

Report to	Policy & Resources Committee
Date	25 November 2021
By	Head of Governances & Support Services
Title of Report (Decision)	Draft Operating Agreement between SDNPA and South Downs Commercial Operations Limited

Recommendation: The Committee is recommended to:

- 1. Note progress with the development of the Operating Agreement between SDNPA and South Downs Commercial Operations Limited (“the Company”);**
- 2. Endorse, subject to any comments made by the committee the current draft of the Operating agreement, noting that work is ongoing to prepare the final version for approval by the NPA.**
- 3. Endorse the principle of delegating matters related to the operation of the Operating Agreement to the Chief Executive as set out as paragraph 3.5 below.**

1. Introduction

- 1.1 As part of the business plan for acquiring Seven Sisters Country Park, which was considered by the NPA at its meeting on 16 May 2019, the NPA were advised of the need to establish a commercial vehicle for the purpose of undertaking activities for a commercial purpose.
- 1.2 At the May 2020 NPA meeting it was agreed that the trading company be called “South Downs Commercial Operations Ltd” (“SDCO”) and that it should be established as a company limited by shares. This Company has now been established in preparation to take over management of the site from April 2022, subject to the execution of the Operating Agreement and subsequent business plan which will subject to approval by the NPA
- 1.3 Ownership of the Seven Sisters Country Park site will sit with SDNPA who, through the Operating Agreement, will contract with the Company to deliver activities for a commercial purpose through the asset in line with Company’s Business plan.
- 1.4 SDNPA will carefully monitor the activities of the Company through the application of the reserved matters set out in the Company’s Articles (previously agreed by the NPA), and through the Policy & Resources Committee and reports to the NPA to ensure that during the term of the Operating Agreement, the Company adheres to the business plan and the Operating Agreement.
- 1.5 The Company is a “Teckal” Company which only has the same powers as the Authority establishing it – therefore the activities of the Company are limited to those that the Authority could undertake and the NPA will need to satisfy itself as to the legality of any activities that the Company undertakes. This is provided for within the Operating Agreement. This places obligations on the Company to restrict how much activity it can undertake for third parties (i.e. anyone other than the SDNPA) and confirms that the SDNPA exercises authority over the Company similar to that which it exercises over its own departments. To maintain Teckal status no more than 19% of the Company’s activities can be for a third party and the SDNPA must retain control of the Company. This is

enshrined in the Company's objects.

1.6 P&R Committee is asked to comment upon and endorse, subject to any comments made by the committee the current draft of the Operating agreement, noting that work is ongoing to prepare the final version for approval by the NPA.

1.7 There are ongoing conversations between Officers and the Company in relation to the provisions of the agreement and there are still a number of issues to be resolved. However the Directors have indicated that they are broadly content with the direction of travel of the agreement.

2. Policy Context

2.1 Undertaking the activities contained within the Operating Agreement for a commercial purpose is a key part of delivering the Seven Sisters Country Park Project.

2.2 The operation of Seven Sisters Country Park has potential contributions to the Partnership Management Plan for Outcomes 1, 2, 3, 4, 5, 6, 7 and 10.

3. Issues for Consideration

3.1 Members are asked to note progress with the development of the Operating Agreement and endorse the current draft of the agreement. Key issues contained within the Operating Agreement include:

	Heading	Purpose / Rationale
1	Agreement Documents	Standard terms to ensure clarity.
2	Duration	Sets the start and end date, and states that the Agreement can be extended. The term of the Agreement is currently proposed to be 3 years subject to extension agreed by the parties.
3	Basis of Award	Provides clarity with regard to the Teckal nature of the Company.
4	The Services	Sets out the key activities to be undertaken at the Seven Sisters Site and confirms that the SDNPA shall grant a licence to the Company for the delivery of services at the site. The key services within the Operating Agreement are: <ul style="list-style-type: none"> • maintaining the landscape, biodiversity and cultural assets at the Site; • providing a visitor centre and a visitor experience including refreshments; • operating car parks; • managing the designated built assets; and • ensuring that appropriate insurance cover is maintained. This section also sets out the key requirements with regard to delivery against NPA purposes and duty and other legislative requirements and obliges the company to follow SDNPA policies and codes of conduct etc.
5	Standard Terms and Conditions of Business	Confirms that the Company will operate using SDNPA standard terms and conditions.
6	Annual Business Plan	Sets out the requirements pertaining to the agreement of the annual business plan and timescale for doing so.
7	Permitted Activities at	Together with appendix I this sets out a number of activities the company is permitted to undertake at the site and sets out the

