

EAST AYRSHIRE COUNCIL
EAST AYRSHIRE LEISURE TRUST
ASSET TRANSFER AGREEMENT

Transfer of Assets & Undertaking

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ASSET TRANSFER AGREEMENT

between

EAST AYRSHIRE COUNCIL 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**")

(A) The Council has resolved to transfer to the Trust (in consideration of one pound sterling (£1)); save in respect of the stock, for which the consideration will reflect a valuation to be carried out following the transfer) the assets and undertaking of Leisure Services of East Ayrshire Council - but retaining ownership of the land/buildings, the collections and certain intellectual property rights.

(B) The Trust has agreed to accept the assets and undertaking referred to in preamble (A).

(C) The parties wish to record in writing the detailed arrangements associated with the transfer.

IT IS HEREBY AGREED as follows:-

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the Schedule to this Agreement), unless the context requires otherwise, the following terms shall have the following meanings:

"Additional Pension Costs"	has the meaning assigned to that expression in paragraph 13.7.1.4 of the
"the Admission Agreement"	means the admission agreement in relation to the admission of the Trust in respect of the Employees to the LGPS in Scotland between Glasgow City Council (as administering authority) and the Trust;
"in Agreed Form"	means in the terms agreed by the Parties prior to Completion;
"the Agreement"	means this Agreement including the Schedule;
"the Application"	has the meaning assigned to that expression in clause 12.17;
"the Assets"	means the assets referred to in clause 2.1.2 of the Agreement;
"Business Day"	means a day other than a Saturday, a Sunday or a day which constitutes a holiday for the majority of the Council's staff;
"Casual Worker"	means any individual who provided services to the Council in the 6 months prior to the Effective Time on a casual or self-employed basis;
"Casual Worker Claim"	means any claim brought by any Casual Worker or any trade union or other body representing the Casual Worker against the Council or the Trust on the basis that such individual was an employee (as define in Section 230(1) of the Employment Rights Act 1996 (" the Act ") or

worker (as defined in Section 230(3) of the Act and in other relevant employment legislation) of the Council in the 6 months prior to the Effective Time and has therefore accrued certain statutory employment protection rights or rights as a worker against the Council and/or the Trust;

- “Casual Worker Claim Expenses”** means the reasonable legal costs incurred by the Trust in defending any Casual Worker Claim;
- "Casual Worker Claim Expenses"** means the reasonable legal costs incurred by the Trust in defending any Casual Worker Claim;
- "Casual Worker Claim Liabilities"** means all settlement sums and liabilities in connection with or as a result of a Casual Worker Claim including, for the avoidance of doubt and without limitation, the amount of any arrears of Pay and any PAYE liabilities or national insurance contributions and pension contributions due to or in respect of any Casual Worker;
- "Cessation Date"** has the meaning assigned to that expression in clause 13.3.1 of the Agreement;
- "the Collections"** has the meaning assigned to that expression in the Collections Agreement;
- "the Collections Agreement"** means the Agreement to be entered into between the Council and the Trust, conferring certain rights of use on the Trust in respect of the Collections;
- "the Compensation Regulations"** means the Local Government (Discretionary Payments and Injury Benefits)(Scotland) Regulations 1998 as amended by the local Government (Discretionary Payments and Injury Benefits)(Scotland) Amendment Regulations 2009 and as otherwise amended;
- "Completion"** means completion of the transfer under clause 4 of the Agreement;
- "the Conditions of Service"** means the standard conditions of service applicable to the Transferring Employees;
- "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 amounts owing by the Council in connection with the Undertaking, whether in respect of services provided to the Council in connection with the Undertaking up until the Effective Time or otherwise;
- "the Creditors"** amounts owing by the Council in connection with the Undertaking, whether in respect of services provided to the Council in connection with the Undertaking up until the Effective Time or otherwise;
- "the Debtors"** the debts owed to the Council in connection with the Undertaking in

respect of the supply of goods and/or services by the Council in connection with the Undertaking up until the Effective Time;

"the Effective Date"	means 1st July 2013, notwithstanding the date of this Agreement;
"the Effective Time"	means 00.01 am on the Effective Date;
"the Employee List"	the list (in Agreed form) of employees wholly or mainly engaged in relation to the Undertaking, to be delivered by the Council to the Trust;
"Employees"	means the Transferring Employees and all employees employed by the Trust on and from Completion engaged wholly or mainly in the Undertaking; "Employee" shall be construed accordingly;
"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);
"the Equipment & Furniture"	means the equipment, furniture, and other items (other than as comprised in the Excluded Assets) owned by the Council so far as relating exclusively to the Undertaking including, without prejudice to that generality, the items specified in the Non-Collections Assets List (but excluding, for the avoidance of doubt, the Stock);
"the Excluded Contracts"	means the contracts relating to (a) any capital works relating to subjects falling within the Property Portfolio or (b) any matters which fall within the scope of services to be provided to the Trust under the Support Services Agreement;
"the Expenses"	has the meaning assigned to that expression in clause 12.11;
"the Goodwill"	means the goodwill of the Undertaking (if any), including the exclusive right for the Trust to represent itself as carrying on the Undertaking in succession to the Council;
"the Head Lease"	Means the lease of which particulars are set out in Part 6 of the Schedule;
"the Individual"	Has the meaning assigned to that expression in clause 12.10;
"Intellectual Property Rights"	means all patents, trade marks, registered designs (and any applications for any of the foregoing), copyright, 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 and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisals and extensions;
"the LT Databases"	means those databases: (a) in which the rights in and to such databases are owned by the Council; (b) which are used exclusively in connection with the Undertaking; and (c) which are more particularly described in Part 12 of the Schedule;
"LGPS Regulations"	means the Strathclyde Pension Fund, being part of the LGPS (Local

Government Pension Scheme) in Scotland as governed by the LGPS Regulations;

