

**GRAVESEND PIER WALKWAY AND PONTOON MANAGEMENT TENDER**



**Invitation to Tender for the Promotion and Management of Town Pier Pontoon, Gravesend**

1. **Introduction**
   1. Gravesham Borough Council is seeking to appoint an experienced and qualified company to promote and manage the Town Pier Pontoon, and Pier Walkway, Gravesend. This will be for a period of 3 years from 1st April 2021. There will be a break clause in favour of Gravesham Borough Council exercisable on six months written notice at any time
   2. This documentation comprises the instructions and information that a tenderer requires in order to submit a tender.
   3. Procurement Timetable

| **Stage** | **Deadline** |
| --- | --- |
| Issue Invitation to Tender | 16 November 2020 |
| Tenderer deadline for receipt of clarification questions | 15 December 2020 |
| Council deadline for confirming changes, if applicable, to the Lease or requirements | 18 December 2020 |
| Deadline for receipt of Tenders from Tenderers | 22 January 2021 |
| Evaluation of Tenders | January/ February 2021 |
| Internal approvals process. Notices of decision to award and standstill period | February 2021 |
| Award of contract | March 2021 |
| Lease commences | 1 April 2021 |

* 1. This timetable is subject to variation by the Council.

1. **Instructions to Tenderers**
   1. Tenderers are expected to demonstrate that they have the expertise and experience to meet the licence conditions as set out in **Part 1** of this invitation to tender.
   2. Tenderers are invited to submit an annual fee that they will charge to Gravesham Borough Council to provide the Services and the Maintenance Services in accordance with the provisions of the licence.
   3. Tenderers are required to complete and submit the following documentation via the Kent Business Portal (<https://www.kentbusinessportal.org.uk/> )
      1. A pre-qualification questionnaire **(Part 2)** together with any supporting documents which must be clearly marked and cross referenced to the relevant paragraph/section of the pre-qualification questionnaire;
      2. Collusive Tendering Certificate(**Part 3**);
      3. Tender Form (**Part 4**); together with a statement outlining the tenderers proposals for the pontoon and walkway.
      4. Interests declaration (**Part 5**);
   4. Tenderers must not submit alternative contract conditions or seek to vary the conditions in **Part 1** as these will not be accepted insofar as they conflict with the Council's conditions.
   5. Tenderers will be informed if they are required to meet with the Council during the tender process. This would be to allow the Council to better understand the proposal being submitted.
2. **Information for Tenderers**
   1. Information supplied by the Council (whether in these documents or otherwise) is provided for guidance in the preparation of the pre-qualification questionnaire and tender.
   2. Tenderers must satisfy themselves as to the conditions affecting costs and all other conditions of the locality in which the works the subject of the contract are to be carried out, insofar as the same might affect their tender.
   3. Tenderers must satisfy themselves by their own investigations with regard to the accuracy of any information provided by the Council, its servants or agents.
   4. Should any additions or alterations to any tender document or the provision of further information appear to the Council to be desirable to be provided prior to the date for submission of the pre-qualification questionnaire and tender, such information will be issued to tenderers in writing and any document thereby modified shall be made available via the Kent Business Portal (KBP). Tenderers are advised during the tender period to check the Portal for further information.
   5. In the event that any tenderer wishes to raise a query or seek clarification prior to the submission of the pre-qualification questionnaire and tender, then such queries or requests must be made by email to [richard.debney@gravesham.gov.uk](mailto:richard.debney@gravesham.gov.uk), or via direct message on the Kent Business Portal (<https://www.kentbusinessportal.org.uk/>).
   6. The Council will endeavor to respond to all queries raised and requests made by email provided that queries or requests are received by 15 December 2020.
   7. The completed pre-qualification questionnaire, tender and all supporting documentation must be in the English language. All financial sums and amounts must be in pounds sterling.
   8. Where the tenderer is a company, the pre-qualification questionnaire, tender and the other documents which require signature must be signed by two directors or by a director and the company secretary. Where the tenderer is an individual the documents must be signed by that named individual and where the tenderer is a partnership by at least two partners on behalf of all the partners, two members in respect of a Limited Liability Partnership **(LLP)** and/or the sole proprietor or an authorised senior manager in respect of a business run by a sole proprietor.
   9. All costs (direct or indirect}, expenses and disbursements incurred by any tenderer in the preparation and submission of the pre-qualification questionnaire and tender and any discussions are to be borne in full by the tenderer.
3. **Tender Submission**
   1. Tenderers are to complete the pre-qualification questionnaire and all required tender documents in the manner stated below.
   2. The tenderer should note that:-
      1. No unauthorised alteration or addition (save for the inclusion of the relevant information) should be made to the Form of Tender or any other part of the invitation to tender documentation.
      2. Tenders must not be qualified in any way and must be submitted strictly in accordance with the invitation document, including these instructions.
      3. Tenders must not be accompanied by any covering letter or any statement that could be construed as rendering the tenders equivocal and/or placing it on a different footing from other tenders.
      4. Additional content and appendices containing materials and documentation to that requested such as brochures, marketing literature, case studies or project histories, unless specifically requested, will not be considered as part of the tender and will be disregarded in the assessment and evaluation of tenders.
      5. Tenderers are fully responsible for the delivery/return of their tender and also for the actions of their staff, representatives or delivery agents.
   3. The completed pre-qualification questionnaire and tender must be received no later than **14.00 hours on 22 January 2021.**
   4. Pre-qualification questionnaires and tender documents whether in full or in part which are sent by email will not be considered by the Council and will be returned to the tenderer.
   5. The Council may, at its own discretion, extend the closing date and time stated in the tender or as notified in writing to the tenderers by the Council. Otherwise the Council will not consider requests for any extension of the closing date and time stated in writing by the Council.
   6. The tenderer is to note that any pre-qualification questionnaire, tender and/or supporting documentation received after the tender due date and time will not be considered by the Council and will be returned to the tenderer.
   7. The Council shall not be responsible for or pay any expenses incurred by any tenderer or would be tenderer in the preparation of its pre-qualification questionnaire and tender.
   8. The Council does not bind itself to accept the lowest or any tender submitted. The Council does not bind itself to consider any tender submitted. The Council reserves the right to accept any tender in whole or in part.
   9. Tenders must be kept open and valid for acceptance by the Council for at least 90 days after the closing date for the return of tenders.
4. **Confidentiality**
   1. The invitation to tender documentation and any related and supporting information provided by or on behalf of the Council must be treated by the tenderer as 'Private and Confidential'.
   2. The tenderer is not to disclose or release any information relating to the invitation to tender documentation and any related or supporting information other than on a strictly confidential basis to those whom the Tenderer needs to consult in the preparation or the submission of a bona fide tender.
5. **Rejection of Tenders**
   1. The Council shall reject a tender, without prejudice to any other civil remedies available to the Council or any criminal liability the tenderer may attract, if the Tenderer:-
      1. Fixes or adjusts the price shown in its tender by or in accordance with any agreement or arrangement with any other person or by reference to any other tender; or
      2. Communicates to any person other than the Council the amount or appropriate amount of the prices shown in its tender, except where such communication is made in confidence in order to obtain quotations necessary for insurance;
      3. Agrees with any other person that such other person shall refrain from submitting a tender or shall limit, restrict or reduce the prices to be shown by any other tenderer in its tender; or
      4. Offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done, or for causing or having caused to be done any act of omission in relation to any other tenderer or any other persons proposed tender.
   2. **The Council's Right not to Award or to Deselect a Tenderer**
   3. The issue of this invitation to tender in no way commits the Council to award any contract pursuant to this invitation to tender process and the Council shall be able in its sole discretion to withdraw from the procurement process at any time.
   4. The Council may (but shall not be obliged) at its discretion but always acting proportionately and in accordance with the law to deselect a tenderer if:-
      1. The price is unaffordable;
      2. The completed pre-qualification questionnaire and tender is incomplete, misleading or inaccurate;
      3. The tender is not submitted as stated and required by the Council which therefore makes a tender 'not compliant' for evaluation and full consideration by the Council. The tenderer is to note that this applies to both quality and price;
      4. The tenderer seeks to negotiate;
      5. The tenderer makes material changes to, or (in the Council's opinion) a material change takes place in respect of, any aspect of .either their business qualification submission or tender unless substantial justification can be provided to the satisfaction of the Council.
6. **Insurance**
   1. The contractor is required to have in place third party liability insurance in the sum of not less than £10,000,000 for each and every event with the number of events unlimited. Tenderers are required to have in place employer's liability insurance in the sum of not less than £10,000,000 for each and every claim in respect of all customary risks. Tenderers must confirm levels of third party liability insurance and employer's liability insurance and any limitations on cover in their response to the pre-qualification questionnaire.
7. **Data Protection Act (2018) (DPA)**
   1. Applicants shall at all times during this tender exercise comply with the provisions and obligations imposed by the Data Protection Legislation and shall assist and/or co-operate with the Council in respect of the Council's compliance with Data Protection Legislation.
8. **Freedom of Information Act 2000 and/or Environmental Information Regulations 2004**
   1. In accordance with the obligations placed upon public authorities and organisations by the Freedom of Information Act (FOIA) and/or through Environmental Information Requests (EIR), all information submitted to the Council may be disclosed by the Council in response to a request made pursuant to the FOIA and/or the EIR. The Government also requires local authorities to be transparent about its processes and expenditure and this may require the publication of information and documentation.
   2. Tenderers must carefully consider the use of phrases such as "in confidence" or "commercially sensitive" when submitting their pre-qualification questionnaire and tender since they will not necessarily protect the pre-qualification questionnaire, tender or parts of tender from disclosure. In respect of any information submitted by an Tenderer which they consider to be commercially sensitive, Tenderers should:
   3. Clearly identify such information as commercially sensitive and the consequences of disclosure;
   4. Detail the envisaged timeframe during which such information will remain commercially sensitive;
   5. The Council is required to comply with the provisions of the FOIA and/or EIR and will normally seek comments from any party whose information is subject to a request under the FOIA and/or EIR. Even where information is identified as confidential and/or commercially sensitive, the Council may be required to disclose such information in accordance with the FOIA and/or EIR if a request is received. Receipt of Tender marked in whole or in part as "confidential" and/or "commercially sensitive" should not be taken to mean that the Council accepts any duty of confidence by virtue of the marking.
9. **Pre-Qualification and Tender Evaluation**
   1. The evaluation process will be transparent, objective, consistent and fair in its analysis. It will focus upon how the tenderer proposes to deliver the requirements detailed in the Licence (**Part 1**).
   2. The Contract will be awarded to the most economically advantageous tender having regard to the tenderers proposals for the pontoon/pier walkway and ability to conform with the terms of the licence.
   3. If a tender meets the Council's Pre-Qualification Questionnaire criteria, they will then be evaluated against the criteria set out in **Section 10** below to identify the tender achieving the highest score.
   4. Evaluation of a Pre-Qualification Questionnaire will include a financial appraisal which will be undertaken by the Council's Finance Services Department.
   5. The purpose of the financial appraisal is to analyse a tenderer's financial position and to determine the level of risk that it would represent to the Council, having regard to the contract requirement and value, criticality, and the nature of the market.
   6. The objectives of undertaking this financial appraisal are to:
      1. assess the risk to the council which would result if a tenderer bidding for a contract were to go out of business during the life of the contract or have inadequate financial resources to perform the contract;
      2. When justified, eliminate from procurement any tenderer whose current financial capacity would pose an unacceptable risk to the council.
      3. The financial appraisal will be considered as part of the overall selection criteria. It will not, on its own, be used as an indicator of a tenderer's ability to deliver. It is a selection and not an award criterion.
      4. The council will apply commercial judgement to the issues, especially where a situation is not clear-cut. Only experienced staff will conduct a financial assessment, calling on specialist in-house or external expertise as necessary.
      5. Basic checks will be made on a UK-based tenderer's title and its registered number at Companies House, whether it is trading or dormant and whether it is owned by another company or supported by a venture capital organisation. The status of the company's accounts will also be determined, that is the last accounting period for which statements have been filed and whether there are later accounts that are overdue. Annual reports and accounts, annual returns, details of company directors, dissolved companies, disqualified directors and insolvency details are also checked. Companies that are in receivership, administration or liquidation

