

**EAST AYRSHIRE COUNCIL**

**EAST AYRSHIRE LEISURE TRUST**

**SUPPORT SERVICES AGREEMENT**

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## **SCHEDULE**

PART 1 – SERVICES AND FEES

PART 2 – CHANGE CONTROL PROCEDURES

## AGREEMENT

between

**EAST AYRSHIRE COUNCIL**, a local authority established under the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Headquarters, London Road, Kilmarnock KA3 7BU ("**the Council**"); and

**EAST AYRSHIRE LEISURE TRUST**, a Scottish Charitable Incorporated Organisation (SCIO) Registered number SC043987 and having its principal office at The Dick Institute, 14 Elmbank Avenue, Kilmarnock, KA1 3BU ("**the Trust**").

## WHEREAS:

- (A) The Council is transferring to the Trust, as part of an administration reorganisation by the Council, the assets and undertaking of Leisure Services – but retaining ownership of the land/buildings, the collections and certain intellectual property rights.
- (B) The Trust wishes to be provided with certain support services for a period of time following the date of the transfer to ensure a smooth transaction of the activities and functions to be undertaken by the Trust.
- (C) The Council has agreed to provide the Services (as defined below) to the Trust on certain terms and conditions; and the Trust is satisfied that these represent value for money from the Trust's perspective such that it is in the Trust's interests to proceed with these arrangements.

NOW IT IS HEREBY AGREED:

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:-

**"Agreement"** means this agreement including the Schedule;

**"Assigned Employee"** means any employee of the Council who is wholly or mainly assigned to the provision of Services to the Trust;

**"Business Day"** means a day other than a Saturday, a Sunday or a day which constitutes a holiday for the majority of Council staff;

**"Cessation of Service"** means the cessation or partial cessation (whether as a result of termination of the Agreement, or part, or otherwise) of the provision by the Council of all or part of the Services;

**"Change Control Procedures"** means the change control procedures set out in Part 2 of the Schedule;

**"Charges"** means the charges for the Services as set out in Part 2 of the Schedule or, where relevant, the agreed charges for any Renewal Period, which charges are exclusive of Value Added Tax;

**"Collections"** has the meaning assigned to that expression in the Collections Agreement;

**"Collections Agreement"** means the collections agreement entered into on the date of this Agreement between the Council and the Trust;

**"Commencement Date"** means 00.01 am on 1 July 2013;

**"Confidential Information"** means, in relation to either Party, information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to that Party, its business affairs or activities which (a) either Party has marked as confidential or proprietary, (b) either Party, orally or in writing has advised the other Party is of a confidential nature, or (c) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential (and for the Trust includes the Trust Data and for the Council includes the Council Data);

**"Contract Manager"** means the representative of the Council appointed pursuant to clause 15.1 ;

**"Contract Year"** or **"Year"** means each period from 1 April to 31 March during the term of this Agreement;

**"Council Data"** means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which: (a) are supplied by the Council to the Trust under this Agreement; or (b) are held by the Council but accessed by the Trust under this Agreement;

**"Council Departments"** means Finance and Corporate Support, Neighbourhood Services Educational and Social Services and the Chief Executive's Office as such departments and services may be reorganised and renamed from time to time;

**"Discrimination Legislation"** means any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) including, without limitation, the Equality Act 2010, the Sex Discrimination Act 1975; the Race Relations Act 1976; the Disability Discrimination Act 1995; Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, Employment Equality (Sexual Orientation) Regulations 2003, and Employment Equality (Religion or Belief) Regulations 2003 and Employment Equality (Age) Regulations 2006;

**"Employment Losses"** means actions, proceedings, liabilities, costs, losses, damages, claims, demands and expenses (including, without limitation, all legal and professional fees and expenses, on a full indemnity basis);

**"Financial Year"** means the period from 1 July 2013 to 31 March 2014 and each period of a year ending on 31 March thereafter throughout the Initial Period and any subsequent Renewal Period;

**"Health and Safety Legislation"** means any law, enactment, order, regulation or Approved

Code of Practice issued by the Health and Safety Executive or the Scottish Government relating to health and safety or fire safety including, without limitation, the Health and Safety at Work etc Act 1974 and the Fire (Scotland) Act 2005;

**"Indemnified Party"** shall have the meaning ascribed to it in clause 8.5;

**"Indemnifying Party"** shall have the meaning ascribed to it in clause 8.5;

**"Individual"** shall have the meaning ascribed to it in clause 12.9;

**"Individual Service"** means each individual part of the Services, each of which is outlined separately at Sections A to E of Part 1 of the Schedule, as opposed to all of these services taken together (and such that, for the avoidance of doubt, there shall accordingly be xxxxxx Individual Services as at the Commencement Date);

**"Initial Period"** has the meaning ascribed to it in clause 2.1 ;

**"Intellectual Property Rights" or "IPR"** means all patents, trade marks, registered designs (and any applications for any of the foregoing), copyright (including rights in software -object code and source code), semi-conductor topography rights, database right, unregistered design right, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisions and extensions;

**"The Trust Data"** means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which: (a) are supplied by the Trust to the Council under this Agreement; or (b) are held by the Trust but accessed by the Council under this Agreement;

**"The Trust Premises"** means the premises occupied by the Trust from time to time (excluding, to the extent that the Parties may agree from time to time (each being bound to act reasonably in this respect) those parts which are occupied by sub-tenants or other third parties);

**"The Trust Property"** means any tangible property (including the Collections) issued or otherwise furnished in connection with this Agreement by or on behalf of the Trust, other than any heritable property;

**"The Trust Representative"** means the representative of the Trust appointed pursuant to clause 15.1;

**"The Trust's Responsibilities"** means the responsibilities assigned to the Trust by clause 4;

**"The Leases"** has the meaning assigned to that expression in the Asset Transfer Agreement;

**"New Supplier"** means any entity which is awarded a contract to provide (or to procure the provision of) services equivalent or similar to the Services, or any part of the Services, in place of the Council (including the Trust in the case of the provision of the Services, or any part of the Services, by the Trust);

**"Parties"** means the Council and the Trust; **"Party"** shall be construed accordingly;

**"Person Days"** means the anticipated time input, and on the basis that one person working for one full day will be deemed to constitute one "Person Day";

**"Asset Transfer Agreement"** means the asset transfer agreement entered into between the Parties on the date of this Agreement;

**"Quarter"** means a period of three consecutive calendar months commencing on the first day of each Financial Year and every subsequent period of three consecutive calendar months thereafter during the Initial Period or any subsequent Renewal Period;

**"Renewal Period"** shall have the meaning given to it in clause 2.2;

**"Service IPR"** has the meaning ascribed to it in clause 5;

**"Services"** means the services set out in Sections X to X of Part 1 of the Schedule (and including all requirements and obligations set out in those Sections);

**"Services and Finance Agreement"** means the services and finance agreement entered into between the Parties on the date of this Agreement;

**"Services Renewal Notice"** has the meaning ascribed to it in clause 2.4;

**"Service Transfer"** has the meaning ascribed to it in clause 12.2;

**"Service Transfer Time"** has the meaning ascribed to it in clause 12.2;

**"Third Party"** means any person other than the Trust or the Council;

**"Transfer Assistance Period"** means the period (a) of six months prior to expiry of the Initial Period, or the Renewal Period where applicable, or if shorter, the period (b) beginning on the date on which the Council becomes aware of the earlier termination of this Agreement, until the Service Transfer Time;

**"TUPE Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purposes of implementing the Acquired Rights Directive (2001/23/EC) into UK law;

**"VAT invoice"** means a VAT invoice complying with Part II of the Value Added Tax Regulations 1995.

- 1.2 Any reference to a clause, sub-clause or Schedule shall be to, respectively, a clause, sub-clause or Schedule to this Agreement.
- 1.3 Clause headings are for ease of reference only and shall not affect the construction or interpretation of any clause.
- 1.4 Words importing the singular shall include the plural and vice versa; and words denoting any gender shall include all genders.
- 1.5 Reference to any statute, statutory instrument, regulation, or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

- 1.6 Except where otherwise provided, words and expressions used in this Agreement shall have the meanings ascribed to them by the Companies Act 2006.

## **2 THE TERM**

- 2.1 This Agreement shall commence on the Commencement Date and, subject to clause 10, shall continue for a period of three Contract Years ("the Initial Period") unless extended by written agreement between the Parties in accordance with clause 2.2.
- 2.2 With effect from the expiry of the Initial Period and subject to clause 2.3, this Agreement, and the provision of the Services under it, shall be capable of extension for rolling periods of one Contract Year (each a "Renewal Period") by written agreement between the Parties.
- 2.3 Not less than two months prior to the expiry of the Initial Period and any Renewal Period, the Parties will conduct a business review of the Services provided during the Contract Year in which that review is taking place and shall consult with each other as to whether any of the Individual Services or all of the Services should be provided during any subsequent period, giving due consideration to the principles of best value.
- 2.4 Where the Parties agree that any of the Individual Services or all of the Services can and will be provided for a subsequent Renewal Period, the Council shall issue a written notice (the "Services Renewal Notice") to the Trust, specifying:-
- 2.4.1 the Individual Services to be provided (or the provision of which is to be procured) by the Council to the Trust during the subsequent Renewal Period; and
- 2.4.2 the charges that shall be payable by the Trust to the Council in respect of the provision (or the procurement of the provision) of those Individual Services,
- and the terms of this Agreement shall be deemed to be amended to reflect the terms of the Services Renewal Notice, with effect from the expiry of the Initial Period, or as the case may be, the expiry of the previous Renewal Period.
- 2.5 For the avoidance of doubt, the information contained within any Services Renewal Notice shall reflect the outcome of the discussions between the Parties as to the scope and extent of the Individual Services to be provided and the level of the charges payable in respect of the provision (or the procurement of the provision) of those Individual Services.

## **3 PROVISION OF SERVICES**

- 3.1 In consideration of the Charges, the Council will provide the Services with effect from the Commencement Date in accordance with the terms and conditions of this Agreement.
- 3.2 The Council will provide the Services:-
- 3.2.1 with all reasonable skill and care and in accordance with all generally accepted standards and practices applicable to the Services or services similar to the Services;
- 3.2.2 in proper, diligent, expeditious and professional manner,
- 3.2.3 in accordance with the terms of this Agreement and in accordance with any specific obligations outlined in Sections X to X of Part 1 of the Schedule; and



- 3.2.4 in accordance with any policies and guidance directly related to the Services issued by the Trust (acting reasonably) to the Council.
- 3.3 During the term of the Agreement, the Council shall provide such personnel as shall possess the appropriate experience, skills and qualifications necessary for the Council Services to be performed in accordance with the Agreement.
- 3.4 The Council shall procure that its employees and representatives:-
  - 3.4.1 make themselves available, at reasonable times and on reasonable notice, to the Trust for the purposes of consultation and advice relating to the provision of the Services; and
  - 3.4.2 attend meetings with representatives of the Trust and such other parties as may be necessary for the performance of the Services.
- 3.5 The Council shall not be liable for any failure to provide the Services if and to the extent that such failure results from a failure by the Trust to perform or otherwise fulfil the Trust's Responsibilities.
- 3.6 The Trust and the Council shall, to the fullest extent permitted by law, co-operate with each other and comply with the requirements of their own internal and external auditors in respect of all matters arising out of or in connection with the provisions of the Agreement.
- 3.7 The Trust and the Council will keep the Agreement and all related arrangements under review to ensure that the Agreement and those related arrangements comply with the requirements of the law, and, in particular, in relation to European Union procurement, requirements and best value.
- 4.1 The Trust shall:-
  - 4.1.1 co-operate with the Council and provide it with all such information and assistance as the Council shall reasonably require to facilitate the provision of the Services in accordance with Part 1 of the Schedule;
  - 4.1.2 provide the Council with fully accurate and up-to-date information in respect of any and all reasonable requirements which they may have in relation to the delivery of the Services under the terms of this Agreement, including (without prejudice to that generality) information relating to financial information and reporting, health and safety procedures and payroll mechanisms;
  - 4.1.3 comply with any specific requirements in respect of the Council as are outlined in Sections X to X of Part 1 of the Schedule as being appropriate to facilitate the provision of the Services;
  - 4.1.4 provide the Council and its employees and agents with such physical access to the Trust Premises and equipment, insofar as the Trust itself has physical access to the Trust Premises and to the equipment, as is appropriate to facilitate the performance of the Services, subject to the Council complying with the provisions of this Agreement;
  - 4.1.5 allow the Council and its employees and agents such reasonable access to power supplies, hot and cold running water supplies, waste disposal facilities, kitchen

facilities and to all other Trust Property as is appropriate to facilitate the performance of the Services subject to compliance by the Council and its employees and agents with any reasonable health and safety rules put in place by the Trust and notified to the Council;