	Seven Sisters Country	process for identification and agreement of additional permitted activities. Confirms that the SDNPA will not unreasonably withhold its consent for additional activities.
8	Leases, Licences and Contracts with Third Parties	Provides for the Company to negotiate future leases and licences in relation to the site and to benefit from the income from such arrangements, but clarifies that, as freeholder, the NPA will make the final decision about entering into leases and licenses. Also includes provision in relation to the negotiation, novation and observance of contracts and matters relating to third party contracts.
9	Reasonable Charges	Requires that, for operations within a country park, only reasonable charges may be made for services provided in accordance with s43(2) of the Countryside Act 1968.
10	SDNPA Undertakings	Confirms that SDNPA will consider requests for enforcement activity from the Company e.g. in relation to leases and car parking
11	Performance and Review	References the key performance indicators that P&R Committee will monitor performance against and obliges the Company to provide information to support this activity. Also sets out obligations with regard to the annual business plan and financial reporting.
12	Staffing	Sets out arrangements for secondment of SDNPA staff and payment for these by the Company.
13	Insurance	Sets out arrangements for insurance and which body should take out which insurances.
14	Indemnity	Confirms the additional indemnity provided to the Company Directors
15	Annual Payment	Sets out details of the annual payment to be made by the Company to the Authority (in addition to any payment for staffing).
16	Termination	Confirms that SDNPA and the Company retain the right to terminate the agreement on 6 months' notice.
17	Entire Agreement	Standard terms for clarity.
	Appendices	Includes: <ul style="list-style-type: none"> • KPIs and service specification for the operation of Seven Sisters Country Park • Permitted activities at Seven Sisters Country Park • Activity not connected to Seven Sisters Country Park that the Company may request be added to the list of permitted activities • Licence details • Relevant SDNPA policies that the Company is obliged to follow • SSCP Site plans

- 3.2 An indicative annual timetable, setting out the requirements of the Operating Agreement has also been included as **Appendix 2** to this report, so that members can consider the implications this may have on other areas of the Authority's activities and governance.
- 3.3 Key performance indicators have been included within the Operating Agreement and the targets will be agreed annually as part of the annual business plan setting process (which will also define the Company's activities for the coming year. Other key issues such as contracts to be entered into will also be included in the annual business plan.
- 3.4 The annual business plan and landscape management plan will be presented to the Authority for approval prior to the commencement of the Operating Agreement.
- 3.5 In addition, to support the effective operation of the Agreement and support the efficient delivery of activities for a commercial purpose it is proposed to seek delegation from the NPA to the Chief Executive specifically to make amendments to the appendices of the Operating Agreement where he considers it appropriate. This will include approving, subject to consideration of appropriate advice, additional activities to be undertaken by the Company.
- 3.6 For clarity it is not proposed to seek specific delegated authority for Officers to have discussions and undertake negotiations with the Company each year prior to making recommendations the P&R committee regarding performance of the Company and for any amendments to the agreement as it is considered that this falls within the general delegation of authority to the Chief Executive in appendix 7 of the Authority's Standing Orders which authorises the Chief Executive to undertake the day to day management and control of the Authority, its officers, resources, premises and services.

4. Options & Cost Implications

- 4.1 Failure to agree the Operating Agreement would significantly hinder the Authority's ability to undertake activities for a commercial purpose at the Seven Sisters Country Park Site and elsewhere in the National Park as to do so the Authority must act through a company.
- 4.2 The Articles of the Company established by the SDNPA for this purpose only allow the Company to act within the parameters of its annual business plan.
- 4.3 The costs associated with this work have now been committed and have been met from within the Seven Sisters Country Park project budget or other existing budget areas.

5. Next steps

- 5.1 The comments of the P&R committee will be considered when the Operating Agreement is formally agreed by the NPA. This is currently scheduled for the December 2021 NPA meeting.
- 5.2 The annual business plan will be presented to the NPA in March 2022 for agreement.
- 5.3 Once these two documents have been agreed the Company will be able to take over delivering operations at the Sevens Sisters Country Park site and undertake other activities for a commercial purpose that are contained within the business plan and permitted activities list contained within the Operating Agreement.

6. Other Implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	Yes as set out above.
Does the proposal raise any Resource implications?	The resources required in relation to the delivery of the Seven Sisters Country Park have been previously agreed by the NPA and allocated to the Seven Sisters' project.
How does the proposal	The annual payment by the company to the Authority will cover the authority's costs in relation to ownership of the Sevens

represent Value for Money?	Sisters Country Park Site. The employment costs of staff seconded to the Company will also be met by the Company.
Are there any Social Value implications arising from the proposal?	No.
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	Yes, the business case for SDNPA managing the Country Park was based partly on increasing access to the Country Park and improving the visitor experience for people of different ethnic origins and those of different physical capabilities and mental health. The Company will support the delivery of these improvements and the operating agreement expressly requires adherence with Authority's enhanced Public Sector Equality Duty .
Are there any Human Rights implications arising from the proposal?	None.
Are there any Crime & Disorder implications arising from the proposal?	No.

7. Risks Associated with the Proposed Decision

- 7.1 This paper specifically supports the mitigations set out against risk 02 (finance) and Risk 22 income generation etc. set out in the Corporate Risk Register
- 7.2 A failure to agree the proposed Operating Agreement would impact upon the delivery of the aspirations of the NPA as income could not be generated to offset the initial investment in improvements required.

ROBIN PARR

Head of Governance & Support Services

South Downs National Park Authority

Contact Officer: Robin Parr
Tel: 01730 819207
email: Robin.parr@southdowns.gov.uk

Appendices
1. Draft Operating agreement
2. Indicative annual timeline

SDNPA Consultees Chief Executive; Monitoring Officer.
External Consultees None
Background Documents None

DATE

2021

SOUTH DOWNS NATIONAL PARK AUTHORITY

and

SOUTH DOWNS COMMERCIAL OPERATIONS LIMITED

Operating Agreement

Outstanding issues:

- Issues relating to licensing and brand identity
- Draft data sharing agreement
- Review Clause

South Downs National Park Authority
South Downs Centre
North Street
Midhurst
West Sussex
GU29 9DH

PARTIES:

- (1) South Downs Commercial Operations Limited (company number 13527164) of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH ("**the Company**");
- (2) South Downs National Park Authority of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH ("**SDNPA**"),

each "**a party**" and, together, "**the parties**".