will be identified.

* + 1. Other credit agencies and online databases may be used for assessment of non-UK companies.
    2. Evaluation of the pre-qualification questionnaire requires that all questions are answered and where applicable answers will need to 'pass'.

1. **Tender Evaluation**
   1. The criteria for evaluating tenders to select the most economically advantageous tender which complies with the terms of the licence.
   2. Tender Scoring
      1. Tender responses will be evaluated against the following criteria. The maximum number of available scoring points is shown in relation to the each element of the evaluation criteria:

|  |  |
| --- | --- |
| **Evaluation Criteria in relation to Specification** | **Maximum** |
| **Requirements.** | **number of** |
|  | **available** |
|  | **Points** |
| C1 The proposal that best illustrates the tenderers ability to manage the pontoon/pier walkway in line with the requirements set out by the licence. This statement should be included and submitted as a separate document by the tenderer together with Part 4 Form of tender | 50 |
| C2 The Licence Fee that the tenderer is to charge the council for the work involved in complying with the terms of the licence. | 50 |
| **Total** | 100 points |

* 1. Scored Criteria
     1. The number of points scored for C1 will be allocated by reference to the percentage ranges stated below:-

|  |  |
| --- | --- |
| % **of score** | **Criteria for awarding points** |
| 0-30 | Minimal conformity to the specification |
| 31-50 | Good conformity to the terms of the specification |
| 51-75 | Very good conformity to the terms of the specification |
| 76-100 | Exceptional conformity to the terms of the specification |

* + 1. In respect of C2 the best offer will be judged to be the lowest priced submission. Other tenders will be awarded points in proportion to the relationship between their submitted price and the lowest priced offer.
    2. A tender application should be aiming to achieve the highest overall points score.

**Tender for the Promotion and Management of Town Pier Pontoon and Pier Walkway, Gravesend Guidance for Completion of the Pre-Qualification Questionnaire**

1. All questions in the Pre-qualification Questionnaire must be answered, but if a question is not applicable tenderers must write "not applicable" and if the answer is not known tenderers must write "not known". Failure to complete the documents as requested may result in the tender not being accepted.
2. A signed pre-qualification questionnaire (Part 2) together with any supporting documents which must be clearly marked and cross referenced to the relevant paragraph/section of the pre-qualification questionnaire

**Question 1: Business information** - this is requested for information only.

**Question 2: Financial information**

It is anticipated that a tenderer, if they are a listed company, will have adopted International Financial Reporting Standards (IFRS) for their consolidated accounts. It is understood that non-listed firms, including those that are subsidiaries of listed companies, are not obliged to have done so.

In the absence of audited accounts, other information may be requested that is considered sufficient for assessment purposes. Information assessed will include figures for the current and previous year to establish a trend wherever possible.

Accounting ratios will be applied as an aid for analysing and interpreting relationships existing between different items in a tenderer's financial statements and to highlight areas and items that should be subjected to more detailed examination and questioning.

If the applicant does not provide one of the required submissions detailed in question 2.2 (a­ d) the response will fail

Assessment of the submitted financial information will be undertaken as shown below:

If the result of the liquidity ratio is > than 1, the contractor will be considered financially suitable and the application will pass, if not further analysis is required (as per point 2).

The liquidity ratio used is determined as follows :

(Total Value of Current Assets less Total Value of Stocks)/ Total Value of Current Liabilities

If the liquidity ratio is < than 1, the financial suitability should be assessed according to the following matrix (note: A = Acceptable and R = further analysis

required - as per point 3).