- 4.1.6 ensure that key personnel are available to assist the Council, subject to reasonable notice being given by the Council of this requirement;
- 4.1.7 give notification of any changes (and reasonable prior notification of any proposals with regard to future changes) which could reasonably be considered to affect the provisions of the Services;
- 4.1.8 give notification of all or any material changes on risk issues including but not limited to the failure of any fire or security and/or any additional cover requirements or deletions;
- 4.1.9 maintain the integrity of the Trust Data except where such responsibility has been specifically transferred to the Council;
- 4.1.10 ensure that the Trust has in place all necessary and appropriate consents and approvals, in order to enable the Council to provide the Services to the Trust;

## **5 INTELLECTUAL PROPERTY**

- 5.1 The Trust acknowledges and agrees that all Intellectual Property Rights arising or created by or on behalf of the Council in connection with the provision of the Services (including documents, method of operation, and any systems, procedures or products developed or created as a result of this Agreement) ("Service IPR") shall belong to and upon its creation vest in the Council.
- 5.2 The Trust shall not acquire any rights to the Service IPR other than those that it acquires as a licensee pursuant to this Agreement.
- 5.3 The Council hereby grants to the Trust a non-exclusive, royalty-free, worldwide licence to use the Service IPR for any purpose whatsoever.

## **6 CHARGES**

- 6.1 In consideration of the provision of the Services, the Trust shall pay to the Council the Charges in accordance with the invoicing procedure and the mechanism for payment specified in Part 1 of the Schedule.
- 6.2 Payment of sums due under this clause 6 shall be made, without set-off, within 25 Business Days of receipt by the Trust of a valid VAT invoice issued by the Council.
- 6.3 All sums due under this Agreement are expressed exclusive of any Value Added Tax; The Trust shall pay any Value Added Tax thereon at the rate and in the manner provided by law from time to time.
- 6.4 The Trust will, upon request, pay interest on any amount payable under this Agreement not paid on the due date, for the period from that due date to the date of payment, at the rate of

2% per annum above the base-lending rate of the Bank of Scotland from time to time. The Parties acknowledge and agree that the amount set out in this clause represents a substantial remedy.

- 6.5 If the Trust disputes any invoice or other request for payment, the Trust shall immediately notify the Council in writing. The Parties shall negotiate in good faith in an attempt to resolve the dispute promptly but where the Parties cannot reach agreement, either Party shall be entitled to refer the matter for resolution in accordance with clause 17. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date in accordance with clause 6.2.
- 6.6 Where this Agreement is extended under clause 2.2, the charges for each Renewal Period shall be as agreed between the Parties prior to the commencement of the Renewal Period and the provisions of this clause 6 shall apply. Where the Parties cannot agree the charges for each Renewal Period prior to the commencement of the relevant Renewal Period, either Party shall be entitled to refer the matter for resolution in accordance with clause 17.
- 6.7 If any sum of money shall be due from either Party to the other Party then the same may be deducted from any sums then due, or which at any time thereafter may become due, to the either Party under this Agreement.
- 6.8 All sums payable to the Council under this Agreement shall become due immediately on its termination. This clause 6.8 is without prejudice to any right to claim interest under the law or under this Agreement.

## **7 WARRANTIES**

- 7.1 The Council warrants, represents and undertakes to the Trust that:-
  - 7.1.1 the Council has full capacity and authority to enter into this Agreement;
  - 7.1.2 the Services will be performed in accordance with the service level agreement documentation annexed and executed as relevant hereto and in compliance with all applicable laws and regulations;
  - 7.1.3 the Council has in place all necessary and appropriate consents and approvals in respect of the provision of the Services;
  - 7.1.4 the provision of the Services shall not infringe any Intellectual Property Rights of any Third Party; and
  - 7.1.5 as at the date of this Agreement there is no material outstanding litigation, arbitration or other disputed matters to which the Council is a party, which may have a material adverse effect upon the fulfilment of the Council's responsibilities or obligations pursuant to this Agreement.
- 7.2 The Trust warrants, represents and undertakes to the Council that The Trust has full capacity and authority to enter into this Agreement.
- 7.3 The Parties hereby exclude from this Agreement all implied warranties, implied

conditions, implied licences and implied terms to the fullest extent permitted by law.

## **8 LIABILITY AND INDEMNITY**

- 8.1 The Council shall indemnify The Trust against any claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages suffered or incurred by the Trust arising from:-

- 8.1.1 a breach of any of the warranties given by the Council in this Agreement;
- 8.1.2 a breach or failure to perform the Council's obligations under this Agreement;
- 8.1.3 the negligence, recklessness or wilful misconduct of the Council or its employees, agents or contractors in the course of providing the Council Services;

provided always that the Trust shall use all reasonable endeavours to minimise any such costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages and that the Trust shall not take any steps which may increase any such liability (except in circumstances where the taking of such steps is required by law).

- 8.2 The indemnity given by the Council pursuant to clause 8.1 shall not apply in respect of any claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages to the extent that such liabilities have resulted directly from the Trust's failure to properly observe the Trust's Responsibilities.

- 8.3 The Trust shall indemnify the Council against any claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages suffered or incurred by the Council arising from:-

- 8.3.1 a breach of any of the warranties given by the Trust in this Agreement;
- 8.3.2 a breach or failure to perform the Trust's Responsibilities;
- 8.3.3 the negligence, recklessness or wilful misconduct of the Trust, its employees, agents, contractors or otherwise,

provided always that the Council shall use all reasonable endeavours to minimise any such costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages and that the Council shall not take any steps which may increase any such liability (except in circumstances where the taking of such steps is required by law).

- 8.4 The indemnity given by the Trust pursuant to clause 8.3 shall not apply in respect of any claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages to the extent that such liabilities have resulted directly from the Council's failure to properly observe its responsibilities under this Agreement.

- 8.5 Each Party (an "Indemnified Party") which incurs a loss or liability, or receives a claim, of a nature which may fall within the indemnity contained in clause 8.1 or 8.3,

- 8.5.1 shall intimate the loss or liability, or the relevant claim, to the other party (the "Indemnifying Party") as soon as reasonably practicable after the loss, liability or claim becomes known to the Indemnified Party, providing to the Indemnifying Party all such information and evidence in respect of the loss, liability or claim as is reasonably available to the Indemnified Party;
- 8.5.2 shall (in the case of a claim) take such steps to resist or defend the claim as the Indemnifying Party may reasonably request or (if the Indemnifying Party so elects) allow the Indemnifying Party the conduct of any defence and/or. negotiations in respect of the claim (subject in either case to the Indemnifying Party indemnifying the Indemnified Party in respect of any liability (including reasonable legal expenses on a solicitor/client basis and any award of expenses) which the Indemnified Party may thereby incur);
- 8.5.3 shall keep the Indemnifying Party closely apprised of all developments relating to the relevant loss, liability or claim (including any insurance claim that may be pursued in connection with the relevant occurrence);
- 8.5.4 shall not (in the case of a claim), compromise any such claim, or take any steps which would prejudice the defence of such claim, without (in each such case) the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld) (except where the taking of such steps is required by law);
- 8.5.5 take all reasonable steps available to it to mitigate such loss or liability.
- 8.6 Neither Party excludes or limits liability for death or personal injury arising as a result of its negligence.
- 8.7 Subject always to clause 8.6, neither Party shall be liable to the other Party in respect of any of the following losses or damages (whether such losses or damages were foreseen, foreseeable, known or otherwise):-
  - 8.7.1 any, indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in clauses
  - 8.7.2 loss of actual or anticipated profits;
  - 8.7.3 loss of goodwill;
  - 8.7.4 loss of business;
  - 8.7.5 loss of revenue or of the use of money;
  - 8.7.6 loss of contracts; and
  - 8.7.7 loss of anticipated savings.

## **9 PARTIAL TERMINATION**

- 9.1 Where this Agreement is extended beyond the Initial Period or any subsequent Renewal Period pursuant to clause 2.2, but such extension is in respect of only an Individual Service or Individual Services, as opposed to the Services in their entirety, this Agreement shall be terminated to the extent that it relates to that Individual Service or to those Individual Services not to be provided during the subsequent Renewal Period.

## **10 TERMINATION**

10.1 Either Party may (subject to clause 10.2) at any time by notice in writing to the other terminate this Agreement with immediate effect if:-

10.1.1 the other Party fails to observe or perform any of its material obligations contained in this Agreement where such failure is not remediable;

10.1.2 the other Party fails to observe or perform any of its material obligations contained in this Agreement where such failure was capable of being remedied but was not remedied within 15 Business Days of being requested to do so by the Party making that request;

10.1.3 the other Party fails to comply with a remedial plan of the nature referred to in clause 10.3 within the period reasonably prescribed within that remedial plan;. or

10.1.4 the other Party ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or undertaking, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order is made or resolution passed for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or shall suffer any analogous event.

10.2 To the extent that the circumstances outlined in clauses 10.1.1, 10.1.2 and/or 10.1.3 above relate exclusively to an Individual Service or to Individual Services (as opposed to relating to the Services in their entirety), then the non-defaulting party may terminate at any time, by notice in writing to the defaulting party, this Agreement insofar as relating only to the Individual Service or Individual Services affected.

10.3 In the event of either Party committing any breach or series of breaches in respect of its obligations under this Agreement, the other Party may (without prejudice to any right to terminate this Agreement under paragraph 10.1.1 or 10.1.2):-

10.3.1 enter into discussions with the other Party with a view to determining how that breach or series of breaches might be remedied or the incidence of any breaches of that nature might be reduced or eliminated;

10.3.2 prescribe (acting reasonably, and taking account of any discussions held in pursuance of paragraph 10.3.1) a remedial plan (including a reasonable period for implementation) which it shall issue in writing to the other Party;

and, the other Party shall thereafter be under obligation to comply with the remedial plan within the period stated in such remedial plan.

10.4 This Agreement shall automatically terminate if the Council exercises any right to terminate the Services and Finance Agreement, the Asset Transfer Agreement or the Collections Agreement or all, or a majority, of the Leases

10.5 Termination or expiry of this Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party, including (without prejudice to that generality), the right to recover any sums of money which are due to be paid under this Agreement.

- 10.6 Notwithstanding the provisions of this clause 10, the provisions of clauses 3.5, 5.1, 5.2, 6.4, 6.5, 6.6 to 6.8, 7.3, 8, 11, 12, 17, 20, 23, 24, 26, 27, 28 and 30 to 34 shall survive termination (for whatever reason) or expiry of this Agreement.

## **11. CONSEQUENCES OF TERMINATION**

- 11.1 In the event of termination (for whatever reason) or expiry of this Agreement, in respect of all of the Services:-
- 11.1.1 the Council shall, within 30 days of the date of such termination, reimburse to the Trust any charges paid to the Council by the Trust which relate the period following such date of termination (calculated pro rata on a daily basis) plus any Value Added Tax previously paid by the Trust in relation thereto;
  - 11.1.2 the Trust shall immediately pay to the Council all sums due to the Council under the Agreement insofar as not already paid;
  - 11.1.3 the Council shall cease to use the Trust Data;
  - 11.1.4 the Trust shall cease to use the Council Data.