"the Leases"	means the leases to be entered into between the Council and the Trust in respect of the Properties;
"the Leasehold Property"	means the property identified in Part 7 of the Schedule;
"the Licence"	means the licence to occupy conferred by clause 7.3.2 of the Agreement, as read with Part 3 of the Schedule;
"the Non-Collections Assets List"	means in the list (in the Agreed Form) of assets in respect of which ownership is to be transferred to the Trust under this Agreement, to be delivered by the Council to the Trust;
"Pay"	means remuneration, benefits or entitlements (including, without limitation, wages expenses and holiday pay);
"Parties"	means the Council and the Trust; "Party" shall be construed accordingly;
"the Pensions Guarantee"	means the guarantee to be granted by the Council in connection with the Admission Agreement;
"the Petty Cash"	means cash in hand held by the Council, exclusively in relation to the Undertaking, as at the Effective Time;
"the Prepayments"	means amounts paid by the Council to third parties in connection with the Undertaking prior to the Effective Time, to the extent that such sums relate to services, goods or utilities to be supplied or performed after the Effective Time;
"the Properties"	means the properties identified in Part 8 of the Schedule
"Replacement Scheme"	has the meaning assigned to that expression in clause 13.3.1 of the Agreement;
"the Retained Intellectual Property"	means (a) all Intellectual Property Rights relating to the Collections (in respect of which a licence conferring certain rights of exploitation is conferred by the Collections Agreement); (b) the Retained (Non-collections) Intellectual Property and (c) the LT Databases;
"the Retained (Non-collections) Intellectual Property"	means all Intellectual Property Rights owned by the Council insofar as used solely in the conduct of the Undertaking (including, without limitation the rights in and to the Shared Databases) other than (a) the Intellectual Property Rights relating to the Collections; and (b) the LT Databases;
"the Support Services Agreement"	means the Support Services Agreement to be entered into between the Council and the Trust relating to the provision of certain services for an agreed period of time by the Council;
"the Shared Databases"	means those databases in which the rights in and to such databases are owned by the Council but excluding the LT Databases;
"Single Status Review"	means the single status review undertaken by the Council <i>inter alia</i> in relation to the Transferring Employees;

- “the Stock”** means all stock held by the Council as at the Effective Time which is owned by the Council at the Effective Time (including items which, although subject to reservation of title conditions in favour of the supplier, are under the control of the Council);
- “the Sublease”** means the Lease to be granted in respect of the Leasehold Property;
- “the Third Party Rights”** means the benefit of all sums to which the Council is or may become entitled (whether before or after Completion) either from third parties or insurers in respect of damage to any of the assets where such damage arose prior to the Effective Time (whether or not such damage was then apparent);
- “the Third Party Leases”** means the leases, licences and other occupancy arrangements of which particulars are set out in Part 5 of the Schedule;
- “the Transfer”** has the meaning assigned to that expression in clause 12.1;
- “the Transferring Contracts”** means all contracts and undertakings relating solely to the conduct of the Undertaking to which the Council is party as at the Effective Time including, without prejudice to that generality, the contract listed in Part 9 of the Schedule; but excluding the Excluded Contracts;
- “the Transferring Employees”** means the persons wholly or mainly employed by the Council in the Undertaking at the Effective Time (who consist of those persons whose details are set out in the Employee List), save for those of the Transferring Employees who object to their transfer pursuant of Regulation 4(7) of the TUPE Regulations.
- “the Transferring Records”** all records held by the Council or by any third party on behalf of any of them (whether or not confidential and in whatever form held relating exclusively to the Undertaking or Assets or any part of them, including without limitation:-
- (a) all accounts, books, vouchers, customer and supplier records, contracts, invoices received and copies of invoices issued, orders and quotations made and received;
 - (b) all contracts of employment, policies, documents, files, records or information (whether stored electronically or otherwise) in the Council's possession in relation to the Transferring Employees or their terms and conditions of employment;
 - (c) any formulae, designs, specifications, drawings, data, manuals or instructions, research materials, catalogues .and correspondence files;
 - (d) records concerning the operations, management, administration, or financial affairs of the Undertaking, including any business plans or forecasts, and records relating to future business development or planning or to litigation or legal advice; and
 - (e) records relating to the products manufactured, sold or supplied or services rendered by the Undertaking including, without limitation, all customer names and lists, sales and marketing materials (including but not limited to targets, sales and market

share statistics, market surveys and reports on research);

“the Services and Finance Agreement”	means the Agreement to be entered into between the Council and the Trust, providing for the Trust to supply certain services to the Council for an agreed period;
“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;
“the Undertaking”	means that part of the undertaking of the Council which consists of the operations of Leisure Services of the Council;
“VATA”	means the Value Added Tax Act 1994;
“VAT Regulations”	means the Value Added Tax Regulations 1995;
“the Warranties”	means the warranties set out in Part 10 of the Schedule.

1.2 Interpretation

- 1.2.1 Reference to a statute or a statutory provision includes a reference to it as from time to time amended, extended or re-enacted.
- 1.2.2 Words denoting the singular number only included the plural, and *vice versa*.
- 1.2.3 Unless the context otherwise requires, any reference to a clause or paragraph is to a clause or paragraph of the Agreement.
- 1.2.4 The headings in the Agreement are included for convenience only and shall not affect its interpretation.

2 TRANSFER

- 2.1 The Council shall transfer to the Trust, and the Trust shall accept, in each case with effect from the Effective Time:-
- 2.1.1 the Undertaking; and
- 2.1.2 all of the assets associated with the conduct of the Undertaking (with the exception of the Excluded Assets), including without prejudice to that generality:-
- 2.1.2.1 (subject to clause 8.3) the Council's interest under each of the Transferring Contracts;
- 2.1.2.2 the Equipment & Furniture;
- 2.1.2.3 the Stock;
- 2.1.2.4 the Third Party Rights; and
- 2.1.2.5 the Petty Cash.
- 2.2 For the avoidance of doubt, the following assets associated with the conduct of the Undertaking are excluded from the Transfer:-