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Liquidity  Ratio | £25k-  £50k | >£50k -  £100k | >£100k  - £200k | >£200k  - £300k | >£300k  - £400k | >£400k  - £500k | >£500k |
| 0.95-  0.99 | A | A | A | A | A | A | R |
| 0.90-  0.94 | A | A | A | A | A | R | R |
| 0.85 - 0.89 | A | A | A | A | R | R | R |
| 0.80 - 0.84 | A | A | A | R | R | R | R |
| 0.75-  0.79 | A | A | R | R | R | R | R |
| 0.70 - 0.74 | A | R | R | R | R | R | R |

If the result of the liquidity ratio for an individual contractor is > than the mean average of the liquidity ratio for all the contractors invited to tender for a specific contract and is also >= than the liquidity ratios in the table below, the contractor should be considered financially suitable. If neither of these conditions are met, the decision should be referred to the Service Manager (Financial Services)/ Assistant

Director (Finance).

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Liquidity  Ratio | £25k-  £50k | >£50k-  £100k | >£100k  - £200k | >£200k  - £300k | >£300k  - £400k | >£400k  - £500k | >£500k |
| 0.95 - 0.99 | >0.6 | >0.65 | >0.65 | >0.70 | >0.70 | >0.75 | >0.85 |

The decision taken by the Assistant Director (Corporate Services) will be based on a number of other financial issues including for example :

* Trends in liquidity / profitability over differing financial years.
* Estimated value of the contract as a proportion of company turnover.
* Level of work carried out for GBC over recent financial years. Where the results do not provide a clear basis for a decision, the Council will undertake an external company search to support the decision making process.

Examples of other information that may demonstrate a tenderer's economic and financial standing are identified in the pre-qualification questionnaire (**section 2.4**).

Credit rating reports will be used to provide a snapshot view of a tenderer's financial standing as part of a broader appraisal, but are not used as the sole assessment tool.

If the financial information supplied by the tenderer identifies a concern about their financial position then the pre-qualification will fail.

**Question 3: Insurance**

If the Tenderer states that it has or will take out the required insurances the response will pass.

If the Tenderer does not have, and states that it will not take out the required insurances the response will be failed.

**Question 4: Business Activities** - this is requested for information only.

**Question 5: Health and Safety**

A tenderer will be expected to answer 'yes' to both these questions, unless there is a justifiable reason otherwise.

The Council may ask for more information in respect of health and safety policies and systems as part of the evaluation process.

**Question 6: Experience and References**

Tenderers who have carried out similar work and can supply contact details for each referee proposed will be passed.

Tenderers must have at least one suitable reference.

**Question 7: Professional and Business Standing**

If the Tenderer answers 'yes to any item in section 7, the response may pass or fail at the discretion of the Council, dependent on the seriousness of the circumstances and the steps taken by the Tenderer to address them.

**Question 8: Quality Assurance**

Information only.

**Question 9: Equalities**

Information only except for questions 9.3 and 9.4.

If Tenderer answers "yes" to question 9.3, the response may pass or fail at the discretion of the Council, dependent upon the seriousness of the circumstances and the steps taken by the Tenderer address them.

**Question 10: Staffing**

Please submit this information

**Question 11: Use of Sub-Contractors**

Please submit this information

APPENDICES

Appendix 1 Appendix 2a Appendix 2b Appendix 3a Appendix 3b Appendix 4a Appendix 4b Appendix 5

Appendix 6

Appendix 7

SCHEDULE

Part 1

Part 2

Part 3

Part 4

The Facilities The Outgoings Income Services

Maintenance Services

The Supporting Facilities

Terms of use of the Supporting Facilities The plan of the property

The plan of the Town Pier

PLA Licence (separate attachments)

Prevention of Fraud and Bribery

DRAFT LICENCE FOR GRAVESEND TOWN PIER WALKWAY AND PONTOON

PRE- QUALIFICATION QUESTIONNAIRE

COLLUSIVE TENDERING CERTIFICATE

FORM OF TENDER

**Appendix 1 The Facilities**

1. Pontoon

The Pontoon means the 40m pontoon with an access, jetty single brow and a short ramp on the main pontoon, situated at the end of the Town Pier.

1. The Buoys

The Buoys mean the three Town Pier Moorings situated in the River Thames, Gravesend, Kent known as the Upper, Middle and Lower Moorings and which are registered with the PLA under reference numbers 336/202/203/204 and all shown coloured yellow on the Plan at Appendix Five but which are subject to tidal movement in the River Thames.

1. St Andrew's Quay Moorings

The St Andrew's Quay Moorings means the three berths alongside St Andrew's Gardens and which are shown coloured blue on the Plan of the Property. At Appendix 5.

1. Town Pier Walkway

Town Pier Corridor access to the Pontoon from the land end along to the Pier Head of the Pontoon as shown hatched grey on the Plan at Appendix 6.

**Appendix 2a The Outgoings**

1. The proper and reasonable:-
   1. cost of supervision and other employee costs including locking up the facility at night
   2. cost of office expenditure, telephone rental and call charges
   3. cost of staff car parking expenses
   4. cost related to the keeping and auditing of accounts
   5. cost of non-domestic rates for the facilities
   6. cost of water sewerage and environmental rates for the Pontoon
   7. cost of public liability insurance and employee indemnity insurance
   8. cost of electricity, water and other services consumed by the Licensee or its occupiers at and using the facilities, subject to full account being taken of any recharges to occupiers and users
   9. cost of refuse collections from the facilities
   10. cost of day to day operation, maintenance and cleaning by the Licensee of the Facilities as set out in Appendix 3b
   11. cost of VAT except to the extent that the Licensee can recover the same as input tax
   12. direct costs of advertising and promoting the services
   13. cost incurred by the Licensee in respect of any further activities or matters in respect of the services not specifically permitted under this Appendix 2a but otherwise agreed in advance writing with the Licensor
   14. and expenses paid by the Licensee in complying with any obligation of the Licensee under any statute bye-law or order affecting the facilities excluding any costs and expenses attributable to any culpable non-performance or non­ observance the facilities

**PROVED ALWAYS** that the Licensee shall use its reasonable endeavours to recover any such fees costs expenses outgoing tax and disbursements and to minimise such expenditure.

**Appendix 2b The Income**

"Income" means all sums received or receivable by the Licensee for berthing, mooring and other use of the facilities and all Monthly Sums received for the Licence Period.