## **12 TUPE**

- 12.1 The Council undertakes that during the Transfer Assistance Period it shall, within 15 Business Days of receiving a request from the Trust, supply in writing to the Trust such information or documentation relating to the Assigned Employees in its possession or control as may be reasonably requested by the Trust and subject to the Council's obligations under the Data Protection Act 1998.
- 12.2 In the event of a Cessation of Service resulting in a transfer of the Services in whole or in part (a "Service Transfer"), the Assigned Employees shall transfer to the employment of the New Supplier in accordance with the provisions of the TUPE Regulations immediately upon the occurrence of the Service Transfer (the "Service Transfer Time").
- 12.3 The Council shall be responsible for all amounts payable to or in relation to the Assigned Employees (including but not limited to wages and salaries, expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period up to the Service Transfer Time and the Council shall indemnify the New Supplier against any Employment Losses arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.
- 12.4 The Trust shall be responsible for all amounts payable to or in relation to the Assigned Employees (including but not limited to wages and salaries, expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period after the Service Transfer Time and The Trust shall indemnify the Council against any Employment Losses arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.
- 12.5 The Council shall indemnify and keep indemnified the New Supplier from and against all and any Employment Losses suffered or incurred by the New Supplier arising from or as a result

of any act, fault or omission or alleged act, fault or omission of the Council prior to the Service Transfer Time relating to an Assigned Employee including, without limitation:-

- 12.5.1 any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
  - 12.5.2 any claim or demand by any Assigned Employee or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the New Supplier) on behalf of any Assigned Employee arising out of or in connection with any failure by the Council to comply with its or their obligations under Regulations 13 and 14 of the TUPE Regulations save to the extent that such failure by the Council was as a result of any act or omission by the New Supplier in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 12.6 The Trust shall indemnify and keep indemnified the Council from and against all and any Employment Losses suffered or incurred by the Council in respect of any (and each) of the Assigned Employees arising from or as a result of-
- 12.6.1 any act, fault or omission or alleged act, fault or omission of the New Supplier relating to an Assigned Employee occurring after the Service Transfer Time including, without limitation, any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
  - 12.6.2 any act, fault or omission or alleged act, fault or omission of the New Supplier in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 12.7 Following a Service Transfer, the Trust shall ensure (subject to any amendment to statutory or other guidance regulating the subject matter of this clause) that the terms and conditions of employment offered to any new employees employed or engaged by the New Supplier in connection with the provision (or the procurement of the provision of) services equivalent or similar to the Services, or any part of the Services, shall be no less favourable overall than the terms and conditions of employment applying to the comparable Assigned Employees. For the avoidance of doubt, the Trust's obligations in this clause 12.7 shall not exceed the requirements of statutory guidance in place from time to time.
- 12.8 In accordance with clause        of the Asset Transfer Agreement entered into between the Council and the Trust dated on or around the date of this Agreement, the Trust shall procure that the New Supplier complies with the provisions of clause        of that Asset Transfer Agreement.
- 12.9 If, by operation of the TUPE Regulations, the contract of employment of any individual who was employed by the Council immediately prior to the Service Transfer Time and who is not an Assigned Employee ("the Individual") takes effect or is alleged to take effect as if originally made with the New Supplier as a consequence of the Service Transfer:-
- 12.9.1 the New Supplier shall notify the Council in writing as soon as it becomes aware of this fact and shall consult with the Council as to the appropriate course of action;



12.9.2 the Council shall, within 14 days of receiving notice in terms of clause 12.9.1, offer employment to the Individual or notify the New Supplier that it does not wish to make such an offer;

12.9.3 if the Individual does not accept any offer of re-employment made by the Council within 14 days of such offer being made (or if no such offer is made within the 14-day time limit referred to in clause 12.9.2) the New Supplier shall be entitled to terminate the employment of the Individual; and

12.9.4 provided that the date of such termination of employment is within 14 days of the expiry of the 14-day time limit referred to in clause 12.9.3 (where an offer of re-employment is made by the Council) or within 14 days of the expiry of the 14-day time limit referred to in clause

12.9.4.1 arising from or in connection with the termination of employment of the Individual; and

12.9.4.2 arising from any claim or demand against the New Supplier by such Individual arising out of or in connection with any act, fault or omission or alleged act, fault or omission of the Council prior to the date of termination or commencement of employment of the Individual by the New Supplier including, without limitation:-

- (a) any claim for wages and salaries (including backdated Pay in terms of the Council's Workforce Pay and Benefits Review as at the Effective Time), expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums;
- (b) any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
- (c) any claim or demand by any such Individual or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the New Supplier) on behalf of any such Individual arising out of or in connection with any failure by the Council to comply with its or their obligations under Regulations 13 and 14 of the TUPE Regulations.

### **13 DOCUMENTATION**

13.1 The Council shall supply to the Trust on or before the Commencement Date such documentation as is reasonably required by the Council in order to facilitate the provision of the Services.

### **14 COSTS**

14.1 Each of the Parties shall meet its own costs in connection with the preparation, adjustment and completion of this Agreement.

## **15 REVIEW**

- 15.1 The Council will appoint a Contract Manager and the Trust will appoint a Trust Representative to oversee the overall performance of this Agreement. Neither Party shall change such appointee without prior consultation with the other Party.
- 15.2 The Contract Manager and the Trust Representative shall meet at least once every Quarter, or as otherwise agreed, to review the performance of the Council in providing the Services and to discuss any concerns associated with the implementation of the respective obligations of the Parties under this Agreement.
- 15.3 Meetings between the Contract Manager and the Trust Representative shall be convened on not less than 5 Business Days' notice, except in an emergency (in which case as much notice as is reasonably practicable shall be given); and shall (except in the case of an emergency) be accompanied by an agenda of items to be discussed at the meeting.
- 15.4 The Contract Manager shall be responsible for preparing minutes of all meetings.
- 15.5 A copy of the minutes prepared by the Contract Manager in pursuance of clause 15.4 shall be forwarded to the Trust Representative by the Contract Manager within 5 Business Days of the date of the meeting.
- 15.6 The Trust Representative shall advise the Contract Manager of any comments which He/she has in respect of the minutes prepared in pursuance of clause 15.4 within 5 Business Days of receipt of a copy of the minutes in accordance with clause 15.5; and the Contract Manager will make such revisions to the minutes as are agreed between the Trust Representative and the Contract Manager.

## **16 REPORTS**

- 16.1 The Council shall provide the Trust with reports, at such intervals and in such form as the Trust may reasonably require from time to time, relating to:-
  - 16.1.1 the Council's performance in respect of delivery of the Services;
  - 16.1.2 any failure in performance or observance of the obligations of the, respective Parties under this Agreement of which it becomes aware;
  - 16.1.3 the financial performance of the Council in delivering the Services, to assist the Trust in determining whether the arrangements under this Agreement deliver best value to the Trust.

## **17 DISPUTE RESOLUTION**

- 17.1. If a dispute arises out of or in connection with this Agreement (a Dispute") then, except as expressly otherwise provided in this Agreement, the Parties shall follow the procedure set out in this Clause 17.
- 17.2. Either Party shall give to the other notice in writing of the dispute (the Dispute Notice"), setting out its nature and reasonable particulars with the relevant supporting documentation. On service of the Dispute Notice, the Council Officer and the Services Provider Representative shall seek in good faith to resolve the dispute.

- 17.3. If the Council Officer and the Services Provider Representative are unable to resolve the dispute within twenty Business Days of service of the Dispute Notice then the dispute shall be referred to the Chief Executive of the Trust and the Chief Executive of the Council who shall attempt in good faith to resolve the dispute.
- 17.4. If the Chief Executive of the Trust and the Chief Executive of the Council are unable to resolve the dispute within twenty Business Days of it being referred to them, then the matter may, if agreed by the Parties, be referred to a mediator for mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("ADR notice") to the other Party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice. Unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator. If any matter arising out of or in connection with this Agreement is referred to mediation the Trust shall remain responsible for the provision of the Services throughout the period of mediation.
- 17.5. The fees of the mediator and the cost of mediation shall be borne equally by the Parties.
- 17.6. No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## **18 HEALTH AND SAFETY**

- 18.1 The Council shall carry out such risk assessments in connection with the performance of this Agreement as it is obliged to carry out to comply with Health and Safety Legislation. The Council shall notify the Trust of any health and safety hazards and control measures identified by such risk assessments that appear, in the opinion of the Council, to be of relevance to the Trust.
- 18.2 The Trust shall carry out such risk assessments in connection with the Trust Premises and the performance of this Agreement as it is obliged to carry out to comply with Health and Safety Legislation. The Trust shall notify the Council of any health and safety hazards and control measures identified by such risk assessments that appear, in the opinion of the Trust, to be of relevance to the Council. The Council shall take reasonable steps to draw these hazards to the attention of those of its employees and agents who have reason to attend the Trust Premises and shall instruct such persons in connection with any necessary associated safety measures.
- 18.3 The Trust shall notify the Council of any reasonable health and safety rules put in place at the Trust Premises. The Council shall comply with any such reasonable health and safety rules and will, where appropriate, inform its employees and agents of those rules.
- 18.4 To the extent that the Council and the Trust have obligations under Health and Safety Legislation to manage health and safety at the Trust Premises, the Council and the Trust shall co-operate in and co-ordinate such management.

## **19 SECURITY**

- 19.1 The Trust shall notify the Council immediately of any concerns or issues relating to security which may exist or arise at the Trust Premises and which may affect the provision of the

Services by the Council. The Council shall take all reasonable steps to draw these concerns and issues to the attention of those of its employees and agents who have reason to attend the Trust Premises and shall instruct such persons in connection with any necessary associated security measures.

- 19.2 The Trust shall take all reasonable steps to ensure that all appropriate measures are in place to afford protection to the employees and agents of the Council who have reason to attend the Trust premises, against any and all foreseeable risks to their personal safety, arising as a result of any issues relating to security.

## **20 DATA PROTECTION AND FREEDOM OF INFORMATION**

- 20.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.
- 20.2 Where the Council, as part of the provision of Services under this Agreement, processes personal data on behalf of the Trust, then in relation to such personal data the Council shall:-
- 20.2.1 act only on instructions from the Trust; and
- 20.2.2 comply with the Trust's instructions in relation to the processing of such personal data, as such instructions are given and varied from time to time by the Trust; and
- 20.2.3 take all appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data.
- 20.3 The provisions of clause 20.2 shall apply in relation to any personal data processed by the Trust on behalf of the Council under this Agreement as if each reference in that clause to the Council were a reference to the Trust and vice versa.
- 20.4 For the purposes of clause 20.2, the terms "personal data" and "processing" shall have the meanings ascribed to them in the Data Protection Act 1998.
- 20.5 The Trust acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the Act") and the Environmental Information (Scotland) Regulations 2004 ("the Regulations") and acknowledges in particular that the Council may be required to provide information relating to this Agreement or the Trust to any person on request in order to comply with the Act or the Regulations.
- 20.6 Where the Council seeks to consult the Trust in connection with a request for information made under the Act or the Regulations the Trust will facilitate the Council's compliance with the Act or the Regulations by responding timeously to the Council.
- 20.7 In the event that the Trust is or becomes a designated Scottish public authority by Order of the Scottish Ministers under Section 5 of the Act the Trust shall comply with the said Act and the Regulations.
- 20.8 Where the Trust receives a request for information, pursuant to Clause 20.7 or otherwise, which relates to or is likely to have an effect on the interests of the Council, the Trust shall consult with the Council before responding to such request.