- 2.2.1 the Properties (in respect of which the only rights to be acquired by the Trust shall be those conferred on it under the Leases, the Sublease and the Licences to Occupy);
 - 2.2.2 the Collections (in respect of which the only rights to be acquired by the Trust shall be those conferred on it under the Collections Agreement);
 - 2.2.3 the Retained Intellectual Property (in respect of which the only rights to be acquired by the Trust shall be those conferred on it (a) by clause 4.3 of this Agreement and (b) by the Collections Agreement);
 - 2.2.4 the Retained ICT Infrastructure (in respect of which the only rights to be acquired by the Trust shall be those conferred on it by the IT SLA);
 - 2.2.5 all cash at bank and cash in transit, all cheques received but not yet banked, and all cheques which are in the course of clearance, in each case, as at the Effective Time;
 - 2.2.6 the Debtors; and
 - 2.2.7 the Creditors.
- 2.3 The Council undertakes that (except in the case of a bona fide dispute and subject to the provisions of clauses 5, 7 and 8) it shall pay and discharge in accordance with its normal procedures all debts and liabilities arising out of or in connection with the conduct of the Undertaking in the period up to the Effective Time.
- 2.4 The Trust shall (subject to the provisions of clauses 2.5, 6, and 8) assume responsibility, as from the Effective Time, for the satisfaction of all debts and liabilities (both ascertained and contingent) incurred in relation to, or in connection with, the conduct of the Undertaking as from the Effective Time; the Trust shall indemnify the Council against all proceedings, claims and demands in respect of such debts and liabilities.
- 2.5 For the avoidance of doubt, the Trust shall not assume any liability which relates exclusively to an item or items comprised in the Excluded Assets.

3 CONSIDERATION

- 3.1 Subject to clause 5, the consideration due by the Trust to the Council or *vice versa* in respect of the transfer of the Undertaking and Assets under clause 2 shall be One Pound Sterling (£1).
- 3.2 Within 45 Business Days of Completion the Trust shall pay to the Council an amount equal to the Petty Cash. Any such amount due shall be payable through an adjustment in terms of the sum payable by the Council to the Trust in terms of the Finance and Services Agreement.

4 COMPLETION

- 4.1 The transfer shall be completed immediately following the Effective Time at the offices of the Council, when all of the matters set out in clause 4.2 shall (so far as reasonably practicable) be effected and property in the Assets shall be deemed to pass to the Trust.
- 4.2.1 the Council shall (subject to clause 4.10) cause to be delivered or made available to the Trust:-
- 4.2.1.1 all items comprised in the Assets which are capable of physical delivery (but on the understanding that delivery shall be deemed to be affected by their being left at the Properties);
 - 4.2.1.2 copies of the following documents, to the extent only that they have been maintained by the Council and are in the Council's possession (and in each case only to the extent that they relate to the Properties and existing fittings and fixtures and equipment):-

- (a) asbestos assessments and written plans required under the Control of Asbestos Regulations 2012;
- (b) fire risk assessments and documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006;
- (c) health and safety files required under the Construction (Design and Management) Regulations 1997;
- (d) risk assessments and control plans required under the Control of Substances Hazardous to Health Regulations 2002;
- (e) risk assessments required under the Management of Health and Safety at Work Regulations 1999;
- (f) risk assessments required under the Workplace (Health, Safety and Welfare) Regulations 1992;
- (g) any risk assessments, documented controls, maintenance manuals, information and written instructions required under the Provision and Use of Work Equipment Regulations 1988;
- (h) any records of assessments required under the Health and Safety (Display Screen Equipment) Regulations 1992; and
- (i) any records of assessments, control measures, health surveillance, information, instruction and training required under the Control of Noise at Work Regulations 2005;

provided that following Completion the Council shall also make available to the Trust copies of the documents relating to health and safety and fire safety reasonably requested by the Trust, to the extent only that they have been maintained by the Council and are in the Council's possession (and only to the extent that they relate to the Properties and fittings and fixtures and equipment existing as at Completion);

- 4.2.1.3 (subject to clause 4.8) all of the Council's accounting records, client files, contact lists, distribution lists, reference material, test and other certificates, registration documents, and all other records (otherwise than of the nature referred to in paragraph 4.2.1.2), information (including security codes) and keys held by or on behalf of the Council, in each case so far as relating exclusively to the conduct of the Undertaking;
- 4.2.1.4 copies of the Transferring Contracts, so far as held by or to the order of the Council;
- 4.2.1.5 a certificate showing the amount comprised in the Petty Cash;
- 4.2.1.6 the Employee List;
- 4.2.1.7 the Non-Collections Assets List;
- 4.2.1.8 the Pensions Guarantee, duly executed by the Council,
- 4.2.2 the Council and the Trust shall execute, in each case in the Agreed Form:-
 - 4.2.2.1 the Services and Finance Agreement;
 - 4.2.2.2 (subject to clause 4.10) the Leases;

4.2.2.3 (subject to clause 4.10) the Sublease;

4.2.2.4 the Collections Agreement;

4.2.2.5 the Support Services Agreement; and

and

4.2.3 the Trust shall execute the Admission Agreement (in the Agreed Form).

4.3 Subject to clause 4.4, the Council hereby grants to the Trust, with effect from the Effective Time, a worldwide, royalty free, sole licence, or (where the interest of the Council is that of a licensee) sole sub-licence, to use the Retained (Non-collections) Intellectual Property for all purposes associated with the conduct of the Undertaking. For the avoidance of doubt, the Council hereby grants to the Trust, with effect from the Effective Time, a worldwide, royalty free, exclusive licence, or (where the interest of the Council is that of a licensee) exclusive sub-licence, to use the Retained (Non-collections) Intellectual Property for the purposes of commercial exploitation.

4.4 In any case where the interest of the Council in Retained (Non-collections) Intellectual Property is that of a licensee and the terms of the relevant licence or other agreement are such that the licensor's consent is required to the grant of a sub-licence, the grant of the sub-licence in pursuance of clause 4.3 shall have effect only as from the date on which the licensor issues its consent to the grant of the sub-licence; if the licensor does not expressly consent in writing to the grant to the Trust of the sub-licence, the sub-licence under clause 4.3 shall not extend to the Retained (Non-collections) Intellectual Property which is the subject of that licence or other agreement.

4.5 The Council hereby grants to the Trust, with effect from the Effective Time, a worldwide, royalty free, exclusive licence to use, adapt, modify and develop the LT Databases for all purposes associated with the Undertaking.

4.6 To give effect to the licences granted pursuant to clauses 4.3 and 4.5, the Council hereby agrees to give the Trust such access to the Shared Databases as it requires in connection with the Undertaking.

4.7 The licences granted pursuant to clauses 4.3 and 4.5 shall terminate only upon termination of the Services Agreement, howsoever arising.