**Appendix 3a The Services**

**The Licensee shall:**

1. Manage and operate a high quality point of embarkation and disembarkation for:-
   1. Mooring of leisure and commercial craft and private vessels from the Pontoon, Buoys and St Andrew's Quay to facilitate tourism leisure and business development;
   2. The (and which the Council may require to be free of charge or subject to a concessionary charge only):-
      1. berthing and mooring of the Waverley and Balmoral at The Pontoon throughout the summer period;
      2. berthing and mooring of LV21 at St Andrew's Quay Moorings and the Buoys;
      3. berthing of the Gravesend to Tilbury ferry at the Pontoon.
   3. Hold access keys when required for the shutter and glass door to the Town Pier public corridor shown at the position marked "A" on the attached plan ("the Plan"); the Pontoon gate shown at the position marked "8" on the Plan and St Andrew's Quay gates shown marked "G" on the Plan;
   4. Ensure:-
      1. the Pontoon gates and the St Andrew's Quay gates are locked during times when the Services and the Maintenance Services are not being provided, but to maintain emergency egress and access if required by users of the Facility;
      2. the shutter and glass door to the Town Pier public access corridor is locked during times when both the Services and the Maintenance Services are not being provided and the Town Pier tenant's (if any)restaurant and bar is closed . In the event of a flood warning to arrange for the walkway floodgate to be closed ;
      3. ensure the safekeeping of access keys and access codes and shall only permit them to be given to those of its employees whose names and addresses have been supplied to the Licensor and only to the extent necessary for them to provide the Services and the Maintenance Services;
      4. not and shall not permit any duplicate key to be made and shall return all keys to the Licensor at the end of the Licence Period or when the Licensee ceases to provide the Services and Maintenance Services if earlier.
   5. Use best endeavours to actively promote, publicise, and maximize the use of the Pontoon and Walkway for the benefit of regeneration of the town of Gravesend and the Borough tourism, economic generation and travel opportunities to include:-
      1. increasing awareness of the Facility as widely as possible at local, regional, national and international levels including by commercial operators, leisure operators, leisure users, operators of other marinas and boating facilities, boating and other related bodies, organisations and clubs, the general public, the media and tourist organisations;
      2. increasing usage of the Facility by and through the above groups, including encouraging new commuter and leisure services from the Pontoon, thereby increasing opportunities for all kinds of public river travel to and from Gravesend;
      3. increasing income raised from usage of the Pontoon to render the Pontoon at least self-supporting and ideally profit making;
      4. increasing footfall in Gravesend Town by increasing numbers and range of commuter and leisure services from the Pontoon, increasing numbers of vessels using the Pontoon and by increasing numbers of the public visiting to see and enjoy vessels using the Pontoon, for example historic vessels, other vessels of note, working vessels, special river related events;
      5. promotion by means including, but not exclusively limited to, internet, creation and maintenance of a Facility web site, media coverage, advertising in relevant publications, and printed publicity and promotion material,
   6. The Licensee will develop and maintain a very close working relationship with the Licensor's Tourist Information office at Gravesend Market together with its Economic Development, Regeneration and Property departments to ensure co-ordination and maximising benefits of the Facility usage across all areas.
   7. The Licensee shall:-
      1. Hold access keys when required for the shutter and glass door to the Town Pier public corridor shown at the position marked "A" on the Plan; the Pontoon gate shown at the position marked "8" on the Plan and St Andrew's Quay gates shown marked "G" on the Plan;
      2. Ensure:-
         1. the Pontoon gates and the St Andrew's Quay gates are locked during times when the Services and the Maintenance Services are not being provided, but to maintain emergency egress and access if required by users of the Facility.
         2. the shutter and glass door to the Town Pier public access corridor is locked during times when both the services and the maintenance services are not being provided and the Town Pier tenant's restaurant and bar is closed.
      3. Ensure the safekeeping of access keys and access codes and shall only permit them to be given to those of its employees and the ferry operator whose names and addresses have been supplied to the Licensor and only to the extent necessary for them to provide the Services and the Maintenance services;

1.7.4 Not and shall not permit any duplicate key to be made and shall return all keys to the Licensor at the end of the Licence Period or when the Licensee ceases to provide the Services and Maintenance Services if earlier.

**Appendix 3b**

**The maintenance services**

Day to Day maintenance and cleaning by Licensee for both the Pontoon and Access way

|  |  |
| --- | --- |
| Action | Frequency |
| Keep the Facilities in a clean and tidy  condition at all times | Daily morning clean and keep clean at all  times. |

|  |  |  |
| --- | --- | --- |
| Check | Action | Frequency |
| Life rings and lifesaving equipment, and provide daily written report on findings to Licensor. | Inspect and maintain | Daily |
| Bollards, fixings, lighting, navigation and provide weekly written report on findings to Licensor. Make good any deficiencies at Licensor's cost in relation to above items, repair and decoration to comply with statutory legislation  Water tightness of Pontoon | Inspect pontoon, pier furniture and pier walkway access route | Weekly |
| Check Pontoon freeboard at each corner of the Pontoon and report any change in  dimensions to the Council | Monthly  - |
| Lubrication | Grease nominated pivots on Pontoon and brows | As required |
| Lights | Where required replace light bulbs, including navigation lights to Town Pier and Pontoon. Inform GBC of any issues with LED lighting to Town Pier walkway or pontoon .  Inspect and carry out minor repairs | As required |
| Surfaces | As required |
| Cleaning and safety | Cleaning, safe removal of guano and litter removal, snow and ice clearance, rending safe for daily use | Daily |

/

**Appendix 4a**

**The supporting facilities**

So far as the Licensor is able to grant the same the use of:-

1. **Water**

The water supply via the self-contained break tank unit is situate on The Pier and shown on the Plan in the position marked "ws"

1. **Electricity**

The supply of electricity via The Town Pier which is provided by a new panelboard installed in the meter cupboard in the bar area and which is more particularly shown in the position marked 'E' on the Plan

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**Appendix 4b**

**Terms of use of supporting facilities**

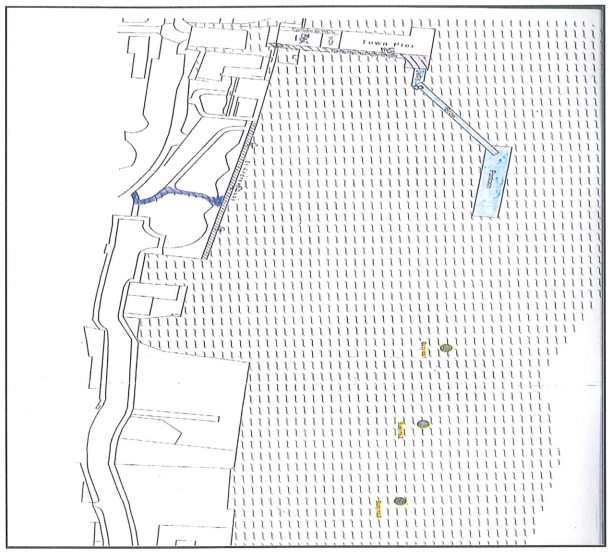
1. Use of the Supporting Facilities is:-
   1. in common with the Town Pier tenant (if any)and their employees, customers and licensees and
   2. personal to the Licensee and the Licensee's employees and the Gravesend to Tilbury ferry operator and their staff whilst mooring at the Pontoon and shall cease upon written notice being given at any time to the Licensee by the Licensor **PROVIDED THAT** no compensation shall be payable to the Licensee (and the Licensee shall not claim compensation) in the event of termination of the use of the and the supporting facilities.
2. The Licensee shall:-
   1. on the date of this Licence and thereafter monthly throughout the Licence Period record the Pontoon -
      1. electricity sub-meter reading and
      2. water sub-meter reading and pontoon tap meter reading and shall retain the meter readings thereafter and if required, provide them to the Licensor from time to time
   2. when required promptly pay to the Town Pier tenant (if any)or other occupier for the time being of the Town Pier the amount due for electricity and water consumed by the Licensee's together with VAT and a due proportion of standing charges

**Appendix 4c**

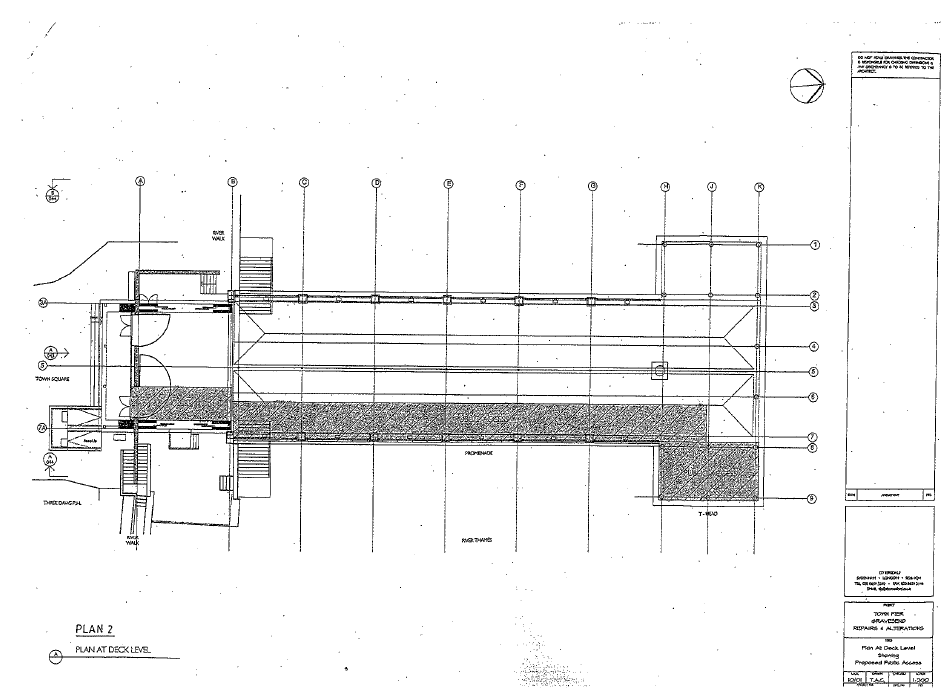
**Access areas for the facilities and supporting facilities**