## **21 COUNCIL'S PERSONNEL**

- 21.1 If and when directed by the Trust, the Council shall provide a list of the names of all persons who it is expected may require admission to the Trust Premises in connection with the performance of this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Trust may reasonably require.
- 21.2 The Council shall comply with all reasonable security requirements and reasonable policies of the Trust, insofar as written details of these requirements and policies have been provided to the Council, while:-
- 21.2.1 in the Trust Premises; or
- 21.2.2 using the Trust Property.
- 21.3 The Council shall use all reasonable endeavours to procure that all of its employees and agents shall likewise comply with all reasonable security requirements and reasonable policies of the Trust, insofar as written details of these requirements and policies have been provided to the Council.
- 21.4 The Trust shall provide the Council on the Commencement Date with copies of the requirements and policies referred to in clauses 21.2 and 21.3, as in force at that date.
- 21.5 The Trust shall not make any amendments to the requirements and policies referred to in clauses 21.2 and 21.3 (insofar as such amendments may have an impact in the context of the provision of the Services), except where such amendments are required by law, without first consulting with the Council, which consultation will take place between the Contract Manager and the Trust Representative.
- 21.6 The Trust shall (subject to clause 21.7) notify the Council in writing of any amendments to the requirements and policies referred to in clauses 21.2 and 21.3 (insofar as such amendments may have an impact upon the provision of the Services).
- 21.7 The Trust shall not make any amendments to the requirements and policies referred to in clauses 21.2 and 21.3 (except where such amendments are required by law) where the result of that amendment would be that the cost to the Council of providing the Services, or of providing any Individual Service, would be significantly increased.

## **22 DISCRIMINATION**

- 22.1 Neither Party shall, at any time during the term of this Agreement, unlawfully discriminate within the meaning and scope of the Discrimination Legislation.
- 22.2 Each Party shall take all reasonable steps to ensure the observance of the provisions of clause 22.1 by all of its employees and agents and consultants.

## **23 PUBLICITY**

- 23.1 Neither Party (including their respective agents, employees or representatives) will, without the prior written consent of the other Party, disclose or permit to be disclosed any part or parts

of this Agreement except and to the extent that such disclosure may be necessary to:-

- 23.1.1 comply with the law or the requirements of auditors;
- 23.1.2 provide information to HM Revenue & Customs or to its professional advisers;
- 23.1.3 provide information to a Party's professional advisers; or
- 23.1.4 provide information to potential New Suppliers.

- 23.2 Neither Party will unreasonably withhold or delay its consent to a request by the other Party to disclose the contents of the Agreement to a Third Party which has a bona fide interest therein.

## **24 AMENDMENTS TO THIS AGREEMENT**

- 24.1 Save as provided in clause 24.2, this Agreement shall not be varied or amended unless such variation or amendment is recorded in a written document, duly signed by a duly authorised representative of the Trust on behalf of the Council.
- 24.2 The provisions of the Schedule to this Agreement may be amended in accordance with the Change Control Procedures.

## **25 NOTICES**

- 25.1 All notices and notifications under this Agreement shall be given or issues by letter or by other written document, or by way of facsimile transmission or other visible electronic means.
- 25.2 A notice or notification under this Agreement shall (subject to clauses 25.3 and 25.4) be deemed to be duly given:-

25.2.1 in the case of a letter or other written document, when delivered;

25.2.2 in the case of facsimile transmission or other visible electronic means (provided that any relevant answerback has been received) when despatched;

To the Party to which it is given, addressed to that Party (mentioning the contact name last intimated in writing to the Party giving the notice) at the address last intimated in writing to the Party giving notice) at the address last intimated in writing to the Party giving the notice or (as the case may be) at the facsimile number then current of the Party to which it is given.

- 25.3 A notice or notification which is delivered, or (in the case of facsimile transmission or other visible electronic means) despatched, outwith business hours shall be deemed to be duly given during business hours on the Business Day which next follows.
- 25.4 A notice sent by first class recorded delivery post (or equivalent postal service) shall be deemed to have been delivered during business hours on the Business Day following the date of posting, in proving that a notice was given, it shall be sufficient to prove that an envelope containing the notice was duly addressed and posted in accordance with clause 25.2.
- 25.5 For the purposes of clauses 25.3 and 25.4, "business hours" shall mean the period between 9.00am and 5.00pm on a Business Day.

- 25.6 Unless and until some other address or facsimile number or contact number is supplied in pursuance of clause 25.2, the respective addresses, contact names, and facsimile numbers for the respective parties are as follows:

## **26 FORCE MAJEURE**

- 26.1 If either Party is prevented from or hindered or delayed in performing any obligations under this Agreement by reason of any circumstances beyond its reasonable control (including, without prejudice to that generality, strikes or lockout):-

26.1.1 it shall be excused performance to the extent affected by the circumstances concerned, so long as it gives notice to the other Party of those circumstances promptly after they first affected performance and uses all reasonable commercial endeavours to eliminate or mitigate their cause or effect;

26.1.2 performance by that Party shall be excused for the period during which the inability of the Party to perform by reason of the circumstances concerned subsists (or, if a shorter period, the period for which it would have been unable to perform for that reason had it complied with its obligation under paragraph 26.1.1 to seek to eliminate or mitigate their cause or effect) but for no longer period, and shall be remedied as soon as possible; and

26.1.3 any time period for performance by that Party shall be extended by a period equal in duration to any period for which performance is excused under paragraph 26.1.2.

- 26.2 If the Council is prevented or impeded from performing all of the Services by reason of any circumstances falling within the provisions of clause 26.1, for a period in excess of three months, then either Party may terminate this Agreement, with immediate effect, by written notice to the other Party, with such termination to take effect forthwith.

- 26.3 If the Council is prevented or impeded from performing any Individual Service or Individual Services by reason of any circumstances falling within the provisions of clause 26.1, for a period in excess of two months, then either Party may terminate this Agreement insofar as relating only to that Individual Service or those Individual Services, with immediate effect, by written notice to the other Party.

## **27 NON-SOLICITATION**

- 27.1 Subject to clause 27.2, for the duration for this Agreement and for a period of 12 months thereafter, neither Party will, without the prior written consent of the other, whether directly or indirectly, either for itself or for any other person, firm or company, engage, employ or otherwise actively solicit for employment any person who, during the relevant period, was an employee of the other.

- 27.2 Nothing in clause 27.1 shall prevent either Party from engaging or employing any person who, during the relevant period, was an employee of the other Party where that individual made an unsolicited response to a general recruitment advertisement issued by the Party which is engaging or employing him/her.

## **28 AUDIT**

- 28.1 The Council shall keep or cause to be kept full and accurate records of all Services performed in connection with this Agreement.
- 28.2 On at least ten Business Days' notice from the Trust, the Council shall grant to the Trust, any statutory auditors of the Trust, and their respective authorised agents reasonable access during the Council's normal working hours to any records of the nature referred to in clause 28.1 and/or any premises and/or materials used in the provision of the Services.

## **29 ASSIGNATION AND SUB-CONTRACTING**

- 29.1 The Council shall be entitled (without any requirement for the Trust's consent) to assign or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any successor body to the Council.
- 29.2 The Council shall be entitled to engage any person or firm as its Sub- contractor to provide all or any part of the Services.

## **30 SEVERABILITY**

- 30.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

30.2.1 circumstances arise of the nature referred to in clause 30.1; or

30.2.2 either of the Parties (having regard to developments or anticipated developments in the law or other relevant factors) believes (acting reasonably) that a provision of the Agreement might be held invalid, illegal or unenforceable if challenged,

the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision which is found to be invalid, illegal or unenforceable or is considered to be vulnerable to challenge.

## **31 WAIVER**

- 31.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver of that provision, right or remedy; and shall not prejudice the ability of that Party to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.
- 31.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver, identifies the specific provision(s) to which it relates, and is communicated to the other Party in writing, signed by a duly authorised representative of the Party which is waiving the relevant provision(s).



## **32 WAIVER RIGHTS**

- 32.1 Save to the extent expressly set out in this Agreement, this Agreement is not intended to create nor shall it create, any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.
- 32.2 The Parties are independent contractors and nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement, shall constitute, or be deemed to constitute, between the Parties a partnership, association, joint venture or other corporate entity.

## **33. FAILURE TO PERFORM**

- 33.1. At any time during the Services Period the Trust may investigate each instance where it appears to the Trust that the Council has failed to perform all or any of the Services in accordance with the provisions of this Agreement. Where the Trust is satisfied that a failure has occurred it shall be entitled to instruct the Council to remedy the failure and to comply therewith within such period as it may determine acting reasonably and with full regard to the nature of the failure.
- 33.2. Where the Council fails to remedy a failure in accordance with Clause 33, the Trust may issue a Rectification Notice in accordance with Clause 34.

## **34. RECTIFICATION PROCEDURE**

- 34.1. If the Council fails to comply with the Trust's instruction under Clause 33.1, the Trust may issue to the Council a notice in writing (a "Rectification Notice") advising the Council of that fact and requiring the Council to prepare in writing and provide to the Trust an action plan to rectify the situation.
- 34.2. Following the service of a Rectification Notice, the Council shall prepare and provide to the Trust for its agreement a Rectification Plan. Both Parties shall act reasonably in agreeing the Rectification Plan.
- 34.3. Where the Council fails to establish a Rectification Plan within two months of the issue of a Rectification Notice, the Trust may issue to the Council a notice in writing of that fact (a 'Warning Notice').
- 34.4. Where the Council fails to implement a Rectification Plan in accordance with its terms the Trust may issue to the Services Provider a notice in writing of that fact (also a "Warning Notice").
- 34.5. Following the service of a Warning Notice, the Council will establish and agree with the Trust a Final Rectification Plan. Both Parties shall act reasonably in agreeing the Final Rectification Plan.
- 34.6. If in a period of six consecutive months following the issue of a Warning Notice referred to in Clause 34.3, the Council has:-
  - 34.6.1. failed to establish and agree with the Trust a Final Rectification Plan; or
  - 34.6.2. failed to implement a Final Rectification Plan in accordance with its terms, then the Trust will be entitled to terminate this Agreement, the Asset Transfer Agreement, the Leases and the Services and Finance Agreement.

### 35 INDEPENDENT CONTRACTORS

The Parties are independent contractors and nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement, shall constitute, or be deemed to constitute, between the Parties a partnership, association, joint venture or other corporate entity.

### 36 LAW AND JURISDICTION

This Agreement is governed by and shall be construed in accordance with Scots law and, subject to clause 17, the Parties hereby submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement comprising this page, the preceding pages together with the Schedule in 3 parts annexed is executed by the Parties as follows:-

SEALED with the common seal of EAST AYRSHIRE COUNCIL and SUBSCRIBED

for and on its behalf by a proper officer at KILMARNOCK on the day of  
2013

..... Authorised Signatory

SUBSCRIBED for and on behalf of the said EAST AYRSHIRE LEISURE TRUST

At

On

By

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Charity Trustee

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Charity Trustee

Before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Address  
\_\_\_\_\_

**This is the Schedule referred to in the preceding Support Services Agreement between East Ayrshire Council and East Ayrshire Leisure Trust**

**PART 1 – THE SERVICES AND FEES**

**EAST AYRSHIRE COUNCIL**

**SERVICE LEVEL AGREEMENT BETWEEN FINANCE AND CORPORATE SUPPORT AND EAST AYRSHIRE LEISURE TRUST**

**Schedule A – Standard Services**

**Schedule B – Non Standard Services**

**Schedule C – Service Availability**

**Schedule D – Place of Delivery**

**Schedule E – Service Monitoring and Performance Measurement**

**Schedule F – Contact Arrangements**

**Schedule G – Problem Escalation**

**Schedule H – Fees and Expenses**

<b>SCHEDULE A – STANDARD SERVICES</b>
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This schedule provides a detailed list of the Standard Services that are to be delivered to the Client under the terms of this Agreement.