AGREEMENT TERMS

1. Agreement Documents

- 1.1. This Operating Agreement ("the Agreement") comprises the following:
 - 1.1.1. the terms of this Agreement including the Schedules ("**Special Terms**");
 - 1.1.2. SDNPA contract terms and conditions, as amended from time to time and as notified to the Company ("**Contract Terms and Conditions**").
- 1.2. In the case of any inconsistency between the documents then the terms of individual documents should take precedence in the order set out above, with those higher in the list taking greater priority.
- 1.3. The Agreement comprises the "Service Order" for the purposes of the Contract Terms and Conditions.

2. Duration

- 2.1. The Agreement shall commence on 1 April 2022 ("**the Commencement Date**") and subject to earlier termination and extension in accordance with its terms shall expire on 31 March 2025 ("**the Expiry Date**") ("**the Contract Period**").
- 2.2. The Agreement may be extended pursuant to clause 3.2 of the Contract Terms and Conditions. Appropriate adjustment of the contract charges will be determined by SDNPA, acting reasonably and in accordance with clause 15 of this agreement.

3. Basis of Award

- 3.1. The parties acknowledge and agree that this Agreement is awarded to the Company by utilising the "Teckal" exemption contained in regulation 12 (1) of the Public Contract Regulation 2015 ("the PCR") which allows SDNPA, as a "contracting authority" under the PCR, to award a public contract to a legal person outside the scope of the PCR if all of the following conditions are fulfilled;

- (a) *the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;*
- (b) *more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and*
- (c) *there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the [Retained] Treaties, which do not exert a decisive influence on the controlled legal person*

3.2. In addition the following is acknowledged and agreed by the parties:

- 3.2.1. The Company's activities shall be limited to the territory of its shareholder (SDNPA) and are carried out essentially for its shareholder's benefit and the constitution provides for governance by representatives of the shareholder.
 - 3.2.2. The Company must remain wholly owned by SDNPA (i.e. even a minority private shareholding excludes the possibility that the contracting authority can exercise control over the Company to the same extent as it does over its internal departments).
 - 3.2.3. If SDNPA intends to divest itself of all or part of its ownership of the Company then that will likely trigger the requirement for the contract to be competitively tendered.
 - 3.2.4. The Company may not undertake any activity which threatens or may threaten the company's status as a Teckal entity and in particular the Company must ensure that more than 80% of the activities of the Company are carried out in the performance of tasks entrusted to it by SDNPA or by other legal persons controlled by SDNPA.
- 3.3. The Company shall ensure that any contract let by the Company is compliant with the requirements of the PCR and any other relevant legal requirements, including without limitation equality legislation and the Public Services (Social Value) Act 2012.
- 3.4. Neither party shall by any act or omission cause the basis of award of the Agreement pursuant to this clause 3 to be undermined and if either party becomes aware of any circumstances which might undermine the basis of the award it shall notify the other party as soon as reasonably practicable.

4. The Services

- 4.1. SDNPA hereby appoints the Company to manage the Seven Sisters Country Park ("**the Site**") and the Company shall deliver the

management services described at Appendix 1 ("**the Services**") in accordance with the terms of this Agreement. The Company shall also provide any other services as may be agreed from time to time by the parties.

4.2. **Licence**

4.2.1. SDNPA holds the freehold title to the Site and hereby grants the Company and its staff, agents, sub-contractors and their staff and other representatives of the Company a non-exclusive licence ("**the Licence**") to occupy the Site for the purposes only of delivery of the Services and the proper performance of the Company's obligations under this Agreement ("**the Agreed Purposes**") in accordance with the terms contained in Appendix 3.

4.2.2. The Licence shall commence on the Commencement Date and shall expire on the earlier of the date of termination of this Agreement in accordance with its terms and the expiry date.

4.3. **Key Services**

The Services to be delivered by the Company in relation to the Site, as more particularly described in the specification in Appendix 1 ("**the Specification**"), shall include, without limitation:

- 4.3.1. maintaining the landscape, biodiversity and cultural assets at the Site in accordance with the agreed Landscape Management Plan;
- 4.3.2. providing a visitor centre and a visitor experience including refreshments;
- 4.3.3. operating car parks;
- 4.3.4. managing the designated built assets; and
- 4.3.5. ensuring that appropriate insurance cover is maintained.

4.4. **SDNPA Functions**

At all times the Company shall deliver the Services in accordance with the Specification and all applicable legislation. In particular, the Company shall undertake its activities and deliver the Services in a way which is consistent with the statutory purposes and functions (including the public law requirements) of SDNPA for the operation, management and stewardship of the national park land and facilities for which it is responsible as a National Park Authority ("**NPA**"), as amended from time to time (the "**SDNPA Functions**").

4.5. The parties acknowledge and agree that SDNPA Functions may change over time as the applicable legislation is updated, amended, superseded and replaced. The SDNPA shall draw any relevant changes to SDNPA Functions to the Company's attention as soon as reasonably practicable after becoming aware of the same and the parties shall

discuss and agree any consequential changes required to this Agreement.