1. Access on foot:-
   1. over and along the public access area shown hatched black at Appendix 6, giving access to and from the Pontoon and onto Town Pier Square.
   2. over the St. Andrew's Gardens shown coloured dark blue hatched black at Appendix 5 for access to and from the St. Andrew's Quay Moorings.

**Appendix 5 Plan of Property**



**Appendix 6 Plan of Town Pier**



**THE SCHEDULE**

**PREVENTION OF FRAUD AND BRIBERY**

**DEFINITIONS**

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Prohibited Act: the following constitute Prohibited Acts:

* 1. to directly or indirectly offer, promise or give any person working for or engaged by the Licensor a financial or other advantage to:
     1. induce that person to perform improperly a relevant function or activity; or
     2. reward that person for improper performance of a relevant function or activity;
  2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this licence;
  3. committing any offence:
     1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
     2. under legislation or common law concerning fraudulent acts;
     3. defrauding, attempting to defraud or conspiring to defraud the Licensor.
  4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

Services: the services to be delivered by or on behalf of the Licensee under this licence.

Sub-Contract: any contract or licence, or proposed contract or licence between the Licensee and any third party whereby that third party agrees to provide to the Licensee the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessaryfor the managemen,tdirection or controlof the Services or any part of the Services.

Sub-Contractor: the third parties that enter into a sub-contract with the Licensee.

Licensee's Personne:l all employees, staff, other workers, agents and consultants of

the Licensee and of any Sub-Contractors who are engaged in the provision of the Services or the Maintenance Services from time to time.

**PREVENTION OF FRAUD AND BRIBERY**

1. The Licensee represents and warrants that neither it, nor to the best of its knowledge any Licensee's Personnel, have at any time prior to the Commencement Date:-
   1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
   2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
2. The Licensee shall not during the term of this Licence:-
   1. commit a Prohibited Act; and/or
   2. do or suffer anything to be done which would cause the Licensor or any of the Licensor's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
3. The Licensee shall during the term of this licence:-
   1. establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
   2. keep appropriate records of its compliance with its obligations under Clause

3.1 and make such records available to the Licensor on request.

1. The Licensee shall immediately notify the Licensor in writing if it becomes aware of any breach of Clause 1 and/or 2, or has reason to believe that it has or any of the Licensee's Personnel have:-
   1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
   2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
   3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Licence or otherwise suspects that any person or Party directly or indirectly connected with this Licence has committed or attempted to commit a Prohibited Act.
2. If the Licensee makes a notification to the Licensor pursuant to Clause 4, the Licensee shall respond promptly to the Licensor's enquiries, co-operate with any investigation, and allow the Licensor to audit any books, records and/or any other relevant documentation.
3. If the Licensee is in breach of Clauses 1and/or 2, the Licensor may by notice:-
   1. require the Licensee to remove from performance of this Licence any Licensee's Personnel whose acts or omissions have caused the breach; or
   2. immediately terminate this Licence.
4. Any notice served by the Licensor under Clause 6 shall specify the nature of the Prohibited Act, the identity of the Party who the Licensor believes has committed the Prohibited Act and the action that the Licensor has elected to take (including, where relevant, the date on which this Licence shall terminate).

PART 1

DRAFT LICENCE FOR GRAVESEND TOWN PIER WALKWAY AND PONTOON

For use of Town Pier Walkway, Pontoon, Buoys and St Andrews Quay Moorings

between

Gravesham Borough Council

and

Party 2

CONTENTS

Clause

1. Interpretation
2. Licence
3. Licence Period
4. Use of Facilities
5. Use of Supporting Facilities and Access Areas
6. Prevention of Fraud and Bribery Obligations and Warranty
7. Safety and compliance with legislation
8. Payment
9. Outgoings
10. Income
11. Access by Licensor
12. Suspension of Licence for Works
13. Insurance and Indemnity
14. Liability
15. Nuisance
16. Access Areas
17. No tenancy
18. Alienation
19. Termination
20. Recovery of sums due
21. Notices
22. Third party rights
23. Governing law
24. Jurisdiction

**THIS LICENCE** is dated

**Parties**

**GRAVESHAM BOROUGH COUNCIL** of Civic Centre, Windmill Street, Gravesend Kent DA12 1AU (1)

[FULL COMPANY NAME] incorporated and registered in England and Wales with company

number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(2)**

**AGREED TERMS**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this licence:

Access Areas: Appendix: Buoys:

the access areas described in Appendix 4c an appendix to this licence

the Buoys forming part of the Facilities and described in

Appendix 1

Commencement Date:

Facilities: Income: Licensee: Licensor:

Licence Period: Maintenance Services:

Monthly Sum:

Net Turnover:

Outgoings:

the facilities described at Appendix 1 the sums described in Appendix 2b

Gravesham Borough Council of Civic Centre, Windmill Street, Gravesend, Kent

the period of 3 years from the Commencement Date (subject to Council break clause )

the services for maintenance of the Facilities described at Appendix 3b to be provided by the Licensee

the sum of £xxxxxx monthly (exclusive of Value Added Tax) payable in advance by the Licensor to the Licensee

the amount (if any) by which Income exceeds Outgoings in each Year

the outgoings described in Appendix 2a

PLA:

PLA licences:

Plan: Pontoon:

Services:

St Andrew's Quay:

Supporting Facilities:

Town Pier and Pier Walkway

Town Pier tenant:

VAT:

Works:

Year:

the Port of London Authority of London River House,

Royal Pier Road, Gravesend, Kent, DA12 28G

the licences between the PLA (1) and the Licensor (2) copies of which are annexed at Appendix 7 (separate attachements) and any other licences issued to the Licensor by the PLA from time to time and notified to the Licensee

the plan attached to this licence

the Pontoon adjoining the Town Pier being part of the Facilities and described in Appendix 1

the services to be provided by the Licensee described at Appendix 3a

the moorings at St Andrews Quay forming part of the Facilities and described in Appendix 1

the supporting facilities described in Appendix 4a

the Town Pier, Gravesend in the location shown on the Plan

the Licensor's tenant (if any) for the time being of the Town Pier

value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax

the works for extension of the Pontoon which may be procured by the Licensor during the Licence Period

each period of a year during the Licence Period, the first Year being the year commencing on the Commencement Date

* 1. Clause, Appendix and paragraph headings shall not affect the interpretation of this licence.
  2. A 'person' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  3. The Schedule forms part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedule.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  6. A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
  7. Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
  8. A reference to 'writing' or 'written' excludes fax and e-mail.
  9. Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

1.10 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.