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## **HUMAN RESOURCES**

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Human Resources:-

### **Employee Relations**

Provision of HR Business Partner approach in the following activities:

#### **Recruitment and Selection**

- Placing of vacancies on [www.myjobscotland.co.uk](http://www.myjobscotland.co.uk)
- Providing copies of applications received
- Arranging interviews
- Requesting and collating references
- Attending selection interviews to provide advice
- Interface with candidates at all stages in the recruitment and selection process
- Securing Disclosure Scotland disclosures where appropriate
- Advise unsuccessful candidates

#### **Appointments**

- Provision of a resourcing and employment contract service which will include:
- Issue letters of appointment to employees and provide other advisory and administrative support in relation to the appointment of employees.

#### **Payroll**

Managing a Payroll function which will include to:

- Place new employees on payroll
- Delete leaving employees from payroll
- Ensure that all East Ayrshire Leisure employees are paid in accordance with the agreed arrangements
- Provide the relevant payroll, pension and tax information to the relevant statutory bodies including HMRC and Strathclyde Pension Fund Office

#### **Grievance and Disciplinary Procedures**

Provision of a case management support to:

- Provide advice to managers in dealing with cases under East Ayrshire Leisure's grievance and disciplinary procedures and attendance
- Participate in investigations held under the disciplinary and grievance procedures
- Attend in an advisory role at disciplinary and grievance hearings

#### **Welfare and Absence management**

- Provide advice and assistance to managers in relation to absence management cases
- Make appointments with Occupational Health and the Employee Counselling Service

- Participate as required in case conferences with East Ayrshire Leisure managers and Occupational Health
- Assist in Health promotions to promote positive wellbeing lifestyle changes
- Promotion of employee benefits programme

#### **Organisational Reviews and Job Design**

- Management of a framework for job evaluation and grading of posts by the:
- Development of job outline and person specifications
- Job evaluate new posts or posts where changes have been made to a posts duties and responsibilities
- Assist in reviews of organisational or service structure as well as general establishment control

#### **Statistical and performance information**

- Statistical and performance information relating to elements of the Human Resources service will be provided to East Ayrshire Leisure on a frequency to be agreed between the two parties.

#### **Employee Relations**

- Support managers at Joint Consultative meetings and ad hoc meetings with trade union representatives

#### **Equality and Diversity**

- Support the Trust to meet its legislative and statutory responsibilities as an employer in relation to equality and diversity employment issues.

#### **Policy Development**

- Development of HR strategy and Policies to:
- Provide advice and support to managers in the development of new policies and procedures or the review and revision of existing policies and procedures to meet the Trust's Workforce Planning objectives

**Change Management**

- Assist and support the Trust's managers through workforce planning initiatives to facilitate change management as necessary within the Trust.

**External Service Provision**

- The Human Resources Service will support any negotiations with relevant external service providers as necessary e.g Strathclyde Pension Fund; Employee Counselling Service; Myjobscotland Recruitment Portal; Disclosure Scotland; Occupational Health providers etc

**Organisational Development**

Provision of HR Business Partner approach in the following activities:

**In-service training**

- Delivery of In-service training courses, including health and safety provision
- Access to e-learning modules
- Provision of tailored learning and development interventions
- Advising managers in relation to individual employee development issues
- Access to tri-ennial Employee Attitude Survey

**Further Education**

- Administer enrolment of employees at Further Education establishments

**Employee Review and Development**

- Provision of support to managers in carrying out employee review and development

**DEMOCRATIC SERVICES**

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Democratic Services:

**Administration Section Services**

- Provision of a pre-agenda service including collation and issue of reports.
- Provision of an agenda service including collation and issue of reports.
- Attendance at meetings of the Board and any Committees of the Board to take minutes and provide any advice as necessary on the conduct of the meeting in accordance with the Trust constitution and any other relevant documents.
- Production of minutes and action notes as required and circulation of these to Trustees and relevant officers.
- Booking of venues for all meetings of the Board and Committees of the Board.
- Printing, production and delivery of all agendas and reports relative to meetings of the Board and any committees of the Board.

**Corporate Communications Services**

For the purposes of these arrangements, the term 'communications' will relate principally to the provision of a public relations function and this may or may not include support for official events and photo calls, depending on the nature of the request. Whenever East Ayrshire Council's Communications Division is involved, East Ayrshire Council's corporate media protocols will be observed.

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Corporate Communications Division:-

- Co-ordinate East Ayrshire Council's responses to media enquiries relating to the Council's involvement with East Ayrshire Leisure Trust, in accordance with the Council's own media protocols.
- Ensure that relevant media enquiries made to the Council are referred to the appropriate named officer(s) within the East Ayrshire Leisure Trust.
- Co-ordinate elected member involvement with East Ayrshire Leisure Trust beyond the appointed board of trustees, in accordance with the Council's own media protocols.
- Co-ordinate operational and media arrangements for official visits (e.g. Royal visits and Ministerial visits) to East Ayrshire which may include the facilities under the management of East Ayrshire Leisure Trust, in accordance with the Council's own protocols for such events. East Ayrshire Council will assume lead responsibility for such events but will liaise with Trust employees in respect of Trust facilities.

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## **CORPORATE INFRASTRUCTURE**

Both parties to this Agreement will work collaboratively to meet the objectives and obligations to maintain properties in a fit and proper condition, subject to the extent of the property portfolio and available funding resources.

Both parties will modify requirements to suit Transformation changes as they affect the Council, Community group involvement and modification to the number of operational buildings. East Ayrshire Leisure will be responsible for consequences of changes in the number of buildings that are removed from operational use, or use is suspended pending Community transfer.

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Corporate Infrastructure:-

### **Estates Management**

- Management of land/properties which have transferred to East Ayrshire Leisure and are occupied by Third Parties including negotiation of leases, rent reviews and way-leaves
- Acquisitions of land or property in support of objectives identified by East Ayrshire Leisure
- Rating appeals
- Land survey services including provision of plans

### **Corporate Infrastructure (IT support function) and Energy Management**

- Project Management
- PC Installation and Support (including, but not limited to desktops, laptops and mobile devices (e.g. tablets, iPads etc))
- Applications Development and Support
- Data and Voice Communications Support
- World Wide Web (WWW) and Email Support
- Database Administration
- IT Equipment Procurement
- IT equipment and software inventory

- Licensing
- Systems Operation and Management
- Contingency and Disaster Recovery
- Systems and Information Security
- Energy Strategy and Carbon Management
- Service Desk for IT and Property faults.

### **Capital Programme**

- Architecture
- Quantity Surveying
- Civil Structural Engineering
- Mechanical/Electrical Engineering
- CDM Co-ordinator
- Clerk of Works
- Project Management (in relation to capital programme projects)
- Capital Accounting

### **Property Maintenance**

- Routine maintenance
- Statutory Maintenance/Non Statutory works
- Planned Maintenance
- Sub-Contractor Management

East Ayrshire Leisure will be able to call upon the services of Corporate Infrastructure as and when required in respect of the services being provided.

#### **Service Dependencies**

Capital Programme will enter into appropriate arrangements with consultants and/or specialist contractors procured through framework and term contracts as appropriate to the needs of individual projects and demands of in-house resourcing and other relevant bodies to ensure appropriate standards of service are provided.

Estates Management function does not currently have any relevant specialist external service providers.

The delivery of IT services is dependent upon existing contractual and service level arrangements with external suppliers. These include the public electricity supply and BT (or other Telco) telecommunications voice and data services. In addition the delivery of some services may be co-dependent on other organisations with which the Council has manual and/or electronic interfaces.

Provision of the repairs service is dependent upon the various Contractors and service delivery agents appointed by the Property Maintenance section. The renewal of these providers or modification of service requirements will be administered by the Property Maintenance section for the benefit of East Ayrshire Council and East Ayrshire Leisure.

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## **FINANCE**

The Trust will be required to adopt the Council's financial regulations and Accounting Policy Bulletin's (APB's), which provide the framework and structure required to ensure appropriate governance and internal controls are in place. The following is a list of activities and sub activities that the Finance Service of the Council will deliver for the Trust at the point of the Trust being



created. It must however be noted that the Trust requires to be accountable for their budget and financial returns.

Support and guidance will be provided in line with this agreement but financial decision making will require to be in accordance with the Financial Regulations and scheme of delegation of the Trust. The Trust must ensure their management structure reflects these requirements.

It is expected that the Trust will appoint its own External Auditors through a procurement exercise in sufficient time for the first year's accounts to be signed off.

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Finance Service:-

### **Budgeting and Financial Planning**

- Prepare and distribute budget guidance, timetables and reports
- Assistance with preparing annual estimates and budgets
- Assist with preparing financial analysis and information necessary to support mid to longer term financial planning.
- Upload final version of approved budget to general ledger
- Provision of trial balance and other financial information to allow Trust to meet submission deadlines for all statutory financial returns
- Process approved budget virements and profiling
- Provide period end ledger prints and transactional data to allow the preparation, in consultation with Trust Managers, of periodic budget report for submission to Trust Board.
- Assist with preparing ad hoc financial reports for Trust Board
- Provision of financial advice in respect of the process of budget monitoring

### **Financial Systems**

- Provide a hosted financial management system via corporate system – Civica Financials, including: General Ledger; Accounts Payable; Accounts Receivable; Income Management
- Provide systems support services – processing of feeders and journals, updating and maintenance of coding structures
- Implementation of routine software upgrades in line with timescale adopted by East Ayrshire Council.
- Maintain standard reporting templates and functionality to support in year financial reporting requirements
- Application of routine system developments and maintenance of test systems
- Reconciliation of all feeder systems to ensure integrity of core financial system
- Assist with development of ad hoc reporting requirements
- Manage all Civica interfaces with approved subsidiary systems (PECOS;

CHRIS21) where these are available / utilised

### **Financial Reporting**

- Prepare and distribute year end instructions, deadlines and timetable as they relate to the closure of the core financial systems and modules.
- Process all year end accounting entries to ensure the financial ledger records all transactions and postings to support the preparation of statutory financial statements.
- Preparation of final trial balance, statutory financial accounts, OSCR Returns etc
- Preparation of fully documented working papers supporting the accruals and other financial transactions recorded in the Trust trial balance
- Provision of any clarification of financial information necessary to support annual reporting requirements of the Trust.
- Support the Trust where clarification is sought or requested from the external auditor as regards to transactions recorded in the financial systems.

### **Creditor Payments**

- Key all appropriately certified and coded creditor invoices and payment requests to Civica Financials – Creditors.
- Process payments by the due date, subject to receipt within agreed processing timescales, by BACs or cheque
- Maintain the standing list of suppliers subject to receipt of appropriate verification from the Trust of details as may be required.
- Ensure that appropriate arrangements are in place for the submission of BACs files
- Provide general advice and guidance in respect of the payment of invoices and payment requests
- Ensure that an appropriate procedure is in place to update and maintain an authorised signatory list for the Trust
- Liaise with the Trust's bank to arrange for any stop or cancel cheque requests to be actioned
- Provide read only access to Creditors to allow the Trust to respond directly to Supplier queries

### **Income Management/Cash Receipting**

- Provide for the secure uplift and lodgement of income as part of the Council's term contract
- Ensuring that income received is reconciled and allocated to the appropriate

ledger codes within the general ledger.

- Reconciliation of income bank account
- Provide a system to allow Direct Debit / Standing Order payments to be utilised.