4.6. At the date of this Agreement, the SDNPA Functions include but are not limited to the following:

4.6.1. Section 5(1) National Parks and Access to the Countryside Act 1949, as amended by section 61(1) Environment Act 1995, enacts two purposes of NPAs:

"the purpose—

(a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public".

4.6.2. Section 11A (1) National Parks and Access to the Countryside Act 1949 provides, in relation to those purposes:

"A National Park authority, in pursuing in relation to the National Park the purposes specified in subsection (1) of section five of this Act, shall seek to foster the economic and social well-being of local communities within the National Park."

4.6.3. In the context of functions regarding land, section 11A (2) National Parks and Access to the Countryside Act 1949 provides:

"In exercising or performing any functions in relation to, or so as to affect, land in any National Park, a relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park."

4.6.4. Section 65(2) Environment Act 1995 provides:

"Sections 37 and 38 of the Countryside Act 1968 (general duties as to the protection of interests of the countryside and the avoidance of pollution) shall apply to National Park authorities as they apply to local authorities."

4.6.5. Sections 37 and 38 Countryside Act 1968 confer duties on NPAs to:

"have due regard to" the "needs of agriculture and forestry and to the economic and social interests of rural areas", and to the "protection against pollution of any water, whether on the

surface or underground, which belongs to the Environment Agency, the NRBW or a water undertaker or which the Agency, the NRBW or a water undertaker is for the time being authorised to take”.

4.6.6. Further, by section 149 (public sector equality duty) and Part I of Schedule 19 Equality Act 2010, a NPA in England must when exercising any of its functions have due regard to the needs there set out.

- 4.7. The Company shall ensure that in taking decisions or undertaking its activities, including without limitation in the performance of its obligations under this Agreement it shall not do anything or omit to do anything which is likely to damage the reputation of SDNPA.
- 4.8. In performing its obligations under the Agreement, the Company shall have due regard to those values, codes of conduct and policies for the time being adopted by SDNPA, as updated from time to time and as notified to the Company. A list of such values, codes of conduct and polices as at the date of this Agreement are identified for this purpose in Appendix 4 and copies of these documents have been provided by the SDNPA.

5. Standard Terms and Conditions of Business

The Company undertakes to adopt the Contract Terms and Conditions, as amended from time to time and notified to the Company by SDNPA as its standard terms and conditions of business in connection with the delivery of the Services.

6. Annual Business Plan

- 6.1. The Company shall prepare an annual business plan no later than 1 March in each year or part of a year ending on 31 March (“**a Financial Year**”), setting out the activities to be carried out by the Company in the following Financial Year (“**the Annual Business Plan**”) including without limitation the activities to be undertaken pursuant to this Agreement.
- 6.2. The Company shall provide SDNPA with a copy of the Annual Business Plan no later than 1st March prior to the start of the next Financial Year or by such later date as may be agreed by the parties.

7. Permitted Activities

- 7.1. Subject to the Annual Business Plan the Company shall be entitled to carry out a number of authorised activities identified in the Specification at Appendix 1 (“**the Permitted Activities**”) provided that these activities are carried out in compliance with the terms of this Agreement and in relation to any land do not interfere with public enjoyment and use of the land and the legitimate rights enjoyed by any existing occupiers.

- 7.2. The Company shall be entitled to apply in writing to SDNPA to add to the list of Permitted Activities. The Company's application shall provide written information sufficient enough to enable the SDNPA to be satisfied that:
 - 7.2.1. the activity concerned is one that SDNPA is legally entitled to undertake, including without limitation, charging and trading pursuant to powers under sections 93 and 95 of the Local Government Act 2003;
 - 7.2.2. the activity is compliant with SDNPA Functions as defined at clause 4.4 and clause 4.5;
 - 7.2.3. the activity shall not and shall not be likely to have an adverse impact upon the reputation of SDNPA;
 - 7.2.4. the activity shall be undertaken in compliance with the terms of this Agreement;
 - 7.2.5. where the activity relates to land the activity shall not interfere with public enjoyment and use of the land and the legitimate rights enjoyed by any existing occupiers; and
 - 7.2.6. the financial impact of the activity, in terms of anticipated income and expenditure associated with the activity, can be accommodated by the Company's Annual Business Plan.
- 7.3. SDNPA shall respond to the Company in writing within 20 working days of receipt of the Company's application, together with such supporting evidence as SDNPA shall reasonably require. SDNPA shall be entitled to withhold consent to the addition of any particular activity to the list of Permitted Activities but such consent shall not be unreasonably withheld.
- 7.4. Examples of activities which may be added to the list of Permitted Activities are found in Appendix 2.

8. Leases, Licences and Contracts with Third Parties

- 8.1. Subject to this clause 8, the Company shall be permitted to negotiate the terms of any proposed future leases and licences including any renewals or extensions of leases and licenses granted prior to the Commencement Date in relation to the Site with third parties, subject to approval of the final form of such leases and licences being granted by SDNPA as freeholder of the Site. SDNPA shall be entitled to withhold consent to such agreements in its absolute discretion.
- 8.2. If such approval is granted, SDNPA will enter into any approved legal agreements with all associated legal costs being met by the Company.
- 8.3. The Company will receive the income from any leases or licences negotiated by it and agreed by SDNPA pursuant to this clause 8.