* 1. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  2. If the Licensee is more than one person, the obligations and liabilities of the Licensee under this licence are joint and several.
  3. A working day is any day which is not Christmas or Boxing Day

1. **PROVISION OF THE SERVICES AND LICENCE**
   1. The Licensee shall provide the Services and the Maintenance Services on each working day in accordance with the provisions of this licence.
   2. In consideration of the provision of the Services and the Maintenance Services to be provided by the Licensee, the Licensor permits the Licensee the use of the Facilities described in Appendix 1 on the pleasure of the Licensor and so far as the Licensor

can grant the same, the use of the Supporting Facilities described in Appendix 4a, subject to the terms and conditions of this Licence.

1. **LICENCE PERIOD**

Unless terminated earlier in accordance with this Licence, **add break clause** the Licence shall continue for the Licence Period.

1. **USE OF FACILITIES**

The Licensee shall use the Facilities only for the service of managing and operating the Pier Walkway ,Pontoon, Buoys and St Andrew's Quay as described in Appendix 3a and the provision of the Maintenance Services described in Appendix 3b and subject to the terms of this Licence and compliance with all existing Licences, permissions etc.

1. **USE OF SUPPORTING FACILITIES AND ACCESS AREAS**

The Licensor, so far as it is able to grant the same, authorises the Licensee, for the provision of the Services and the Maintenance Services and in common with the Licensor, the Town Pier tenant, occupiers (if any)and the public and all others having such right:-

* 1. to use the Supporting Facilities during the hours of opening of the Town Pier restaurant and bar by the Town Pier tenant (if any)subject to their management by the Licensee in accordance with the terms described in Appendix 4b;
  2. so far as the Licensor can grant the same access to the Facilities and the Supporting Facilities over the access areas ("the Access Areas") at the times and in the manner described in the attached Appendix 4c.

1. **PREVENTION OF FRAUD AND BRIBERY OBLIGATIONS AND WARRANTY**
   1. the Licensee shall comply with the requirements of the Scheduel .
   2. the Licensee warrants as provided in paragraph 1 of the Scheduel .
2. **SAFETY, COMPLIANCEWITH LEGISLATIONAND PLA LICENCES**
   1. In the provision of the Services and the Maintenance Services the Licensee shall:
      1. provide the Services in accordance with Appendix 3a and the Maintenance Services in accordance with Appendix 3b and in a professional competent and safe manner and otherwise in accordance with the terms of this licence;
      2. take all reasonable measures to ensure the safety of members of the general public on the Facilities;
      3. have obtained and maintain at all times ISO 9001 accreditation; or
      4. operate a suitable Safety Management System approved in advance in writing by the Licensor and subject to such reasonable

amendments as the Licensor may from time to time approve in writing or require;

* + 1. comply with all regulations imposed by the Licensor and the PLA and the PLA licences in relation to the Facilities, the Supporting Facilities and their use throughout the Licence Period;
    2. comply with all statutory requirements and legislation, codes of practice, and other requirements including but without limitation:

7.1.6.1

7.1.6.2

7.1.6.3

the Health and Safety at Work Act 1974 and other relevant legislation relating to health and safety, other relevant legislation; and

the Port Marine Safety Code and Safety in Docks - Approved Code of Practice (ACOP) and other relevant Codes of Practice; and

local authority requirements and byelaws; and

* + 1. submit to the Licensor:
       1. not later than 5 business days from the Commencement Date; and
       2. except as provided in clause 7.1.8, on each second anniversary of the Commencement Date;

comprehensive and suitable risk assessments (including without limitation a fire risk assessment which shall be subject to clause

7.1.8) for approval in writing by the Licensor.

* + 1. the fire risk assessment submitted in accordance with clause

7.1.7.1 shall thereafter be submitted on each anniversary of the Commencement Date;

in connection with the use and occupation of the Facilities; and

all risk assessments shall be reviewed annually by the Licensee and Licensor and shall, if required, be revised to include such measures as the Licensor or its insurers shall require from time to time.

notifies:

* + - 1. the Licensor; and
      2. the Licensee's employees, agents and contractors forthwith of any health and safety hazards on the Facilities or the Supporting Facilities of which it becomes aware; and

instruct its employees, agents and contractors forthwith in connection with any necessary associated safety measures.

* 1. The Licensor may on giving written notice to the Licensee (the period of notice to be proportionate to the seriousness of the breach or circumstances) suspend the Licence, the Services or Maintenance Services in the event of:
     1. non-compliance by the Licensee, its employees, agents or contractors with health and safety legislation or codes of practice;
     2. any other circumstances which in the reasonable opinion of the Licensor may endanger the health and safety of any person; and

the Licensee shall not resume their provision until the Licensor gives written notice to the Licensee that the non-compliance or circumstances have been rectified; and

* + 1. the Licensee shall, if required by the Licensor repay the proportionate amount of the Monthly Sum for any period of suspension necessary in consequence of clause 7.2.1

1. **PAYMENT**

The Licensor will pay the Monthly Sum to the Licensee for the Licence Period, the monthly sum of£ (exclusive of VAT) in advance for the Services and the

Maintenance Services.

1. **OUTGOINGS**

The Licensee will promptly pay the Outgoings during the Licence Period or related to the Licence Period.

1. **INCOME**
   1. The Licensee may retain the Income, for the Licence Period subject to the following:
   2. In each Year, the Licensee shall deduct the cost of the Outgoings incurred during that Year from the Income accrued in that Year:
      1. the Net Turnover (if any) shall be due to the Licensor and the Licensee in equal proportions; and
      2. the Licensee shall within four months after the expiry of each Year pay to the Licensor half of the Net Turnover.
   3. Within two months after the end of each Year the Licensee shall deliver to the Licensor's Director (Communities):
      1. a certificate giving particulars of the Income and the Outgoings for that Year (and if required by the Licensor, the Licensee shall as soon as reasonably practicable following expiry of that Year provide in addition, a certificate signed by a qualified accountant); and
      2. a report providing details of the moorings, berthing and arrangements for the use of the Facilities during that Year.
   4. If the Licence shall determine during the course of a Year, clauses 10.2 and

10.3 shall be applied to the period from the commencement of the relevant Year to the date of termination.

1. **ACCESS BY LICENSOR**

The Licensee shall not obstruct access at all reasonable times to the Facilities by the Licensor and its authorised contractors consultants and agents [to include the Port of London Authority ("PLA")] in order to undertake any required maintenance to the facilities or for any other purposes of the Licensor or the PLA. This to include the remedying of any defects relating to the Licensor's contracts for construction of or alteration to the Facilities.

1. **SUSPENSION OF LICENCE FOR WORKS**
   1. If, during the Licence Period the Licensor determines to carry out the Works:

12.1.1

12.1.2

12.1.3

the Licensor shall by giving at least one month's notice in writing to the Licensee, suspend this Licence for the period specified in the notice; and

during the period of suspension, access by the Licensee to the Facilities and the Supporting Facilities and the provision of the Services and the Maintenance Services by the Licensee shall be suspended;and

the Licensor shall on completion of the Works give a minimum of 7 days' notice to the Licensee:

* + - 1. of the completion of the Works and requiring the resumption of the Services and the Maintenance Services; and
      2. the Licensee shall or shall procure the resumption of the Services and the Maintenance Services on the date specified in the notice.
  1. The Licensor shall continue to pay the Monthly Sum to the Licensee during any period of suspension under clause 12.1.

1. **INSURANCE AND INDEMNITY**
   1. The Licensee shall indemnify and keep indemnified the Licensee against the injury to or death of any person or persons, or loss of or damage to any property, which may arise out of the act default or negligence of or breach of the provisions of this licence by the Licensee, its employees or agents and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof, or in relation thereto, provided that the Licensee shall not be liable for, nor be required to indemnify the Licensor against any compensation or damages for or in respect of injuries loss or damage resulting wholly from any act default or negligence on the part

of the Licensor its employees or agents not being the Licensee or employed by the Licensee.