### **Sundry Debtors**

- Provide user access to the Civica Financials – Debtors module to nominated Trust employees
- Provide appropriate system training to allow direct processing of sundry debtor accounts
- Ensure that invoices raised by the Trust are issued as part of the standard printing arrangements of the Council
- Agree standard recovery timescales and routes and ensure appropriate debt recovery processes are in place.
- Maintain standing data as requested and instructed by the Trust.
- Provide access to allow users to set up and run standard reports etc
- Provide a process for the request, processing and issue of credit notes

### **Insurance and Risk Management**

- As part of the Council's overall insurance arrangements put in place appropriate policies and covers.
- Put in place specific policies required – Directors and Officials Indemnity Policy etc.
- Handling of claims within the policy excess including liaison with the Insurer, appointed loss adjuster etc.
- Where covers continue to be placed by the Council on behalf of the Trust the Finance Service will act as the point of contact for all dealings with the Insurer
- Administer Group Life Assurance Scheme
- Administer PA/Travel Scheme

### **VAT**

- Provision of transactional data extracted from the financial ledger to allow the completion and submission of statutory returns to HMRC
- General VAT Advisory Services
- Access to complex VAT / tax advisory services as required (at an additional cost)

### **Treasury Management / Exchequer**

- Monitor bank account balances and arrange for any transfer of surplus balances to the Investment account
- Bank reconciliations
- Reconciliation of Control Accounts (Net Pay etc)
- Control of and release of payment files for BACs CHAPs and Cheques

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### **LEGAL AND PROCUREMENT SERVICES**

#### **Conveyancing And Contracts**

The provision of a full legal service in all aspects of general conveyancing and contractual issues in respect of (but not limited to):-

- All necessary conveyancing procedures in respect of the acquisition and disposal of all forms of heritable assets
- The negotiation, drafting, variation, completion and registration of all forms of lease and licence to occupy documentation
- General property matters
- Advice and assistance in respect of all forms of commercial contracts for use by the East Ayrshire Leisure Trust

#### **Litigation And Advice**

The provision of a full legal service in all aspects of litigation or potential litigation and general legal advice issues in respect of (but not limited to):-

- All necessary advice and assistance in respect of any form of litigation including debt recovery, reparation, employment law and planning
- General legal advice and assistance over the spectrum of legal issues which will potentially affect the Trust

#### **Licensing**

- The provision of all necessary advice and assistance in respect of all forms of licensing (liquor, gambling and miscellaneous civic government)

#### **Procurement & Tendering**

Provision of Procurement Business Partner approach in the following activities:-

- Market Consultation
- Scoping of Projects
- Contract Notices
- Tenderer Selection Process
- Drafting Invitation to Tender Documents
- Management of Tender Process
- Preparation of Financial Appraisals

- Supporting Tender Evaluation Panels
- Reporting on Tender Outcomes
- Supporting Contract Initiations
- Reminders for Option Appraisals/Contract Reviews/Insurance Checks
- Providing Best Practice Procurement Guidance & Advice

#### **Sourcing & Purchasing Services**

- Sourcing from Contracts/Framework Agreements
- Sourcing via Quotations
- Sourcing & Purchasing Advice

#### **PECOS Support Service**

- Providing and Maintaining PECOS Purchasing System
- East Ayrshire Council shall provide to the East Ayrshire Leisure Trust an electronic purchasing system and related support commensurate with the standards provided to Council staff.

<b>SCHEDULE B – NON-STANDARD SERVICES</b>
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This schedule provides a detailed list of the Non-standard or customised Services that are to be delivered to the Client under the terms of this Agreement.

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## **DEMOCRATIC SERVICES**

### **Corporate Communications**

#### **Media enquiries and requests for comments/interviews**

- When a comment in relation to East Ayrshire Leisure Trust is required from a Trustee or officer from the Trust, it will be the responsibility of East Ayrshire Leisure Trust to draft and seek approval for this. If the comment is required from the Council's perspective it will be prepared by the Communications Division in line with the Council's media protocol. Where a comment is required from an elected member or officer of the Council not on the Board of Trustees, (e.g. local member / spokesperson) but is in relation to the Trust, East Ayrshire Council Communications Division will co-ordinate the response and liaise with East Ayrshire Leisure Trust prior to it being issued.

#### **Media releases**

- East Ayrshire Leisure Trust will prepare press releases to promote its services, events, activities and initiatives, and will copy the Council's Communications Division into all finalised news releases for its information. Similarly, East Ayrshire Council Communications Division will ensure that all finalised statements and press releases issued to the media relating to East Ayrshire Leisure Trust are copied to them for information.

#### **Out of hours media support**

- East Ayrshire Council Communications Division provides an out of hours media service, to handle emergency and weekend media enquiries. As part of these arrangements, when required, the Communications Division will direct relevant media enquiries to an identified out of hours media contact for East Ayrshire Leisure Trust.

#### **Photography framework**

- East Ayrshire Council Communications Division operates an official photography framework to assist with the management of corporate photography requests in support of media and events activities. As part of these arrangements, East Ayrshire Leisure Trust must honour the terms of the photography framework if requesting this service from East Ayrshire Council Communications Division.

#### **E-words**

- East Ayrshire Leisure Trust will work in partnership with the Communications Division to ensure that the Trust's services, initiatives and activities continue to be promoted to East

Ayrshire Council employees through such channels as E-words and East Ayrshire Council intranet.

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## **CORPORATE INFRASTRUCTURE**

### **Capital Programme**

- Corporate Infrastructure Capital Programme will provide multi-disciplinary professional and technical services together with project programming and monitoring, contract administration and budget management, for the delivery of new build, alteration and refurbishment construction projects forming part of the Council's rolling Capital Investment Programme and aligned to the Council's Asset Management requirements.

### **Estates Management**

- Estates Management will proactively manage lease renewals and rent reviews in respect of land/properties which have transferred to East Ayrshire Leisure and are leased to Third Parties.

### **Infrastructure Support and Systems & Performance**

- Infrastructure Support and Systems & Performance will provide a cost effective, responsive and accountable IT and Energy Management service which provides for best value for East Ayrshire Leisure and is focussed upon, and driven by, the business needs of its customers. The Corporate Infrastructure (IT support function) will be delivered through a combination of internal Corporate Infrastructure employee resources and third party contract provision, carefully balanced to ensure best value is obtained for East Ayrshire Leisure at all times.

### **Property Maintenance**

- Property Maintenance will provide the comprehensive delivery of property services including identification of need, commitment and delivery through contractors appointed to carry out the physical repairs, helpdesk services, payments and accounting certification and recording, integrated property status recording and inputting, budget management, and specifying and procuring as required.

<b>SCHEDULE C – SERVICE AVAILABILITY</b>
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This schedule provides a list of the times and periods when the Standard and Non-standard Services will be available to the Client under the terms of this Agreement.

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**SERVICE WIDE**

In general terms, the service will be provided within normal office hours (9am to 5pm Monday to Thursday and 9am to 4pm Friday) although service outwith these hours will be provided in respect of attendance at meetings.

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**CORPORATE INFRASTRUCTURE**

Outwith normal office hours, the Risk Management Centre (RMC) will provide continuity of cover for the instruction of works upon consultation and agreement with the Property Maintenance section. A separate Agreement requires to be put in place between the RMC and East Ayrshire Leisure for continuity of service.



<b>SCHEDULE D – PLACE OF DELIVERY</b>
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This schedule provides the location or locations where the Standard and Non-standard Services will be delivered to the Client under the terms of this Agreement.

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**HUMAN RESOURCES**

The service will be provided from the Human Resources offices at Council Headquarters, London Road, Kilmarnock, Council Offices, Greenholm Street, Kilmarnock and Council Offices, Hill Street, Kilmarnock. Where meetings are required between Human Resources employees and East Ayrshire Leisure Trust employees then these can take place in either organisation's premises.

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**DEMOCRATIC SERVICES**

The service will be provided from the Democratic Services offices at Council Headquarters, London Road, Kilmarnock and in respect of attendance at Board meetings or any committees of the Board, within the relevant premises, where such meetings are held.

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**CORPORATE INFRASTRUCTURE**

Services are currently delivered from 5 locations (Lugar Council Offices, 2 The Cross, Civic Centre South, Council Headquarters and Rennie Street, Kilmarnock).

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**FINANCE**

Finance services are currently delivered from three locations (Council HQ, Greenholm St Offices and 2 The Cross, Kilmarnock). This will be rationalised during the current year and will see services delivered in the main from the new Opera House development.

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**LEGAL AND PROCUREMENT SERVICE**

The service will be provided from Council Headquarters, London Road, Kilmarnock. Where meetings are required between Legal and Procurement employees and East Ayrshire Leisure Trust employees then these may take place in either organisation's premises.

<b>SCHEDULE E – SERVICE MONITORING AND PERFORMANCE MEASUREMENT</b>
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This schedule provides detailed information on the monitoring of Standard and Non-standard Services delivered to the Client and the metrics and other means to be applied to each Service component to measure the performance of the Services delivered under the terms of this Agreement.

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**SERVICE WIDE**

In accordance with statutory requirements, performance information relevant to the services covered by East Ayrshire Leisure will be incorporated within the Council's arrangements for public performance reporting to ensure coherent and regular reporting to stakeholders.

East Ayrshire Leisure will provide to the Service (submitted to the Policy, Planning and Performance Division) all necessary information, on a 4 weekly period basis, which allows the measurement of performance against all previously identified statutory and non-statutory performance indicators as set out in the Business Plan. This will be undertaken by East Ayrshire Leisure populating the Council's Electronic Performance Management System (EPMS) or by providing the Council with the necessary information to allow it do so.

## SCHEDULE F – CONTACT ARRANGEMENTS

This schedule provides information on the contact arrangements in place and available to the Client under the terms of this Agreement.

### HUMAN RESOURCES

The day to day operational service will be provided through named Human Resources Officers and Learning and Development Officers, although in order to maintain service provision other officers may provide the services set out in this Agreement. Matters of a strategic or policy nature will be provided through the Head of Human Resources, the Employee Relations Manager or the Organisational Development Manager.

The Trust will be informed of any changes to key personnel named within this Service that could affect the delivery of the Service.

Contact details for the Service are set out in the table below:

Service/Section	Name and Position	Contact Details
<b>Human Resources</b>	Martin Rose Head of Human Resources	Telephone No: 01563 57092 Email: <a href="mailto:Martin.Rose@east-ayrshire.gov.uk">Martin.Rose@east-ayrshire.gov.uk</a>
<b>Employee Relations</b>	George Park Employee Relations Manager	Telephone No: 01563 576095 Email: <a href="mailto:George.Park@east-ayrshire.gov.uk">George.Park@east-ayrshire.gov.uk</a>
<b>Organisational Development</b>	Ailie Macpherson Organisation Development Manager	Telephone No: 01563 503441 Email: <a href="mailto:Ailie.Macpherson@east-ayrshire.gov.uk">Ailie.Macpherson@east-ayrshire.gov.uk</a>

### DEMOCRATIC SERVICES

#### Administration Division

The day to day operational service will be provided through the Administration Manager, although in order to maintain service provision other officers may provide the services set out in this Agreement.

#### Corporate Communications

The day to day operational arrangements will be carried out by named officers within East Ayrshire Council's Communications Division and East Ayrshire Leisure Trust, although in order to maintain arrangements, other officers may support the arrangements set out. East Ayrshire Leisure Trust will be informed of any changes to key personnel within the Communications Division that could affect these arrangements.

Contact details for the Service are set out in the table overleaf:

Service/Section	Name and Position	Contact Details
<b>Democratic Services</b>	Bill Walkinshaw Head of Democratic Services	Telephone No: 01563 576135 Email: <a href="mailto:Bill.walkinshaw@east-ayrshire.gov.uk">Bill.walkinshaw@east-ayrshire.gov.uk</a>

<b>Administration</b>	Julie McGarry Administration Manager	Telephone No: 01563 576147 Email: <a href="mailto:Julie.Mcgarry@east-ayrshire.gov.uk">Julie.Mcgarry@east-ayrshire.gov.uk</a>
<b>Communications</b>	Out of Hours Media Enquiries	Telephone No: 07818511462

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### CORPORATE INFRASTRUCTURE

The day to day operational service will be provided through named officers, although in order to maintain service provision other officers may provide the services set out in this Agreement. Matters of a strategic or policy nature will be provided through the Head of Corporate Infrastructure.

The Trust will be informed of any changes to key personnel named within this Service that could affect the delivery of the Service.