- 8.4. The Company shall indemnify SDNPA for any liabilities, costs or losses that SDNPA incurs in connection with such leases and licences.
- 8.5. The Company may not purport to change the terms of any of the leases or licences granted in respect of the Site pursuant to this clause, or any leases or licences granted prior to the Commencement Date of this agreement including without limitation in respect of any buildings on the Site or any activities carried out at the Site.

Novation of Existing Contracts

- 8.6. SDNPA shall provide to the Company a copy of any existing contract between SDNPA and a third party in relation to the Site that SDNPA proposes to novate to the Company.
- 8.7. The Company shall co-operate with SDNPA and shall carry out all necessary acts in a timely manner to achieve the novation of the relevant contract to the Company.
- 8.8. The novation of the relevant contract shall be in a form proposed by SDNPA, acting reasonably, and the Annual Payment shall be adjusted to take account of the rights and obligations of the Company under the relevant contract from the date of implementation of the novation.

Third Party Contracts

- 8.9. SDNPA shall provide to the Company a copy of any existing contract between SDNPA and a third party in relation to the Site in respect of which SDNPA proposes that:
 - 8.9.1. the Company shall enjoy any rights of SDNPA and/or undertake any obligations of SDNPA under the relevant contract; or
 - 8.9.2. the Company shall identify the rights and obligations of SDNPA under the relevant contract and shall not, by any act or omission, cause SDNPA to be in breach of the relevant contract,(in each case a "**Third Party Contract**").
- 8.10. The parties shall discuss and agree in writing any rights and obligations of SDNPA under the relevant Third Party Contract that shall pass to SDNPA or which SDNPA shall be required to observe and the Annual Payment shall be adjusted to take account of those arrangements.

9. Reasonable Charges in relation to permitted activities at a Country Park

- 9.1. In accordance with s43(2) of the Countryside Act 1968 ("**the Act**") SDNPA has the power to arrange for any facilities or services in relation

to a Country Park which it may itself provide under the Act to be provided by some other person and, in addition, it may authorise that person to make reasonable charges within the meaning of that provision.

- 9.2. SDNPA confirms that, in accordance with the terms of the Agreement and pursuant to clause 9.1, it authorises the Company to make reasonable charges for any facilities or services provided by the Company at the Site for the enjoyment or convenience of the public.
- 9.3. It is SDNPA's view that there is no requirement that reasonable charges be strictly no more than the cost of provision and so charges that are modestly more than a strictly computed cost of provision may be justified. The Company shall determine the reasonable charges that will be made and, in so doing, shall maintain appropriate records of its calculations. SDNPA reserves the right to review such records. Following a written request by SDNPA to the Company, the Company shall provide access to the records within no more than 5 working days.

10. **SDNPA Undertakings**

SDNPA shall consider promptly any requests and associated representations by the Company for SDNPA to undertake enforcement activity in connection with the Company's delivery of the Services, in particular regarding car parking and leases and shall provide reasons for its decisions.

11. **Performance and Review**

- 11.1. The Company must meet the Key Performance Indicators (KPIs) set out in Appendix 1 which reflect the values of SDNPA.
- 11.2. Should the Company fail to meet any of the Key Performance Indicators then SDNPA, acting reasonably, shall be entitled to regard that failure as a Default comprising a fundamental breach of the Agreement incapable of remedy and SDNPA shall be entitled to terminate the Agreement pursuant to clause 24.4 of the Contract Terms and Conditions or to make appropriate revisions to the Agreement.
- 11.3. The Company shall provide such information as reasonably required by SDNPA in order to enable SDNPA to monitor and review the Company's performance, including the financial performance of the Company, in the context of its delivery against the Key Performance Indicators, the terms of the Agreement and the Company's Annual Business Plan.
- 11.4. The Company shall prepare accounts to 31 March in each year.

12. **Staffing**

- 12.1. The Company must only engage staff members through SDNPA on a secondment basis.
- 12.2. SDNPA's Head of Paid Service will approve any staff secondments to the Company.
- 12.3. The Company undertakes to implement the policies of SDNPA set out at Appendix 4 in relation to any staff members seconded by SDNPA.
- 12.4. SDNPA and the Company agree that no staff are intended to transfer to the Company under TUPE. In the event that TUPE applies, the provisions of clauses 27 and 28 of the Contract Terms and Conditions shall apply upon termination of this Agreement. The Company shall also indemnify SDNPA in respect of any costs or liabilities that it incurs during the term of this Agreement in connection with any claim relating to the application of TUPE.
- 12.5. SDNPA retains responsibility and complete discretion in matters related to performance management consequences, disciplinary and/or redundancies of any staff seconded to the Company in accordance with SDNPA policies.
- 12.6. SDNPA remains responsible for the payment of salaries, pensions and other staffing costs. SDNPA shall invoice the Company and the Company shall reimburse SDNPA on a quarterly basis for all costs related to the employment of staff who are seconded by SDNPA to the Company.
- 12.7. The Company undertakes to engage with SDNPA to resolve any grievances raised by members of staff seconded to the Company.