* 1. Without thereby limiting his responsibilities under this clause, the Licensee shall maintain at all times:

13.2.1

13.2.2

13.2.3

public liability insurance cover in the minimum sum of £1O million for any one incident, the number of incidents in any period of insurance to be unlimited, for any claim for loss of or damage to property and injury to or death of any person or persons arising from the exercise of this Licence whether or not the same shall be caused by a use permitted by this Licence and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof;

insurance for personal injury to or death of any person arising out of a contract of insurance with the Licensee and arising out of an incident occurring in the course of such person's employment which insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made under them;

The Licensee's Employer's Liability and Public Liability policies shall each contain a Principal's Indemnity clause.

13.3 The Licensee shall supply to the Licensor on demand yearly and from time to time, copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this paragraph

1. **LIMITATION OF LICENSOR'S LIABILITY**
   1. Subject to clause 14.2, the Licensor is not liable for:

14.1.1

14.1.2

14.1.3

the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or

damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or

any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause..

14.2 Nothing in clause 14.1 shall limit or exclude the Licensor's liability for:

14.2.1

14.2.2

death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents;

or

any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

1. **NUISANCE**

The Licensee shall not use the Facilities, the Supporting Facilities and the Access Areas in such a manner as to be a nuisance, danger or annoyance or obstruction to the Licensor, occupiers or tenants of them or of any adjoining property, the Town Pier tenant (if any)or any members of the public. It is agreed that the use of the Facilities by the Licensee in accordance with the terms and conditions of this Licence shall not be deemed to be such a nuisance or annoyance.

1. **SHARED FACILITIES**

The Shared Facilities are occupied by and their use is in common with the Town Pier Tenant (if any)and no warranty is given by the Licensor of their availability for use by the Licensee during the Licence Period and no compensation shall be payable (and the Licensee shall not claim compensation) in the event that they are unavailable for use for any part or parts of the Licence Period.

1. **NO TENANCY**
   1. The Licensee acknowledges and agrees that:

* the Licence does not confer any tenancy upon the Licensee and that the possession of the Facilities is retained by the Licensor subject to the rights and privileges granted by the Licensee and subject to the conditions Licence.
* the Licensor shall be entitled to enter the Facilities at any time and for any reason whatsoever during Licence Period -and the Licensee shall not obstruct or interfere with the Licensor's rights of possession and control of the Facilities.

1. **ALIENATION**

Any assignment, under letting, charging or parting with possession of the facilities or any part of them is prohibited save as permitted for the purpose of provision of the services.19

1. **TERMINATION**
   1. As detailed in Clause 1.1 of this Agreement, Gravesham Borough Council have the benefit of a break clause operable on 6 months notice at any time.

Additionally without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

* + 1. The other party commits a material breach of any term of this agreement which breach is irremediable or (if such a breach is remediable) fails to remedy that breach within a period of 7 days (or such other period as may be reasonable in all circumstances) after being notified in writing to do so.
    2. The other party repeatedly breached any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the agreement.
    3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
    4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
    5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
    6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
    7. · the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
    8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
    9. the other party (being an individual) is the subject of a bankruptcy petition or order;

19.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

* + 1. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause O to clause 19.1.10 (inclusive);
    2. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
    3. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
    4. there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010); or
  1. For the purposes of clause 19.1.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
     1. a substantial portion of this agreement; or
     2. any of the obligations set out in clauses 6, 7.1 or 13.2; and

in deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

1. **RECOVERY OF SUMS DUE**

The Licensee may set off any amount owed by the Licensor to the Licensee against any amount due to the Licensee under this Licence by giving at least 7 days' notice to the Licensor setting out the Licensor's reasons for withholding or retaining the relevant sum.

1. **NOTICES**
   1. Any notice to be served under this Licence shall be served upon the party named at their address stated above or at such other address as either party may notify to the other in writing to the other from time to time;
   2. Any notice to be served on the Licensor shall be served upon Mrs M Norris the Licensor's Director (Communities) for the time being (or other officer nominated from time to time for the purpose and notified to the Licensee in writing);
   3. Any notice to be served on the Licensee shall be served upon a Director of the Licensee (or other officer nominated from time to time for the purpose and notified to the Licensor in writing);
   4. All notices to be given under this Licence shall be in writing and shall either be delivered personally or sent by first class pre-paid post or email and shall be deemed duly served in the case of:
      1. a notice delivered personally, at the time of delivery;
      2. a notice sent by first class pre-paid post, two clear business days after the date of dispatch;
2. **THIRD PARTIES**

Notwithstanding any other provision of this authority nothing in it confers or is intended to confer any right to enforce any of its terms on any person who is not party to it under the Contracts (Rights of Third Parties) Act 1999.

1. **GOVERNING LAW**

This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

1. **JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have jurisdiction to settle any dispute or claim arising out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

**PART2**

**PRE- QUALIFICATION QUESTIONNAIRE**

| **1** | **BASIC DETAILS OF YOUR ORGANISATION** | | |
| --- | --- | --- | --- |
| 1.1 | Name of Organisation |  | |
| 1.2 | Contact name for enquiries |  | |
| 1.3 | Job title |  | |
| 1.4 | Company Address |  | |
| 1.5 | Postcode |  | |
| 1.6 | Telephone number |  | |
| 1.7 | Email address |  | |
| 1.8 | Website |  | |
| 1.9 | Company registration number: |  | |
| 1.10 | Date of registration |  | |
| 1.11 | Registered address, if different from above |  | |
| 1.12 | Are you registered for VAT  If so please provide Registration number |  | |
| 1.13 | Is your organisation: | i) a public limited company |  |
| ii) a limited company |  |
| iii) a partnership |  |
| iv) other (please specify) |  |
| 1.14 | Are you acting as the lead organisation for a consortium? |  | |

|  |  |  |  |
| --- | --- | --- | --- |
|  | If members of your consortium or sub-contractors are likely to deliver a significant (over 50%) proportion of the contract, give their company name(s) and address(es). Please provide this information in a separate annex |  | |
| 1.15 | Name of (ultimate) parent company (if this applies): |  | |
| 1.16 | Companies House Registration number of parent company (if this applies): |  | |
| **2.** | **FINANCIAL INFORMATION** | | |
| 2.1 | What was your turnover in each of the last three financial years (if you are a consortium please state aggregated turnover) | £ for year  ended --/--/-- | £ for year ended --/--  /----  . |
| 2.2 | Please indicate which of the following you would be able to provide (please tick a minimum of one) | | |
| (a) A copy of your audited accounts for the most recent three years (if this applies), or for the period that is available if trading for less than two years. | |  |
| (b) A statement of your turnover, profit & loss and cash flow position for the most recent full year of trading (or part year if full year not applicable) and an end period Balance Sheet, where this information is not available in an audited form at (a). | |  |
| (c) Where (b) cannot be provided, a statement of your cash flow forecast for the current year and a bank letter outlining the current cash and credit facility position. | |  |
| (d) If your company is a subsidiary of a group, (a) to (c) are required for both the subsidiary and the ultimate parent. Where a consortium or association is proposed, the information is requested for each member company or firm. | |  |
|  | (e) A separate statement of your turnover that relates directly to the supply of this service for the past two years, or for the period you have been trading (if less than two years). | |  |
| 2.3 | We will apply for a bank reference from your bank therefore can you provide full bank contact details | I | |

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| --- | --- | --- | --- | --- | --- |
| 2.4 | The Authority may require a candidate to provide other adequate information to demonstrate the candidate's economic and financial standing, if trading for less than a year for example:  . parent company accounts (if applicable);  . bankers statements and references;   * accountants' references; * management accounts; * financial projections, including cash flow forecasts;   . details of previous contracts, including contract values; and  . capital availability. | | | |  |
| **3.** | **INSURANCE** | | | |
| 3.1 | (a) Please confirm whether you would be willing to take out the appropriate level of insurance cover as set out in paragraph  13.2.1 of the licence (Part 1) if you are successful in winning the contract? | |  | |
| **4.** | **BUSINESS ACTIVITIES** | | | |
| 4.1 | What are the main business activities of your organisation? (max 100 words) | | | |
| **5.** | **HEALTH & SAFETY** | | | |
| 5.1 | Does your organisation have a written health and safety at work policy? | | |  |
|  | |
| 5.2 | Does your organisation have a health and safety at work system1? | | |  | |
| 5.3 | If**" No" ,** to either of the above please explain why: |  | | |  |