4.8 The Council shall be entitled to retain all such records relating to the Undertaking and Assets as are required under VATA to be preserved in respect of the Undertaking.

4.9 For the avoidance of doubt:-

4.9.1 the Trust shall not be obliged to complete the acquisition of any of the Assets unless the transfer of all of the Assets is completed simultaneously;

4.9.2 property, ownership and risk in respect of the Assets shall pass to the Trust at Completion;

4.10 In relation to, the Properties specified in Part 1 of the Schedule (Properties in respect of which there are matters outstanding as at Completion), the terms of paragraphs 4.2.2.2 and 4.2.2.3 will not apply as at Completion.

5 VALUATION OF STOCK

5.1 Immediately following the Effective Time, the Council and the Trust shall carry out a stock review for the purposes of determining the composition and value of the Stock as at the Effective Time.

- 5.2 The policies, practices and procedures to be followed in valuing the Stock shall be in accordance with the Council's standard approach in the context of close-down valuations carried out for the purpose of year-end accounts (and including, for the avoidance of doubt, the requirement to have due regard to the condition of the Stock and any other factors which may affect saleability of the Stock in the ordinary course of retail operations.
- 5.3 In the event that the value of the Stock has not been agreed between the Council and the Trust by the expiry of a period of 15 Business Days following Completion, either of them may refer the matter(s) in dispute to an independent expert (the "**Expert**") appointed by agreement between them, or (failing such agreement) nominated on the application of either Party by the President at the time of the Institute of Chartered Accountants of Scotland.
- 5.4 The following provisions shall apply in relation to any reference to an Expert in pursuance of clause:-
- 5.4.1 the Expert shall act as an expert and not as an arbiter;
- 5.4.2 he/she shall have the right to seek such professional advice and assistance as he/she may reasonably require;
- 5.4.3 his/her professional fees and expenses and the fees and expenses of his/her advisers (if any) shall be borne by the Council and the Trust in such proportions as he/she shall direct and, in making such direction, he/she shall have regard to the merits of the arguments placed before him by each Party.
- 5.5 The value of the Stock as agreed between the Parties or as determined by the Expert shall be final and binding on the Parties; no right of appeal shall be competent with regard to the value, and neither of the Parties shall be entitled to appeal or state a case to any court, whether on a point of law or of fact, save in the case of any fraud or manifest error.
- 5.6 The Stock Price shall be paid to the Council within 90 Business Days of Completion, or if the Stock Price is agreed or determined in accordance with this clause 5.6 after such period, immediately after such agreement or determination.
- 5.7 If at the time for payment of any sum pursuant to clause 5.6 there is any Claim outstanding, the Trust shall be entitled to retain an amount equal to the amount of such Claim from any such payment; and to set off against any such payment the amount of any such Claim as finally agreed or determined or to set off any other amounts due to it by the Council in terms of the Agreement.

6 APPORTIONMENTS

- 6.1 Rates shall be apportioned as at the Effective Time on a daily basis, calculated over the current rating period; the Council shall notify the rating authority of the grant of the Leases and the Licence and shall request the rating authority to carry out such apportionments.
- 6.2 If at the Effective Time rates for the current rating period for any of the Properties have not been determined (whether because of an appeal against assessment or otherwise), the apportionment referred to in clause 6.1 will be carried out on the basis of the latest available assessment.
- 6.3 Charges in respect of supplies of gas, electricity, telecommunication services and any other utilities in relation to the Undertaking shall be payable by the Trust as from the Effective Time, and the Council shall notify the relevant suppliers accordingly; the Council shall be responsible for any charges of that nature which relate to the period up to the Effective Time.

- 6.4 All sums due by the tenant under the Head Lease shall be apportioned between the Council and the Trust as at the Effective Date (but only to the extent that the Trust is required to meet such sums under the terms of the Sublease), and on the basis that any annual payment shall be deemed to accrue at a uniform daily rate throughout the year.
- 6.5 The rents and all other sums due to the landlord under the Third Party Leases shall be apportioned between the Council and the Trust as at the Effective Date, and on the basis that any annual payment shall be deemed to accrue at a uniform equal daily rate throughout the year; the apportionment under the preceding provisions of this clause 6.5 shall be carried out on the basis of sums received, and the Council shall account to the Trust for any rent or other sum received after Completion from the tenant under a Third Party Lease, to the extent that such sum relates to the period from and after the Effective Date.
- 6.6 Subject to clauses 6.1 to 6.5 and without prejudice to any other provision of this Agreement:
- 6.6.1 where any payment has been made to the Council in respect of goods and/or services to be supplied by the Undertaking after the Effective Time, the Council shall account to the Trust in respect of that payment;
- 6.6.2 where any payment has been made by the Council in respect of goods and/or services to be supplied to the Undertaking after the Effective Time, the Trust shall account to the Council in respect of that payment;
- 6.6.3 where any liability is accruing due by the Undertaking in respect of goods and/or services being supplied to the Undertaking over a period which spans the Effective Time, the initial responsibility for payment shall be the Council's, but following any such payment the respective amounts shall be apportioned between the Council and the Trust as closely as possible on the basis of supplies made at the Effective Time and, accordingly, the Trust shall reimburse the Council as soon as possible following such apportionment;
- 6.6.4 where any sum receivable is accruing due to the Undertaking in respect of goods and/or services being supplied by the Undertaking over a period which spans the Effective Time, the initial responsibility for collecting payment shall be the Council's, but following receipt of any such payment the respective amounts shall be apportioned between the Council and the Trust as closely as possible on the basis of supplies supplied at the Effective Time and, accordingly, the Council shall pay over the relevant part of the payment to the Trust as soon as possible following such apportionment; and
- 6.6.5 otherwise, the principle applying shall be that accounts of suppliers to the Undertaking shall be for the account of the Council in so far as they relate to goods and/or services supplied prior to the Effective Time and otherwise shall be for the account of, and paid by the Trust to the extent they relate 'to goods and/or services supplied after the Effective Time.
- 6.7 The net amount, or amounts where payments and apportionments are being made separately in respect of specific items, payable by one Party to the other in accordance with the provisions of clauses 6.1 to 6.6 shall be agreed between the Council and the Trust within 6 months after Completion; and if not then agreed, the matter in dispute shall be referred to an independent expert appointed by agreement between them (or, failing such agreement, nominated on the application of either of them by the President at the time of the Institute of Chartered Accountants of Scotland).
- 6.8 The amount or amounts agreed or determined to be payable in accordance with clause 6.7 shall be paid in cleared funds within 25 Business Days of such agreement being reached or such determination being made.