13. **Insurance**

- 13.1. For the duration of this Agreement SDNPA shall take out the following insurances on behalf of the Company and in respect of SDNPA staff seconded to the Company:
 - 13.1.1. Public Liability Insurance to the value of £10 million per claim
 - 13.1.2. Professional Indemnity Insurance to the value of £5 million per claim ;
 - 13.1.3. Director's Indemnity Insurance to the value of £1 million per claim ;
 - 13.1.4. Employer Liability Insurance to the value of £5 million per claim .
- 13.2. For the duration of this Agreement the Company shall take out the following insurances to which the provisions of clause 28 of the Contract Terms and Conditions shall apply:

- 13.2.1. Buildings Contents Insurance at an adequate level to cover the value of the building contents, cash and other assets of the Company or under the Company's control at the Site; and
- 13.2.2. such other insurances as SDNPA shall from time to time require.
- 13.3. Any insurances taken out by the Company must include a waiver of the right of subrogation.
- 13.4. Additional insurance may be required by SDNPA in relation to specific sites, assets and activities identified in Appendix 1 and / or in the Company's Annual Business Plan. Any such additional insurance requirements will be notified to the Company by SDNPA from time to time and the relevant Annual Payment may be revised accordingly.

14. Indemnity

SDNPA will indemnify the Company's directors for all liabilities that they incur in respect of penalties or action taken against them arising from the Company's delivery of the agreed Landscape Management Plan provided that at all times the Company's directors have acted reasonably and in good faith, in compliance with any and all requests, directions or guidance made or issued by SDNPA with regard to landscape matters and in accordance with the terms of this Agreement.

15. Annual Payment

- 15.1. The Company shall make an annual payment ("**the Annual Payment**") to SDNPA, the amount of which shall be calculated by SDNPA on an open book basis to include:
 - 15.1.1. SDNPA's costs in providing the Site for the use by the Company;
 - 15.1.2. the general ancillary costs incurred by SDNPA in providing support to the Company (not including salary and associated costs of staff who are seconded to the Company which shall be invoiced by SDNPA and reimbursed to SDNPA by the Company on a quarterly basis);
 - 15.1.3. an internal rate of return of 1.5% on any SDNPA capital funds invested.
- 15.2. Subject to clauses 6.9 and 6.10 (Dispute Resolution and Interest) of the Contract Terms and Conditions, SDNPA shall invoice the Company no later than 28 February in each calendar year in the amount of the Annual Payment and the Company shall pay the annual Payment on a quarterly basis
- 15.3. The parties agree that the initial Annual Payment will be £90,000 (ninety thousand pounds) with a pro-rata payment being made for any part of a Financial Year covered by the Agreement. SDNPA shall

separately notify the Company of the due date for payment in respect of the initial Annual Payment.

16. Termination

Either party shall be entitled to terminate this Agreement for any reason on six month's written notice.

17. Entire Agreement

This Agreement constitutes the entire agreement and understanding of the parties in connection with its subject matter and supersedes all prior representations, discussions, correspondence and documentation in relation to the subject matter.

Signed for and on behalf of
SDNPA by

Authorised Signatory:.....

Print Name:.....

Signed for and on behalf of
the Company by:

Director:.....

Print Name:.....

Director/Secretary:.....

Print Name:.....

Director/Secretary

APPENDIX 1

SERVICE SPECIFICATION AND KPIS

The Site:

1. The Services to be delivered by the Company at the Site, as more particularly described in this Appendix 1 include, without limitation:
 - a. maintaining the landscape and cultural assets at the Site in accordance with the agreed Landscape Management Plan;
 - b. providing a visitor centre and a visitor experience including refreshments;
 - c. operating car parks;
 - d. managing the designated built assets; and
 - e. ensuring that appropriate insurance cover is maintained.

Landscape Management Plan

2. Landscape, biodiversity and cultural assets within the Site will be maintained and enhanced at the Company's expense. A landscape management plan for the Site ("**the Landscape Management Plan**") will be produced separately by the SDNPA and agreed by the parties and will be annexed to this Appendix. The Landscape Management Plan shall be reviewed by the parties every three years and amended by agreement of the parties
3. In the event that SDNPA and the Company fail to agree the Landscape Management Plan SDNPA shall be entitled to terminate the Agreement or to make appropriate revisions to the Agreement, acting reasonably.
4. Before the start of each Financial Year SDNPA and the Company will jointly agree a set of actions for the year that will be carried out in pursuit of the objectives set out in the Landscape Management Plan. In the event that SDNPA and the Company fail to agree a set of actions for the year, SDNPA shall be entitled to terminate or make appropriate revisions to the Agreement, acting reasonably.

Permitted Activities at the Site

5. Subject to the Annual Business Plan, SDNPA will permit the Company to make use of those parts of the Site shown outlined in [blue] on the map at [sp1] in Appendix 5 excluding those designated built assets shown outlined in [blue] on the map at [sp 2] in Appendix 5 in order to carry out the Permitted Activities specified below ("**the Permitted Activities**"), provided that these activities are carried out in compliance with the terms of this Agreement and in relation to the Site do not interfere with public enjoyment and use of the Site and the legitimate rights enjoyed by any existing occupiers.