Contact details for the Service are set out in the table below:

Service/Section	Name and Position	Contact Details
<b>Corporate Infrastructure</b>	Malcolm Roulston Head of Corporate Infrastructure	Telephone No: 01563 576809 Email: <a href="mailto:Malcolm.Roulston@east-ayrshire.gov.uk">Malcolm.Roulston@east-ayrshire.gov.uk</a>
	Service Desk	Telephone No: 01563 576800 Email: <a href="mailto:cisd@east-ayrshire.gov.uk">cisd@east-ayrshire.gov.uk</a>
<b>Emergency Out of Hours Service</b>	<b>Risk Management Service</b>	Telephone No: 08457 240000
<b>Capital Programme</b>	Simon Bell Capital Programme Manager	Telephone No: 01563 555316 Email: <a href="mailto:Simon.Bell@east-ayrshire.gov.uk">Simon.Bell@east-ayrshire.gov.uk</a>
<b>Infrastructure Support</b> including Energy Management	Paul Toland Infrastructure Support Manager	Telephone No: 01563 576886 Email: <a href="mailto:Paul.Toland@east-ayrshire.gov.uk">Paul.Toland@east-ayrshire.gov.uk</a>
<b>Systems &amp; Performance</b> including Estates Management	Roy Hair Systems & Performance Manager	Telephone No: 01563 576817 Email: <a href="mailto:Roy.Hair@east-ayrshire.gov.uk">Roy.Hair@east-ayrshire.gov.uk</a>
	Sam McVie Estates Manager	Telephone No: 01563 503477 Email: <a href="mailto:Sam.McVie@east-ayrshire.gov.uk">Sam.McVie@east-ayrshire.gov.uk</a>
	Martin Mason IT Account Manager	Telephone No: 01563 576830 Email: <a href="mailto:Martin.Mason@east-ayrshire.gov.uk">Martin.Mason@east-ayrshire.gov.uk</a>
<b>Property Maintenance</b>	Alan Paterson General Property Manager	Telephone No: 01563 503477 Email: <a href="mailto:Alan.Paterson@east-ayrshire.gov.uk">Alan.Paterson@east-ayrshire.gov.uk</a>

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## FINANCE

The day to day operational service will be provided through named Finance officers, although in order to maintain service provision other officers may provide the services set out in this Agreement. Matters of a strategic or policy nature will be provided through the Head of Finance.

The Trust will be informed of any changes to key personnel named within this Service that could affect the delivery of the Service.

Contact details for the Service are set out in the table below:

Service/Section	Name and Position	Contact Details
<b>Finance</b>	Craig McArthur Head of Finance	Telephone No: 01563 576513 Email: <a href="mailto:Craig.McArthur@east-ayrshire.gov.uk">Craig.McArthur@east-ayrshire.gov.uk</a>
		Telephone No: 01563 Email:

## LEGAL AND PROCUREMENT SERVICES

The day to day operational service will be provided through named officers, although in order to maintain service provision other officers may provide the services set out in this Agreement.

The Trust will be informed of any changes to key personnel named within this Service that could affect the delivery of the Service.

Contact details for the Service are set out in the table below:

Service/Section	Name and Position	Contact Details
<b>Legal</b>	David Mitchell Head of Legal, Procurement and Regulatory Services	Telephone No: 01563 576061 Email: <a href="mailto:david.mitchell@east-ayrshire.gov.uk">david.mitchell@east-ayrshire.gov.uk</a>
		Telephone No: Email:

## SCHEDULE G – PROBLEM ESCALATION

This schedule provides information of the Problem Escalation procedure to be applied to Standard and Non-standard Services deliverable under the terms of this Agreement.

## SERVICE WIDE

The Service is committed to provide services in a professional, customer focused and efficient manner consistent with legislative requirements, Council policy and best practice. The respective manager will ensure the service provision and will be the first point of contact for any complaints or comments on the Service. Any such contact will be appropriately logged.

Any complaints which may not be resolved by the respective manager may be raised with the relevant Section Head and will be reviewed subsequently by the Head of Service and discussed with all relevant parties before also being raised at EAL/Service liaison meetings. Any actions identified as service improvements will be built into the appropriate service improvement plan and the

progress/outcome will be included in the (period) service report and discussed at the liaison meetings.

It is expected that any dispute relating to the provision of support services defined within this Agreement will be resolved between the appropriate customer representative and the respective manager.

If appropriate resolution cannot be achieved, then mutual agreement will be sought by escalation to:

- Relevant senior management and equivalent customer representative;
- Director of Finance and Corporate Services and equivalent customer representative, and
- The Chief Executive of East Ayrshire Council and Lead Officer of EAL.

In the event of any continued disputes arising from this agreement, they will be referred to the appointed arbiter, with all parties agreeing to abide by the decision.

<b>SCHEDULE H – FEES AND EXPENSES</b>
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This schedule provides information on the fee structure and reimbursable expenses to be charged by the Supplier in respect of Standard and Non-standard Services deliverable under the terms of this Agreement.

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**HUMAN RESOURCES**

The Council has estimated a total spend of £65,000 during the first year of the Leisure Trust's operation.

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**CORPORATE INFRASTRUCTURE**

The Council has estimated a total spend of £40,000 during the first year of the Leisure Trust's operation.

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**FINANCE**

The Council has estimated a total spend of £54,000 during the first year of the Leisure Trust's operation.

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**LEGAL AND PROCUREMENT SERVICES**

The Council has estimated a total spend of £45,000 during the first year of the Leisure Trust's operation.

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**DEMOCRATIC SERVICES**

The Council has estimated a total spend of X during the first year of the Leisure Trust's operation.

**EAST AYRSHIRE COUNCIL**  
**SERVICE LEVEL AGREEMENT BETWEEN THE CHIEF EXECUTIVE'S OFFICE AND EAST AYRSHIRE**  
**LEISURE TRUST**

**Schedule A – Standard Services**

**Schedule B – Non Standard Services**

**Schedule C – Service Availability**

**Schedule D – Place of Delivery**

**Schedule E – Service Monitoring and Performance Measurement**

**Schedule F – Contact Arrangements**

**Schedule G – Problem Escalation**

**Schedule H – Fees and Expenses**



## SCHEDULE A – STANDARD SERVICES

This schedule provides a detailed list of the Standard Services that are to be delivered to the Client under the terms of this Agreement.

### HEALTH AND SAFETY

The Service Level Agreement which follows sets out the services which the Health and Safety Team will provide to East Ayrshire Leisure Trust:

#### Health and Safety Service Level Agreement

Activity Objective	Planned Action	Outcome Indicator
For the Trust to have in place suitable and sufficient health and safety management arrangements in compliance with their obligations under health and safety law.	<ul style="list-style-type: none"> <li>The Council will provide an Officer one day per week for an agreed period of time, to provide competent advice and assist in the development of required health and safety documentation</li> <li>The Trust will provide suitable accommodation and resources one day per week for the agreed period</li> <li><b>Note:</b> this will be flexible, based on the requirements of both parties</li> </ul>	Suitable and complaint health and safety management arrangements
To have in place a Health and Safety Policy, in compliance with the requirements of the Health and Safety at Work etc Act 1974.	<ul style="list-style-type: none"> <li>Development of the Health and Safety Policy, detailing the organisational responsibilities and arrangements specific to the Trust</li> </ul>	Implementation and communication of the Health and Safety Policy
To have in place safety standards i.e. organisational arrangements in compliance with the requirements of the Health and Safety Policy	<ul style="list-style-type: none"> <li>Development of safety standards to provide the Trust with appropriate safety management arrangements</li> </ul>	Implementation and communication of Health and Safety Standards
To ensure incidents are accurately recorded and where necessary, investigated and reported under the requirements of Reporting of Incidents, Diseases and Dangerous Occurrences Regulations (RIDDOR)	<ul style="list-style-type: none"> <li>Continued access to the SHE incident reporting system and Solution Centre</li> <li>Health and Safety Section checks and approval of all incidents recorded on SHE</li> <li>Reporting RIDDOR incidents to the HSE as required</li> <li>Providing guidance on any required accident investigation</li> </ul>	Accurate management incident reports generated through the SHE system
To ensure substances used within the Trust are adequately assessed and controlled, in compliance with the Control of Substances Hazardous to Health (COSHH)	<ul style="list-style-type: none"> <li>Provide access to the Sypol system in order to carry out COSHH assessments</li> <li>Health and Safety Section to co-ordinate and provide</li> </ul>	Accurate and up to date COSHH assessments for all substances listed on the inventory

Regulations.	advice in relation to COSHH	
To have in place fire risk assessment for all buildings operated by the Trust in compliance with the Fire Scotland etc Act 2005.	<ul style="list-style-type: none"> <li>To carry out fire risk assessments/ reviews as necessary and within agreed timescales</li> </ul>	Valid and up to date fire risk assessments
To have in place systems to manage the risk of asbestos within all buildings operated by the Trust, in compliance with the Control of Asbestos Regulations 2012.	<ul style="list-style-type: none"> <li>To manage asbestos through the continued use and access to the Modus system</li> </ul>	Valid and up to date asbestos registers for all buildings

Activity Objective	Planned Action	Outcome Indicator
To ensure risk assessments across all service areas, identify significant hazards and have suitable and sufficient controls in place	<ul style="list-style-type: none"> <li>To assist management in the identification of any new assessments</li> <li>To assist management with the review of existing risk assessments and recommendations for improvement as required</li> </ul>	Current and robust assessments across all services areas
To have in place valid operating and emergency procedures (NOPs and EAPs) across all facilities and services	<ul style="list-style-type: none"> <li>To assist management with the review of existing procedures and provide recommendations for improvement where required</li> </ul>	Current and robust procedures
To provide access to Council health and safety resources and information	<ul style="list-style-type: none"> <li>To include the Trust in the circulation of any planned health and safety campaigns and relevant safety flashes</li> </ul>	Provision and communication of relevant health and safety information to staff
To ensure employees have received appropriate health and safety training	<ul style="list-style-type: none"> <li>To advise management on any health and safety training requirements</li> <li><b>Note:</b> H&amp;S training delivered through Organisational Development and accredited external bodies</li> </ul>	Trained and competent staff

#### INTERNAL AUDIT

Within the Council it is the responsibility of the Chief Auditor to provide an independent and objective opinion on the overall adequacy and effectiveness of the control environment and stewardship of public funds. The scope of that work will include the Council's dealings with the Trust. It is anticipated that internal audit work undertaken on behalf of the Council, to check arrangements with and within the Trust, will in turn provide a level of assurance to the Trust. This work is anticipated to involve a significant number of internal audit days in year one; these days will be included in the internal audit allocation for Neighbourhood Services with the scope agreed in the usual way with the Depute Chief Executive/Executive Director of Neighbourhood Services.

The Trust is anticipated to have gross expenditure in the region of £9m per annum with approximately £2m of fees and charges resulting in net expenditure of approximately £7m.

It is understood that the Trust will make use of East Ayrshire Council's core financial systems including payroll, debtors, creditors, general ledger and the PECOS purchasing system as well as legal services.

The Council's Defalcation/Corrupt Practices Procedures outline the responsibilities of all Directors/Heads of Service and other relevant officers with regard to the action which requires to be taken in the event of the discovery of suspected or known defalcations or corrupt practices. It is anticipated that the Trust will adopt these procedures with relevant items reported to internal audit.

It is understood that the Trust will appoint external auditors.

This Service Level Agreement (SLA) is for the provision of an internal audit service that delivers direct support to the East Ayrshire Leisure Trust on an agreed basis.

The delivery of these services from the East Ayrshire Council Internal Audit team (hereafter referred to as "IA") to the East Ayrshire Leisure Trust (hereafter referred to as "the Trust") will be carried out in line with the requirements of the Public Sector Internal Audit Standards (PSIAS).

In line with the PSIAS requirements internal audit work within the Council is currently subject to a six monthly risk assessment which forms the basis of an annual plan. Subsequently there is no standard annual allocation to one service.

This SLA covers the period 1 July 2013 to 31 March 2014; it is anticipated that future SLAs will cover a full 12 months and will be issued annually subject to agreement.