7 PROPERTIES

7.1 The Trust undertakes that:-

- 7.1.1 within thirty Business Days of completion , it shall submit each of the Leases (together with applicable forms, supporting documentation and cheque in respect of Land Register of Scotland registration dues) to the Land Register of Scotland for registration and to the Books of Council and Session for registration for preservation and execution, requesting two extracts;
- 7.1.2 within five Business Days of receipt of the extract of each of the Leases, it shall forward one extract to the Council;
- 7.1.3 within five Business Days of receipt from the Land Register of Scotland of each of the annotated Forms 4 together with the Keeper's Acknowledgement Addendum relative thereto showing the Title Number to be allocated to the Title Sheet for the Trust's interest in each of the Leases, it shall forward a copy thereof to the Council;
- 7.1.4 within five Business Days of receipt of a Land Certificate in respect of the Trust's interest in each of the Leases from the Land Register of Scotland, it shall forward to the Council a copy of such Land Certificate in respect of such interest, with a colour copy of the Title Plan(s).

7.2 The provisions of clause 7.1 shall apply in relation to the Sublease, subject to the qualification that, save where the relevant Sublease qualifies to be registered in the Land Register of Scotland, all references in clause 7.1 to registration in the Land Register (or matters associated with registration in the Land Register) shall be disregarded.

7.3 In relation to each of the Properties specified in Part 1 of the Schedule:-

7.3.1 the Council and the Trust undertake that:-

7.3.1.1 the Council and the Trust shall enter into a lease in accordance with the model lease set out in Part 2A of the Schedule (subject to such adjustments to reflect the particularities of the Property as the Council and the Trust may agree (each being bound to act reasonably in this respect)); or (in the case of a Leasehold Property, shall enter into a sublease in accordance with the model lease set out in Part 2 of the Schedule amended to refer to the relevant head lease and impose upon the Trust the whole obligations upon the Council thereunder (subject to such adjustments to reflect the particularities of the Property [and/or the relevant Head Lease] as the Council and the Trust may agree (each being bound to act reasonably in this respect)));

7.3.1.2 the provisions of paragraph 4.2.2.2 and 4.2.2.3 shall apply (with any necessary modifications) as at the date the Trust and the Trust enter into the lease [or the sublease (as the case may be)]; and

7.3.1.3 the provisions of clause 7.1 (as read with clause 7.2 in the case of a sublease) shall apply (with any necessary modifications) in relation to the lease or the sublease (as the case may be);

7.3.2 pending the completion of a lease or a sublease in pursuance of paragraph 7.3.1, the Trust may occupy the relevant Property in accordance with the Licence to Occupy set out in Part 3 of the Schedule.

7.4 The Council undertakes:-

- 7.4.1 to issue, as soon as reasonably practicable after Completion, to any **tenants/licensees/occupiers** under the Third Party Leases a notice intimating the change of landlord/licensor under the relevant Third Party Lease, in such terms as the Council and the Trust may agree (each being bound to act reasonably in this respect); and
- 7.4.2 to supply to the Trust, within 10 Business Days after issue of the notices referred to in clause 7.4.1, copies of such notices, together with appropriate proof of posting.

8 TRANSFERRING CONTRACTS

- 8.1 Subject to clause 8.3, the Council hereby assigns its interest under each of the Transferring Contracts to the Trust with effect from the Effective Time; and the Trust hereby accepts the assignment to it of the Council's interest under each of the Transferring Contracts under the preceding provisions of this clause 8.1.
- 8.2 In respect of each of the Transferring Contracts:-
- 8.2.1 the Council undertakes to use all reasonable endeavours to secure (insofar as not already dealt with) that, as soon as practicable after Completion, the other party to that Transferring Contract consents in writing (or, where there are two or more of such parties, that each of them consents in writing) to an assignment to the Trust with effect from the Effective Time of the Council's interest under that Transferring Contract; and
- 8.2.2 the Council and the Trust shall, as soon as reasonably practicable after such written consent(s) has/have been obtained, enter into such documentation as the Council (acting reasonably) may agree with the other party or parties to that Transferring Contract, to record such assignment.
- 8.3 If the Council's interest under any of the Transferring Contracts is not capable of being assigned without the consent of another party (or parties), and that party (or, as the case may be, any of such parties) in the case of a Transferring Contract does not expressly consent in writing to the assignment to the Trust of the Council's interest under the Transferring Contract with effect from the Effective Time, then
- 8.3.1 the assignment shall not proceed (but without prejudice to any liability of the Trust which may have accrued in respect of the relevant Transferring Contract under the provisions set out in Part 2 of the Schedule); and
- 8.3.2 the Council may (acting reasonably, and after due consultation with the Trust) either
- (a) elect that the provisions set out in Part 4 of the Schedule shall continue to apply, in respect of the relevant Transferring Contract, up to the date of expiry (or earlier termination) of that Transferring Contract; or
 - (b) terminate the relevant Transferring Contract with effect from such date as the Council may reasonably determine..
- 8.4 The provisions set out in Part 4 of the Schedule shall apply in relation to any of the Transferring Contracts during any period when the other party or parties to that Transferring Contract treat the Council, rather than the Trust, as party to that Transferring Contract.
- 8.5 If the Parties are unable to secure the assignment of any Transferring Contract, the assumption by the Trust of responsibility for performance of the relevant obligations in respect of the remainder of the term of that Transferring Contract may (subject to the consent and cooperation of the other party or parties to that Transferring Contract) be dealt with by novation; the provisions of clauses 8.1 to 8.4, and of Part 4 of the Schedule, shall be deemed to be modified accordingly.

8.6 Without prejudice to the provisions of clause 6 and Part 4 of the Schedule, if after the Effective Time any sum or benefit is received by the Council which relates to or arises out of the performance of the Transferring Contracts by the Trust after the Effective Time, the Council shall hold such sum or benefit in trust for the Trust and shall promptly pay such sum, or (as the case may be) transfer such benefit, to the Trust.