6. Subject to amendment pursuant to clauses 6.2 and 6.3 the Permitted Activities include at the date of this Agreement:
- a) Developing a high quality visitor experience, including retail trade within a visitor centre or other designated areas of the site, car parking, provision of refreshments, cycle or other similar vehicle hire;
 - b) Provision of holiday accommodation including campsite, bunk house and holiday lets;
 - c) Provision of exhibitions, events, talks and lectures and experiences and experience packages and facilities for third parties to deliver exhibitions, events, talks and lectures and experiences and experience packages;
 - d) Negotiation of the terms of proposed leases and licences in respect of the Site with third parties pursuant to clause 8;
 - e) Enter into sponsorship agreements in relation to the Site to the extent only that these are compatible with SDNPA's values, codes of conduct and practices as identified in Appendix 4 and have no adverse impact or likely to have a potentially adverse impact on SDNPA's reputation;
 - f) Farm the Site in a way consistent with the Landscape Management Plan;
 - g) provide services connected to filming on the Site;
 - h) provide electric vehicle charging within the car parks on the Site;
 - i) In conjunction with SDNPA, claim RPA and other similar payments for the land management subject to the Company applying with any conditions applicable to such payments
 - j) In conjunction with SDNPA, apply for grants to make improvements to the Site in line with the Landscape Management Plan subject to the Company applying with any conditions applicable to such grants
 - k) *generate via sustainable means the production of electricity and sale of excess electricity.* **We still need to check this for powers**

Visitor Centre

- 7. The Company undertakes to provide a staffed visitor centre, supplying information to visitors to the Site, within the designated area at Exceat as shown outlined in [green] on the map at [x-reference] in Appendix 5.
- 8. The visitor centre will be staffed and open to the public 364 days a year, the exception being Christmas Day.

9. Minimum operating hours will be 10 am – 4pm during the summer season (1 April – 31 October) and during the hours of daylight in the winter season (1 November – 31 March).

Operation of Car Parking Facilities

10. The Company is permitted to charge for vehicle parking in Exceat Car Park and Riverside Car Park ("**the Car Parks**") as shown outlined in [red] on the map at [sp3] in Appendix 5.
11. Until [DATE] such charges shall not exceed the charging rates in force at the Car Parks at the Commencement Date ("**the Existing Car Park Charging Rates**").
12. After [DATE] the Company shall be entitled to adjust the charges for the Car Parks in accordance with Clause 9 of this agreement.

Maintenance, development and alterations of the built assets at the Site

13. SDNPA will maintain a list of approved contractors. Subject to a maximum value of £1,000 in relation to non-routine maintenance and minor alterations, where urgent works, non-routine maintenance or minor alterations are required that do not impact the structural fabric of any of the built assets, the Company may choose an approved contractor from SDNPA's list and commission such work, with the costs being met by SDNPA.
14. Planned or regular maintenance of the buildings on the Site will be undertaken by SDNPA in consultation with the Company.
15. The Company may not undertake alterations, development or works that impact upon the fabric of the built assets without the consent of SDNPA.

Insurance

[]

Key Performance Indicators (KPIs)

16. The Company shall undertake its activities in light of the following KPIs and shall measure and report to the SDNPA its performance on an annual basis against these KPIs.
17. The Company shall undertake an annual survey of visitors and surveys of local businesses on a regular basis and no less frequently than every three years in order to gather the information necessary to identify the Company's performance against the relevant Key Performance Indicators.

18. The parties shall agree, acting reasonably, the methods to be used in the collection of the necessary performance information and the Company shall present any surveys to be issued pursuant to paragraph 17 in advance to SDNPA for comment and approval, such approval not to be unreasonably withheld.
19. The information gathered by the Company containing details of the Company's performance against the KPIs shall be presented to SDNPA no later than 1 February in each Financial Year.
20. Following the issue to SDNPA of the performance information, at SDNPA's request the parties shall meet to discuss the Company's performance in relation to the KPIs and to agree any changes required to the Company's activities in order to improve its performance.
21. The Company shall implement the measures proposed by SDNPA, acting reasonably, and the parties shall agree any appropriate adjustment of the Annual Payment.
22. SDNPA will establish baselines for performance in areas of the Services where it considers this to be necessary and will share this information with the Company. These baselines will inform annual targets in relation to the KPI's which shall be agreed by the parties, acting reasonably, as part of the Company's preparation of its Annual Business Plan.
23. The KPIs for the first Financial Year of the Agreement shall be agreed by the parties as part of the Company's Annual Business Plan for that year.

Type of Key Performance Indicator	Standard / Target to be achieved
People Indicators	
Visitor Experience Survey The survey will request ratings for the following items as well as collecting background information to allow segmentation; origin of journey, time spent in area, age of visitor (band) and interests.	
<ul style="list-style-type: none"> • Rating of Visitor Centre Experience (staff knowledgeable and welcoming, interesting interpretation and retail, etc.) 	[]
<ul style="list-style-type: none"> • Rating of cleanliness, including toilets 	[]
<ul style="list-style-type: none"> • Rating of catering offers on site 	[]
<ul style="list-style-type: none"> • Rating of wider park, landscape and things to do. 	[]
Educational Indicators	

<ul style="list-style-type: none"> Number of events run (each would have individual satisfaction ratings on feedback forms) 	[]
<ul style="list-style-type: none"> Number of people engaged; children, adults, etc. 	[]
Local Economy Indicators	
<ul style="list-style-type: none"> Percentage of goods, services sold by Company originating from local suppliers. 	[]
<ul style="list-style-type: none"> Number of local businesses involved (trading, supplying) 	[]
<ul style="list-style-type: none"> Survey of local businesses on ease of engagement, barriers and benefits (this would be infrequent, maybe every 3 years) 	[]
<ul style="list-style-type: none"> Overall contribution to local economy from visitors – derived from visitor survey questions on length of stay in area 	[]
Landscape Indicators	
<ul style="list-style-type: none"> Progress against key activities in annual action plan agreed in pursuit of landscape management plan 	[]
<ul style="list-style-type: none"> Number of individual initiatives taken to improve habitats 	[]
<ul style="list-style-type: none"> Actions taken in mitigation of habitat stresses elsewhere on South Coast. 	[]
<ul style="list-style-type: none"> the features of the SSSI are in good condition and improving; 	