The services covered by this SLA are:

- Development of an Internal Control Self-Assessment (ICSA) document for Golf Courses (5 days);
- Development of an Internal Control Self-Assessment (ICSA) document for Libraries (15 days);
- Contingency for unplanned items including ad-hoc advisory (5 days).
- Total days allocation 25 days.

The total allocation of 25 days represents 3% of available IA days in 2013/14. This allocation does not create a precedent for future years.

The internal audit service for planned items will be delivered in a timescale agreed with the Trust. Unplanned items are dealt with at Schedule B below.

Internal Audit will continue to provide a service to Neighbourhood Services within the Council with regard to the delivery of services by the Trust and in particular with regard to the requirements of Following the Public Pound. It is anticipated that during 2013/14 this service will include a systems review of internal control systems established for and by the Leisure Trust. That systems review may result in recommendations for the Trust and these will be discussed with the Trust prior to finalising any reports to the Council as the client.

## **SCHEDULE B – NON-STANDARD SERVICES**

This schedule provides a detailed list of the Non-standard or customised Services that are to be delivered to the Client under the terms of this Agreement.

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### **INTERNAL AUDIT**

Variations to this agreement are anticipated to relate to unplanned work and in particular defalcations. Should a need for a variation arise this should be raised with the Chief Auditor or their

nominated representative. Any days required over the allocated days will be subject to negotiation with the Chief Auditor or their representative.

Depending on the nature of the unplanned work an additional charge may be made to the Trust.

Unplanned items may require a quick response and such work may be agreed with the Chief Executive of the Trust or their nominated representative through e-mail prior to an Audit Brief being issued; a retrospective Audit Brief will be issued.

<b>SCHEDULE C – SERVICE AVAILABILITY</b>
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This schedule provides a list of the times and periods when the Standard and Non-standard Services will be available to the Client under the terms of this Agreement.

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**SERVICE WIDE**

Generally, the service will be provided within normal office hours (9am to 5pm Monday to Thursday and 9am to 4pm Friday) although service outwith these hours will be provided in respect of attendance at meetings.

<b>SCHEDULE D – PLACE OF DELIVERY</b>
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This schedule provides the location or locations where the Standard and Non-standard Services will be delivered to the Client under the terms of this Agreement.

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**HEALTH AND SAFETY**

The Health and Safety Team are based at the Civic Centre (South), John Dickie Street, Kilmarnock. The Health and Safety Manager reports directly to the Depute Chief Executive, Elizabeth Morton, to make sure there are clear health and safety reporting arrangements in place within the Council.

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**INTERNAL AUDIT**

The Internal Audit section are based at the Civic Centre (South), John Dickie Street, Kilmarnock.

## **SCHEDULE E – SERVICE MONITORING AND PERFORMANCE MEASUREMENT**

This schedule provides detailed information on the monitoring of Standard and Non-standard Services delivered to the Client and the metrics and other means to be applied to each Service component to measure the performance of the Services delivered under the terms of this Agreement.

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### **INTERNAL AUDIT**

It will be the responsibility of Trust management to ensure that adequate systems of internal control are in place.

It is anticipated that this internal control environment will be supported by written policies and procedures including standing orders, a scheme of delegation, governance and risk management policies, a code of conduct, a code of corporate governance, financial regulations, defalcation procedures, anti-fraud and whistle blowing procedures, an information security policy, disaster recovery and business continuity plan, a document retention policy and detailed work instructions for various processes.

This control environment should be monitored by management to ensure compliance. Internal audit can support in providing assurance but is not a replacement for controls or monitoring of controls. Monitoring can include exceptions reports and internal control self-assessments.

While the Trust takes on responsibility for service delivery, the Council remains responsible for ensuring the Trust uses the public funds that the Council provides to the Trust properly and can demonstrate best value. Consequently the Council must be able to “follow the public pound” to the point where it is spent.

Following the Public Pound (CoSLA/Accounts Commission, 1996) remains relevant for Trusts. The principles of openness, integrity and accountability apply to funds or other resources which are transferred to Trusts. The six principles require Councils to:

- have a clear purpose in funding a Trust;
- set out a suitable financial regime;
- monitor the Trust’s financial and service performance;
- carefully consider representation on the Trust board;
- establish limits to involvement in the Trust;
- maintain audit access to support accountability.

### **Reporting Protocols**

IA will agree an Audit Brief with the Trust at the start of each assignment, to be signed by the Chief Auditor and the Chief Executive of the Trust or their representatives. That Audit Brief will indicate a timeline for the work.

IA will produce an output for each assignment, that output can take a number of forms including an Audit Report, an ICSA document or an email. The nature of each output will be agreed in the Audit Brief.

It is anticipated that where issues arise that are deemed to be of interest to the Council, these will be reported to the Chief Executive of the Council, and where appropriate to elected Members.

Where IA carry out work on behalf of the Council as the client that work may result in recommendations for the Trust, these recommendations will be discussed with the Trust prior to finalisation of the report.

It is anticipated that agreed IA recommendations will be promptly implemented by the Trust. IA may carry out follow-up work to ensure recommendations are implemented; the Trust may be requested to carry out a self-assessment of implementation.

IA will not provide an annual opinion to the Trustees.



<b>SCHEDULE F – CONTACT ARRANGEMENTS</b>
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This schedule provides information on the contact arrangements in place and available to the Client under the terms of this Agreement.

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**HEALTH AND SAFETY**

In general terms the day to day operational service will be provided through named Health and Safety Officers, although in order to maintain service provision other officers may provide the services set out in this Agreement. Matters of a strategic or policy nature will be provided through the Health and Safety Manager. The Trust will be informed of any changes to key personnel named within this Service that could affect the delivery of the Service.

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**INTERNAL AUDIT**

In general terms the day to day operational service will be provided through a number of Internal Audit team members. Matters of a strategic or policy nature will be provided through the Chief Auditor or nominated representative. The Trust will be informed of any changes to key personnel named within this Service that could affect the delivery of the Service.

In order for IA to be able to provide services to the Trust full access to records (financial and non-financial), staff and assets must be granted to IA.

All suspected defalcations must be reported to IA and IA must be able to share confidential information received from the Trust within the Council as deemed appropriate by IA, the Trust will be consulted prior to any data sharing.

IA should be able to have access to the external auditors of the Trust and their outputs.

<b>SCHEDULE G – PROBLEM ESCALATION</b>
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This schedule provides information of the Problem Escalation procedure to be applied to Standard and Non-standard Services deliverable under the terms of this Agreement.

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**CHIEF EXECUTIVE’S OFFICE**

In the event of any disputes arising from this agreement they will be referred to the appointed arbiter, with all parties agreeing to abide by the decision.

The Service is committed to provide services in a professional, customer focused and efficient manner consistent with legislative requirements, Council policy and best practice. The respective Manager will ensure the service provision and will be the first point of contact for any complaints or comments on the Service. Any such contact will be appropriately logged.

Any comments or complaints raised with the relevant Section Head relating to services will be reviewed by the Depute Chief Executive and discussed with all relevant parties before also being raised at EAL/Service liaison meetings. Any actions identified as service improvements will be built into the appropriate service improvement plan and the progress/outcome will be included in the (period) service report and discussed at the liaison meetings.

Matters of a strategic or policy nature will be provided through the Depute Chief Executive, or Section Heads within the Chief Executive’s Office.

<b>SCHEDULE H – FEES AND EXPENSES</b>
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This schedule provides information on the fee structure and reimbursable expenses to be charged by the Supplier in respect of Standard and Non-standard Services deliverable under the terms of this Agreement.

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**HEALTH AND SAFETY**

The Council has estimated a total spend of £4,400 per annum, for which they will provide the service levels set out in this agreement.

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**INTERNAL AUDIT**

Based on planned commitments for 2013/14, it is estimated that the total time input for the Internal Audit section will be 25 days.

The Council has estimated a total spend of £4,000 during the first year of the Leisure Trust's operation.

## **PART 2 – CHANGE CONTROL PROCEDURES**

### **1 Principles**

- 1.1 Neither the Trust nor the Council shall unreasonably withhold or delay its agreement to any change proposed in pursuance of the provisions of this Part 3 of the Schedule.
- 1.2 Until such time as Change Control Notice (“CCN”) has been signed by both Parties, the Council shall, unless otherwise expressly agreed in writing in accordance with the provisions of clause 24 (*Amendments to this Agreement*), continue to supply the Services in accordance with this Agreement.
- 1.3 Any discussion, negotiations or other communications which may take place between the Trust and the Council in connection with any proposed change to this Agreement, including but not limited to the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either Party.

### **2 Procedure**

- 2.1 If the Trust wishes to amend this Agreement pursuant to the provision of this Schedule then the Trust Representative shall submit a brief written paper (the “Proposed Change Paper”) to the Contact manager addressing, as a minimum, the following points:-
  - 2.1.1 the title of the proposed change;
  - 2.1.2 the reason for the proposed change; and
  - 2.1.3 details of the proposed change.
- 2.2 Within 20 Business Days after the submission of a Proposed Change Paper (or such period as may be agreed between the Parties), the Contract Manager shall prepare and deliver to the Trust Representative two copies of a written and signed response to the proposed change paper (each a CCN) setting out in as much details as possible:-
  - 2.2.1 the title of the proposed change;
  - 2.2.2 technical details of how to implement the change;
  - 2.2.3 a list of deliverables in relation to the change (together with any related acceptance criteria);
  - 2.2.4 a timetable for delivery of the change;
  - 2.2.5 any tasks required to be completed by the Trust in order to allow the Council to deliver the change;
  - 2.2.6 (where applicable) an estimate of the number of person days required to complete the change;
  - 2.2.7 a price for delivery of change (or, as the case may be, the pricing structure which will apply as a result of the change) together with a payment profile; and
  - 2.2.8 a price for delivery of change (or, as the case may be, the pricing structure which will apply as a result of the change) together with a payment profile; and

- 2.2.9 associated revisions to be made to this Agreement.
- 2.3 If the Council wishes to amend this Agreement pursuant to the provisions of this Schedule then the Contract Manager shall submit two copies of a Change Control Note to the Trust Representative setting out in as much detail as possible:-
  - 2.3.1 the title of the proposed change;
  - 2.3.2 technical details of how to implement the change;
  - 2.3.3 a list of deliverables in relation to the change (together with any related acceptance criteria);
  - 2.3.4 a timetable for delivery of the change;
  - 2.3.5 any tasks required to be completed by the Trust in order to allow the Council to deliver the change;
  - 2.3.6 (where applicable) an estimate of the number of Person Days required to complete the change;
  - 2.3.7 a price for delivery of the change (or, as the case may be, the pricing structure which will apply as a result of the change) together with a payment profile; and
  - 2.3.8 associated revisions to be made to this Agreement.
- 2.4 The price quoted under a CCN shall (except in a case where a Sub-Contractor is involved in relation to delivery of services which are affected by the change) not be more than a reasonable estimate of the staff costs incurred by the Council, plus the reasonable costs of materials to be supplied to the Trust in relation to the change hereunder, together with an allocation of general overheads/charges; where a Sub-Contractor is involved in relation to delivery of services which are affected by the change, the price quoted under a CCN shall (in addition to any element reflecting staff costs and an allocation of overheads/charges) be such as to allow for full recovery by the Council of any charges payable by the Council to the Sub-Contractor in that regard.
- 2.5 Each CCN shall be uniquely identified by a sequential number.
- 2.6 Following receipt of a CCN, The Trust may enter into discussions with the Council in relation to the contents of the CCN with a view to the Parties reaching an agreed position, but ultimately the Trust must either accept or reject a CCN. To accept a CCN, the Trust must sign and return the CCN to the Council no later than 10 Business Days following its receipt of the CCN (or such other period as may be agreed between the Parties).
- 2.7 Following acceptance of a CCN, the Agreement shall be deemed to be revised as set out in the CCN.
- 2.8 A CCN may only be used to vary the terms of the Schedule to the Agreement, all other amendments being subject to the provisions of Clause 24.