8.7 The parties acknowledge that it is the intention that:-

8.7.1 the Trust should not be liable in respect of any breach of any of the Transferring Contracts committed prior to the Effective Time or under any guarantee or warranty (express or implied) given by the Council to any customer in relation to goods sold or services rendered by the Council prior to the Effective Time;

8.7.2 the Council should not be liable in respect of any breach of any of the Transferring Contracts committed after the Effective Time or under any guarantee or warranty (express or implied) given by the Trust to any customer in relation to goods sold or services rendered by the Trust after the Effective Time;

and the parties shall endeavour to procure that the provisions of any assignment entered into in pursuance of paragraph 8.2.2 reflect that principle; in any event, the provisions of clause 10 (indemnity) shall apply in respect of any liability inconsistent with that principle which is incurred by either the Council or the Trust to a party to a Transferring Contract.

8.8 The Trust undertakes that (insofar as not already dealt with) it shall issue intimations, to those having dealings in relation to the Undertaking, as follows:-

8.8.1 the Trust shall, immediately following Completion, display notices in all venues comprised in the Properties to which members of the public have access, intimating that the Trust is now responsible for the operation of the relevant facilities; and

8.8.2 the Trust shall seek to advise library users in relation to the transfer of responsibilities for the library operations to the Trust, by way of the display of notices within the libraries and information leaflets available at library desks;

the intimation, notice, acknowledgement or information sheet in each case being in such terms as the Council and the Trust may agree (each being bound to act reasonably in this respect).

9 LICENCES & CONSENTS

9.1 The Council shall use all reasonable endeavours to procure that, prior to or as soon as practicable after the Effective Time, all licences, consents and authorisations held by the Council relating solely to the conduct of the Undertaking are assigned or transferred to the Trust or are granted afresh in favour of the Trust.

9.2 Without prejudice to the generality of clause 9.1, the Council shall provide the Trust with all such assistance and co-operation as the Trust may reasonably request:-

9.2.1 in connection with submitting or pursuing any application to the relevant authority or other third party for the purpose of any assignment, transfer or fresh grant of the nature referred to in clause 9.1; and

9.2.2 in connection with an application by the Trust for any licence, consent or authorisation which relates partly to the Undertaking and partly to other operations of the Council (or bodies connected with the Council).

10 INDEMNITIES

- 10.1 Subject to clause 10.3 (and without prejudice to any specific indemnity set out elsewhere in this Agreement), the Council will, as from the Effective Time, indemnify the Trust against any loss or liability which the Trust may sustain or incur, or any claim by a third party against the Trust (including the reasonable expenses associated with contesting any such claim on a solicitor/client basis, and any costs awarded against the Trust in respect of any such claim), where such loss, liability or claim arises out of, or in connection with, the conduct of the Undertaking up to the Effective Time.
- 10.2 Subject to clause 10.3 (and without prejudice to any specific indemnity set out elsewhere in this Agreement), the Trust will, as from the Effective Time, indemnify the Council against any loss or liability which the Council may sustain or incur, or any claim by a third party against the Council (including the reasonable expenses associated with contesting any such claim on a solicitor/client basis, and any costs awarded against the Council in respect of any such claim), where such loss, liability or claim arises out of, or in connection with, the conduct of the Undertaking from and after the Effective Time.
- 10.3 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 10.1 or 10.2:-
- 10.3.1 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;
- 10.3.2 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);
- 10.3.3 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);
- 10.3.4 shall not (in the case of a claim), compromise any such claim, or take any step 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 in circumstances where the taking of such steps is required by law;
- 10.3.5 take all reasonable steps available to it to mitigate such loss or liability, and shall comply at all times with insurers claims handling protocols. In particular the Trust shall notify the Council immediately in writing of any situation that might give rise to a claim; it must also notify Police Scotland in the event of any theft or malicious damage losses and provide the Council with a crime reference number. All insured losses should be reported immediately to the Council as failure to notify same within a 30 day period from the date of loss could entitle insurers to void the claim.

including, without prejudice to that generality, the indemnities contained in clause 12.

11 INSURANCE ARRANGEMENTS

- 11.1 The Council shall be responsible for maintaining insurances, with effect from the Effective Time, in accordance with the particulars set out in Part 11 of the Schedule, subject to such variations as the Parties may agree from time to time (each being bound to act reasonably in this respect).
- 11.2 With reference to clause 1 1.1:-

- 11.2.1 the Parties shall use all reasonable endeavours to ensure that the indemnity limit in respect of each of the insurances listed at Part 11 of the Schedule is (a) in respect of the collection a sum equivalent to the market value at date and time of loss (b) in respect of all other stock is a sum equivalent to the market value at date and time of loss (c) in respect of all other buildings and contents a sum equal to the reinstatement value as new (d) in respect of employee death/injury, third party death/injury/third party property damage the indemnity limits will be regularly reviewed and maintained at a level to provide suitable protection against catastrophic losses; and (e) in respect of vehicles settlement will be based upon repair costs and/or in the event of a total loss the market value of the vehicle at date and time of loss.
- 11.2.2 (without prejudice to the provisions of clause 11.1 in respect of any other variations) the Council shall not increase the amount of excess in respect of any of the insurances referred to in clause 11.1. without the prior written consent of the Council (such consent not to be unreasonably withheld).
- 11.3 For the avoidance of doubt, the Trust shall be responsible for payment of any excess under any of the insurance policies referred to in clause 1 1.1.
- 11.4 The Council undertakes:-
- 11.4.1 to provide to the Trust on request a summary of the policy covers relating to the insurances maintained by the Council in pursuance of clause 11.1, together with such evidence as the Trust may reasonably request to demonstrate that such policies are in force;
- 11.4.2 to advise the Trust promptly in writing if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.
- 11.5 The Council and its agents and advisers shall, on giving not less than 24 hours' prior notice to the Trust, be given reasonable access to all facilities operated by the Trust within the Properties for the purposes of inspecting such facilities and carrying out risk control surveys; following any such inspection or survey, the Council (or its agents or advisers) shall make recommendations to the Trust on any issues identified by the inspection and/or survey, including (without prejudice to that generality) recommended measures to control risk Where future insurance cover is subject to such recommendations having been fully implemented, the Trust shall take appropriate remedial action and shall confirm to the Council and its agents or advisers as and when any necessary action points have been completed.
- 11.6 The Council and the Trust shall each consider the recommendations referred to in clause 11.5 and shall enter into discussions in respect of the implementation of such recommendations and the timeframe for doing so; the Council and the Trust each recognise that implementation of the recommendations referred to above may have significant financial implications and these shall be taken into account in such discussions.
- 11.7 The Trust undertakes to implement such measures to control risk as the Council may reasonably prescribe (having regard to issues of affordability) in the light of the recommendations made in pursuance of clause 11.5, and within the timeframe reasonably prescribed by the Council.
- The Trust undertakes to notify the Council of any material changes in risk which might affect insurer's view of the insured risk, including but not limited to additional cover requirements for items loaned out or borrowed; partial or total failure of fire/security systems and monitoring thereof
- The Trust undertakes not to do anything that would vitiate the insurance covers arranged by the Council.
- In respect of all insured losses the Trust shall supply all supporting evidence as may from time to time be requested by insurers in support of the claim being made.
- 11.8 Without prejudice to the provisions of clause 10, in the event of any claim (a "Third Party Claim") being made against the Trust in respect of an incident which occurred prior to the Effective Time, then if such Third Party Claim is not covered by the insurances which fall to be maintained by the Council under clause 1 1.1, the