APPENDIX 2

OTHER ACTIVITIES

The Company may apply to SDNPA pursuant to clauses 7.2 and 7.3 of this Agreement for permission to undertake other activities for SDNPA, in addition to the Permitted Activities, and such activities may include without limitation:

- a) Development of consultancy services, provision of information, advice and guidance and provision of business networks where the SDNPA is not required to provide such services free of charge.
- b) Provision of landscape management and visitor site management services within the South Downs National Park where the SDNPA is not required to provide such services free of charge.
- c) *Assessment and delivery of mitigation projects/payments eg where this relates to net gain* We still need to check this for powers

APPENDIX 3

FORM OF LICENCE

To be inserted.

DRAFT

APPENDIX 4

SDNPA VALUES, CODES OF CONDUCT AND POLICIES

- [Authority Purposes and Duty](#)
- [SDNPA Corporate values](#)
- [National Park Circular 2010 and any subsequent updates](#)
- [Anti-Fraud and Corruption Policy](#)
- [Appeals Procedure](#)
- [Bullying and Harassment Policy](#)
- [Complaints Guidance Policy](#)
- [Corporate Clothing Policy](#)
- [Cyber Security Policy](#)
- [Disciplinary Policy](#)
- [Dogs at Work](#)
- [Driving at Work](#)
- [Equality and Diversity Policy](#)
- [Eyesight Test Procedure](#)
- [Family Support Policy](#)
- [File Naming and Versioning Policy](#)
- [Flexible Working Policy](#)
- [GDPR Compliance Policy](#)
- [Grievance Policy and Procedure](#)
- [Health and Safety Policy](#)
- [Hospitality and Refreshments Guidance](#)
- [IT User Policy](#)
- [IT Portable Storage Device Policy](#)
- [Job Evaluation Appeals Procedure](#)
- [Learning and Development Policy](#)
- [Leave Policy](#)
- [Local Protocol for Member and Officer Relations](#)
- [Officer Code of Conduct](#)
- [Partnership in practice guidance](#)
- [Performance and Development Review Scheme](#)
- [Politically Restricted Posts Guidance](#)
- [Procedure for Reporting Absence](#)
- [Recruitment Procedure](#)
- [Restructure – Policy & Process](#)
- [Retention Schedule](#)
- [Revised Performance Award Process](#)
- [Risk Strategy & Guidance](#)
- [Safeguarding Policy](#)
- [Sickness Absence Policy](#)
- [Social Media Policy](#)
- [Teams Chat Policy](#)
- [Transportation and Storage of Petroleum Guidance](#)
- [Travel and Subsistence Policy](#)
- [Whistleblowing Policy](#)
- [Work Space Policy](#)

APPENDIX 5

SITE MAP WITH BUILDING DESIGNATION

To be inserted.

DRAFT

Operating agreement requirements indicative annual timetable

Jan	<ul style="list-style-type: none"> Annual business plan development begins
Feb	<ul style="list-style-type: none"> 1 February – deadline for submission of performance data Annual business plan development underway – concludes by end of month Director meeting – approve annual business plan for submission, accounts etc Prior to 28th Feb SDNPA will invoice for payment of the annual payment P&R committee considers performance data at scheduled committee meeting and considers recommendation to NPA prior to consideration of annual business plan
Mar	<ul style="list-style-type: none"> 1st March annual business plan presented to SDNPA for following year SDNPA agrees considers business plan and P&R recommendations at March NPA meeting Annual General meeting of the company and Shareholder to approve business plan, accounts etc. 31 March Company will pay invoice for annual payment 31 March submission of final accounts Quarterly payment
Apr	<ul style="list-style-type: none"> Summer opening hours commence
May	<ul style="list-style-type: none"> Directors meeting (approve survey)
Jun	<ul style="list-style-type: none"> Approval of annual visitor survey by company & SDNPA 2nd quarterly payment
Jul	<ul style="list-style-type: none"> Annual visitor survey commences?
Aug	
Sep	<ul style="list-style-type: none"> Directors meeting Quarterly payment
Oct	<ul style="list-style-type: none"> Annual visitor survey concludes?
Nov	<ul style="list-style-type: none"> Winter opening hours commence Analysis of visitor survey findings undertaken and preparation of data for submission to NPA begins Directors meeting – review annual visitor survey findings
Dec	<ul style="list-style-type: none"> Quarterly payment

Other key dates / timeframes:

- January 2025 (3 months prior to end of contract) can be reviewed and extended in line with standard T&C's
- 31 March 2025 – Expiry
- Amendments to permitted activities can be submitted at any point – SDNPA will respond within 20 Working days. This means that any requests for additional permitted activity have to be permitted in advance of submission on the 1 March deadline inclusion in the next years Business Plan
- SDNPA will invoice quarterly for staffing costs
- Either party can terminate with 6 months notice
- 2025 - 3 yearly business survey undertaken