have an automatic right to extend the leases at the end of the term.
  - 3.4.2. **Extent of the Site:** The Stadium lease and community track lease cover the whole of the Stadium island site, but do not include the bridges connecting the site with the Park. The leases will provide access rights to the Stadium island site across LLDC land, as well as land connecting the Stadium to Westfield through land owned by Lend

Lease. Further detail on these and other rights is being settled and lease plans are in advanced form.

- 3.4.3. **Permitted Use:** The lease allows the LLP to use the land to achieve the Legacy Benefits defined in the Members' Agreement (commercial use, sports activity, leisure and community events and other ancillary uses). This does not preclude commercial development of land on the site, but the LLDC (as landlord) must agree to this use and would be entitled to seek consideration as a condition of its consent. The community track is protected through legal agreements to ensure its use remains based on athletics and local community usage.
- 3.4.4. **Inherent Defects and Warranties:** The LLP is taking the lease on the basis of the Stadium facilities currently in place. Further discussions are ongoing in respect of the warranties provided to ODA (and passed on to LLDC), but the Board should be aware that these warranties are not strong as they relate to the Stadium built for the Games, and will in many cases be invalidated or weak as a result of the changes made to the Stadium by LOCOG and the transformation works undertaken by the LLP. This is primarily a concern should Option B be developed as under the full £190m transformation scheme, works to the Stadium would require new warranties to be sought from the contractor. The Board should note that LLDC has submitted a claim to LOCOG in respect of certain defects after handover.
- 3.4.5. **Pass down of obligations:** The lease contains a pass down of all obligations that the LLDC has inherited for the site. This is a significant undertaking by the LLP but can be accepted following a review by the LLP of available reports provided by LLDC. This includes the requirement to comply with various CCHP/Cofely/electricity agreements inherited by the LLDC from the ODA.
- 3.4.6. **Payment to LLDC:**
- There is no formal service charge in the leases, nor obligation to provide services. The LLP business plan provides for a service charge to the LLDC for park services. This is set initially at £300,000 and can only rise by indexation.
  - LLDC will also have rights to recover costs relating to stewarding movement of attendees through the Olympic Park
- 3.4.7. **Environmental Liability:** The LLP is taking on the environmental conditions of the Stadium island site, including responsibility for meeting planning conditions relating to decontamination of the site. The LLP has undertaken an independent review of the contamination risk, and concluded that the risks are manageable, albeit they represent a potential LLP liability if contamination issues arise.
- 3.4.8. **SDLT, VAT and tax liability:** The LLP is liable for these costs. These are cross-referenced into the business plan and transformation works and the LLP is taking advice on its tax position.
- 3.4.9. **Reinstatement:** The lease is based on the Stadium being taken in the condition at the time of the lease (pre-transformation works), and with an obligation to return the Stadium island in that condition at the end of the term.
- 3.5. **Insurance:** The LLP must insure the Stadium island site for insurable risks, and the terms of the lease deal with the position if a risk is uninsurable.
- 3.6. The terms set out above are acceptable to both parties and the documents are ready to be entered into at the appropriate time subject to resolution of a limited

number of outstanding issues. The LLP Board has granted delegated authority to the Chief Executives of LLDC and LBN/NLI to enter into the agreements at the relevant time. This will ensure timely signature of the documents and allows final changes to be made to reflect final negotiations between the parties and with concession holders and planners. It is anticipated that the agreement for lease will be signed in late February and the leases signed once the programme of Summer 2013 events has been completed.

#### **4. 2015 RUGBY WORLD CUP**

- 4.1. LLDC is currently developing detailed analysis on the feasibility of hosting a minimum of three matches at the 2015 Rugby World Cup. These matches would take place in late September and October 2015 which, should the deal with WHU be completed, would clash with the construction period for the transformation of the Stadium, scheduled to run from September 2013 through May 2016.
- 4.2. There are implications in terms of event costs from hosting the matches, which LLDC would aim to ensure are neutral but which require additional analysis. For example, temporary seating would be required as the construction programme implies the removal of the lower seating bowl in the Stadium.
- 4.3. While the transformation works can be halted for approximately 2 months in order to make the Stadium fit for hosting events, there are cost and programme implications. It is likely that a proportion of the float in the construction programme would be lost through halting the transformation works which would add risk to the tail end of the programme; this could in turn require greater use of the funding contingency should works need to be accelerated to meet the summer 2016 opening date. Furthermore, the transformation works themselves would in all likelihood be procured in packages, which has an impact on costs; however, this can also mitigate some of the programme risk, in particular for the removal and reconstruction of the roof which could commence alongside the wider deconstruction works.
- 4.4. Hosting matches at the 2015RWC would, however, bring substantial benefits, not least demonstrating the ability to attract major events to the Stadium and further enhancing its reputation as an iconic venue.