Council shall procure that any insurance claim available to the Council (at the time when the Third Party Claim is made) in respect of the Third Party Claim is pursued by the Council; and the Council shall pay over to the party which made the Third Party Claim the amount of the Third Party Claim which is met under the insurance claim pursued by the Council. Subject to liability being proven by the claimants, to the satisfaction of the Council and its nominated insurers.

11.9 For the avoidance of doubt, the provisions of paragraphs 11.1 to 11.7 shall be without prejudice to any provisions relating to insurance contained in the Leases, the Collections Agreement, the Support Services Agreement and the Services and Finance Agreement.

12 EMPLOYEES

12.1 The Council and the Trust consider that the TUPE Regulations shall apply to the transfer of the Undertaking contemplated by this Agreement ("the Transfer"). Accordingly, the contracts of employment of all Transferring Employees shall be transferred to the Trust, to the extent required under the TUPE Regulations, with effect from the Effective Time.

12.2 Where, by virtue of the TUPE Regulations, the employment of any Transferring Employee transfers to the Trust at a time prior to the Effective Time, the provisions of this clause 12 shall have effect as if references to the Effective Time were, in respect of that Transferring Employee, references to the time that the transfer of such Transferring Employee occurred.

12.3 Subject to clause 12.1 and 12.13.3, the Council shall be responsible for all amounts payable to or in relation to the Transferring Employees (including but not limited to wages and salaries (including backdated Pay if a job evaluation appeal has been lodged and the resulting outcome of a re- evaluation is a change in grade), 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 Effective Time and the Council shall indemnify the Trust 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 Subject to clause 12.1 and 12.13.3, the Trust shall be responsible for all amounts payable to or in relation to the Transferring 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 Effective 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 Subject to clause 12.8, the Council shall indemnify and keep indemnified the Trust from and against all Employment Losses arising from any claim or demand against the Trust by any of the Transferring Employees arising out of or in connection with any act, fault or omission or alleged act, fault or omission of the Council prior to the Effective 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.

12.6 The Trust shall indemnify and keep indemnified the Council from and against all Employment Losses arising from any claim or demand by any of the Transferring Employees arising out of or in connection with any act, fault or omission or alleged act, fault or omission of the Trust after the Effective 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.

12.7 Subject to clause 12.8, the Council shall indemnify and keep indemnified the Trust against all Employment Losses arising from any claim or demand by any of the Transferring Employees or by any trade union,

employee representative or body of employees or their representatives (whether or not recognised by the Trust) on behalf of any of the Transferring Employees arising out of or in connection with any failure by the Council to comply with its obligations under Regulations 13 and 14 of the TUPE Regulations in relation to the Transfer.

- 12.8 The Trust shall indemnify and keep indemnified the Council from and against all Employment Losses arising from any claim or demand by any of the Transferring Employees or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the Trust) on behalf of any of the Transferring Employees arising from or in connection with any failure by the Trust to comply with its obligations under Regulation 13(4) of the TUPE Regulations in relation to the Transfer.
- 12.9 The Council and the Trust agree that the Council has, insofar as reasonably practicable, complied with Regulation 11 of the TUPE Regulations in respect of the Transferring Employees; and the Trust shall indemnify and keep indemnified the Council from and against all Employment Losses arising from any claim or demand by the Trust arising out of or in connection with any failure by the Council to comply with its obligations under Regulation 11 of the TUPE Regulations.
- 12.10 If, by operation of the TUPE Regulations, the contract of employment of any individual who was employed by the Council immediately prior to the Effective Time and who is not a Transferring Employee, excluding for the avoidance of doubt any Casual Worker, ("**the Individual**") takes effect or is alleged to take effect as if originally made with the Trust as a consequence of the Transfer:-
- 12.10.1 the Trust 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;
- 12.10.2 the Council shall, within 14 days of receiving notice in terms of clause 12.10.1, offer employment to the Individual or notify the Trust that it does not wish to make such an offer;
- 12.10.3 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 12.10.2) the Trust shall be entitled to terminate the employment of the Individual;
- 12.10.4 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 12.10.3 (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 12.10.2 (where no offer of employment is made by the Council), the Council shall indemnify and keep indemnified the Trust from and against any Employment Losses:-
- 12.10.4.1 arising from or in connection with the termination of employment of the Individual;
and
- 12.10.4.2 arising from any claim or demand against the Trust 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 Trust including, without limitation:-
- (a) any claim for wages and salaries (including backdated Pay in terms of the Single Status 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 Trust) on behalf of any such Individual arising out of or in connection with any failure by the Council to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations.

12.11 The Trust shall pay any overtime, allowances and expenses ("the Expenses") properly due and owing to any of the Transferring Employees which is claimed by such Transferring Employees in accordance with the relevant procedures prescribed in the Conditions of Service after the Effective Time. Where any such Expenses were accrued or incurred by the Transferring Employee prior to the Effective Time notwithstanding that they were claimed from the Trust after the Effective Time, the Council shall reimburse the Trust in full for those Expenses at the next available payment cycle providing full details of the Expenses claimed and attaching vouchers as appropriate.