1 " s ystem" means processes and procedures to ensure that the subject is properly managed. This includes making sure that legal requirements are met

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| **6.**  I | **E XPERIENCE AND REFERENCES**  Please provide details of up to three contracts public or private in the last three years that a relevant to the Authority's requirement for the operation of this marine facility. (Please ensure the referee is prepared to provide a reference) | | | | | | |
|  |  | Contract 1 | | | Contract 2 | Contract 3 | |
| 6.1 | Customer Organisation (name):  Website: |  | | |  |  |  |
| 6.2 | Customer contact name , phone number and email |  |  |  |  |  | |
| 6.3 | Date contract awarded |  | | |  |  |  |
| 6.4 | Date contract completed |  | | |  |  | |
| 6.5 | Brief description of contract (max 100 words) |  | | |  |  | |
| 6.6 | Total Contract Value |  | | |  |  | |
| **7.** | **PROFESSIONAL AND BUSINESS STANDING**  Do any of the following apply to your organisation, or to (any of) the director(s) /partners/ proprietor(s)? | | | | | | |
| 7.1 | Bankruptcy, insolvency, compulsory winding up, receivership, composition with creditors, or subject to relevant proceedings | | | | |  | |
| 7.2 | A conviction (or convictions) for a criminal offence related to business or professional conduct | | | | |  | |
| 7.3 | Legal or administrative finding of commission of an act of grave misconduct in the course of business | | | | |  | |
| 7.4 | Failure to provide information required or providing inaccurate/misleading information when participating in a procurement exercise | | | | |  | |
|  | If the answer to any of these is **"Yes"** please give brief details below, including what corrective measures have been put into place | | | | | | |

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| **8. QUALITY ASSURANCE** | | | |
| 8.1 | Does your organisation hold a recognised quality management certification; for example BS/EN/ISO 9000 or equivalent? | |  |
| 8.2 | If not, does your organisation have a quality management system\*2? | |  |
| 8.3 | If you do not have quality certification or a quality management system, please explain why: | |  |
| **9. EQUALITIES** | | | |
| 9.1. | Is it your policy as an employer to comply with anti-discrimination legislation, and to treat all people fairly and equally so that no one group of people is treated less favourably than others? |  | |
| 9.2. | In the last three years has any finding of unlawful discrimination been made against your organisation by any court or industrial or employment tribunal or equivalent body? |  | |
| 9.3. | In the last three years has your organisation been the subject of a formal investigation by the Equality and Human Rights Commission or an equivalent body on grounds of alleged unlawful discrimination? |  | |
| 9.4. | If the answer to question 2 and/ or 3 is **"Yes",** what steps did your organisation take as a result of that finding or investigation? | | |
| 9.5. | What does your organisation do to ensure that equality and diversity is embedded within your organisation? | | |
| 9.6. | Do you actively promote good practice in terms of eliminating discrimination in all forms through: | | |
| 9.6a. | instructions to your employees concerned with recruitment, training and promotion? |  | |

2 " system" means processes and procedures to ensure that the quality is properly managed. This includes making sure that legal requirements are met.

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| --- | --- | --- | --- | --- | --- |
| 9.6b. | making guidance or policy documents concerning how the organisation embeds equality and diversity available to employees, recognised trade unions or other representative groups of employees? | | |  |  |
| 9.6c. | appropriate recruitment advertisements or other literature? | | |  | |
| 9.7. | If we asked, could you provide relevant examples of the instructions, documents, recruitment advertisements or other literature? | | |  |  |
| **10.** | **STAFFING** | | |  | |
| 10.1 | Can you confirm that the qualifications and experience of the staff who will be employed in delivery of the contract and its management and supervision will be able to comply with the terms of the licence Please submit information | | |  | |
| **11.** | **USE OF SUB-CONTRACTORS** | | |  | |
| 11.1 | Please detail the extent to which you intend to use sub-contractors and the identity, qualifications and experience of sub-contractors. Please submit information  Please note question 7.4 concerning required registration and qualifications for electrical work. | | |  | |
| **12.** | I declare that to the best of my knowledge the answers submitted in this PQQ are correct. I understand that the information will be used in the process to assess my organisation's suitability to be invited to tender for the Authority's requirement. I understand that the Council may reject this PQQ if there is a failure to answer all relevant questions fully or if I provide false/misleading information | | | | |
| **FORM COMPLETED BY** | | | | |
| 12.1 | Name: |  | | | |
| 12.2 | Position (Job Title): |  |  |  | |
| 12.3 | Date: |  | | | |
| 12.4 | Telephone number: |  | | | |

**PART 3: CONDITIONS OF CONTRACT**

**GRAVESHAM BOROUGH COUNCIL**

**TENDER FOR THE PROMOTION AND MANAGEMENT OF THE TOWN PIER PONTOOON AND PIER WALKWAY, GRAVESEND.**

**Collusive Tendering Certificate**

We certify that this is a bona fide Tender, intended to be competitive, and that we have not fixed or adjusted the amount of the Tender by or under or in accordance with any agreement or arrangement with any other persons. We also certify that we have not done and we undertake that we will not do at any time before the hour and date specified for the return of this Tender any of the following acts:

1. Communicating to a person other than the person calling for those Tenders the amount or approximate amount of the proposed Tender, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain insurance premium quotations required for the preparation of the Tender;
2. Entering into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted;
3. Offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the said work any act or thing of the sort described above.

In this certificate, the "person" includes any person and anybody or association, corporate or un-incorporate and "any agreement or arrangement" includes any such transaction, formal or informal, and whether legally binding or not.

**FIRST CONTACT**

Name/ Signed: Print Name in full:

Designation:

Date:

For and on behalf of:

Address:

**SECOND CONTACT**

Name/ Signed: Print Name in full:

Designation:

Date:

For and on behalf of:

Address:

**PART 4 FORM OF TENDER**

**TENDER FOR THE MANAGEMENT OF TOWN PIER PONTOON AND PIER WALKWAY, GRAVESEND.**

To: Gravesham Borough Council

I/We the undersigned, having examined the attached Information to tenderers, Specification and Conditions of Contract having acquainted myself/ourselves of the work and services to be undertaken do hereby offer to undertake and complete the works and services to the true

intent and meaning of the Licence at a monthly fee of £ -------------------**.**

I/We understand and agree that the Council does not bind itself to consider any tender which may be submitted and that the Council does not bind itself to accept the lowest or any tender.

We undertake to hold our tender open for acceptance for a period of 180 days from the date of submission of this Tender.

Unless and until a formal Contract is prepared and executed, this tender, together with your formal written acceptance thereof, shall constitute a binding contract between us.

We undertake if our tender is accepted we will upon demand formally execute a written contract upon the terms of the Conditions of Contract.

**Gravesend Pier Pontoon And Pier Walkway Management Notes**

1. **. Council requirements**
   * Protection of the asset
   * Home third party insurance
   * Safety management systems
   * Comply with PLA regulations
   * Risk assessments by 1st April
   * Safety notices/instructions and compliance
   * Avoid Nuisance
   * Contribute to regeneration
   * Provide Fee income to GBC

* **Gravesend Pier Pontoon and Walkway Business Plan (including information relating to PQQ and staffing)**
* **Cash flow forecast - Management Only**
* **Cash flow forecast - with marketing costs and berthing fees**
* **Response to PQQ Use of Sub-contractors**