12.12 Subject to the restrictions imposed on the Trust as a result of the operation of clause 12.18 below, the Trust shall ensure that the terms and conditions of employment offered to any new employees employed or engaged by it shall be no less favourable overall than the terms and conditions of employment applying to the comparable Transferring Employees. The Trust's obligations in this Clause 12.12 are subject to any amendment to applicable statutory guidance and its obligations shall not exceed the requirements of statutory guidance in place from time to time.

12.13 Notwithstanding the belief of the parties to this Agreement that the Transfer will constitute a relevant transfer for the purpose of the TUPE Regulations, the Council and the Trust agree that if any tribunal or court of competent jurisdiction deems that the contract of employment of any Transferring Employee should not or did not have effect after the Effective Time as if originally made with the Trust by reason of the non-application of the TUPE Regulations:-

12.13.1 the Trust shall, within seven days of being requested to do so by the Council, make to the Transferring Employee an offer in writing to employ the Transferring Employee on the terms and conditions of employment of the Transferring Employee immediately prior to the Effective Time (save with regard to the identity of the employer) with effect from the date on which the offer is accepted; and

12.13.2 if the Transferring Employee accepts such offer, the provisions of clauses 12.3, 12.4, 12.5, 12.6, 12.11, 12.12, 12.17 and 12.18 shall have effect in respect of those Transferring Employees and they shall have effect as if any references to the Effective Time were, in respect of that Transferring Employee, references to the date on which such offer is accepted by the Transferring Employee; or

12.13.3 if the Transferring Employee does not accept such offer of employment, the Transferring Employee shall remain employed by the Council and all claims in relation to the Transferring Employee shall remain with the Council.

12.14 Notwithstanding clause 12.16::

12.14.1 the Trust shall notify the Council in writing of any Casual Worker Claim against the Trust within 10 Business Days from the day on which such claim comes to the notice of the Trust;

12.14.2 the Trust shall take such action and give such information and assistance as the Council may reasonably request to avoid, dispute, resist, litigate, compromise or defend any Casual Worker Claim and, on the request of the Council, the sole conduct of any legal proceedings of whatever

nature arising out of any Casual Worker Claim shall be delegated to the Council. In any event, and provided that the Trust shall appoint such solicitors or other professional advisers as the Council may nominate to act on behalf of the Trust in the event that the Council does not request sole conduct of any legal proceedings arising out of any Casual Worker Claim, the Council shall indemnify and keep indemnified the Trust from and against the Casual Worker Claim Expenses.

- 12.15 The Council shall be responsible for and shall indemnify and keep indemnified the Trust from and against any and all Casual Worker Claim Liabilities (including, for the purpose of this clause 12.15 only, the cost of any protective award arising out of or in connection with any failure by the Council to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations in respect of the Transfer) insofar as such liabilities relate to the period prior to the Effective Time. All necessary apportionments shall be made to give effect to this clause.
- 12.16 The Trust shall be responsible for and shall indemnify and keep indemnified the Council from and against any and all Casual Worker Claim Liabilities insofar as such liabilities relate to the period after the Effective Time. All necessary apportionments shall be made to give effect to this clause.
- 12.17 The Council undertakes (insofar as it has not already done so) to apply ("the Application") within five Business Days of the Effective Date to have the Trust added to the list of bodies set out in Schedule 1 of the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999.
- 12.18 Regardless of the outcome of the Application, in the event that any of the Transferring Employees leave the employment of the Trust (for whatever reason) and become employed by the Council, the Council undertakes to recognise the Transferring Employee's service with the Trust as continuous for the purpose of determining any entitlement of the Transferring Employee to a redundancy payment and to sick pay, annual leave, maternity pay and parental leave or the amount of any such payments.

13 PENSIONS

13.1 Trust to be an Admission Body

The Trust confirms that it is a community admission body (for the purposes of the LGPS Regulations) and undertakes that at Completion it shall execute and deliver the Admission Agreement (in accordance with paragraph 4.2.3) to the Council. The Trust shall ensure that all Employees are offered membership of the LGPS on and from the Effective Time.

13.2 Indemnity for breach of the Admission Agreement

The Trust agrees to indemnify and keep indemnified the Council from and against all liabilities, costs, losses or expenses (including legal expenses on a solicitor/client basis) incurred by the Council which arise from any breach by the Trust of the Admission Agreement.

13.3 Trust ceasing to be an Admission Body

If for any reason the Trust ceases to be an admission body for the purposes of the LGPS Regulations then the following provisions shall apply:-

- 13.3.1 the Trust shall as soon as practicable after the date on which it has ceased to be an admission body ("**the Cessation Date**") nominate to the Council in writing the scheme or schemes which it proposes shall be "**the Replacement Scheme**" for the purposes of this Agreement. Such scheme or schemes must be:-

- 13.3.1.1 established within three months of the Cessation Date or such longer period as the Council

may agree;

13.3.1.2 reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed); and

13.3.1.3 certified by the Government Actuary's Department as providing benefits which are broadly comparable, and no less favourable overall, to those provided by the LGPS at the Cessation Date;

13.3.2 the Trust undertakes to the Council to procure that the Employees are offered membership of the Replacement Scheme with effect from and including the Cessation Date;

13.3.3 the Trust undertakes to the Council to procure that:-

13.3.3.1 the Replacement Scheme shall provide benefits for and in respect of the Employees in respect of periods of service on and after the Cessation Date which the Government Actuary's Department shall determine to be broadly comparable to the benefits which the Employees would have been entitled to under the LGPS at the Cessation Date had they continued in active membership of the LGPS;

13.3.3.2 if the Replacement Scheme is terminated, the Trust shall provide a replacement arrangement or arrangements for the Employees;

13.3.4 any replacement arrangement(s) under paragraph 13.3.3.2 must comply with this clause 13 in all respects as if it were the Replacement Scheme;

13.3.5 within two months of the Cessation Date, the Trust shall offer or procure that there is offered to each Employee who agrees to become a member of the Replacement Scheme the opportunity to transfer the benefits he/she had accrued under the LGPS into the Replacement Scheme. For each Employee who accepts such an offer in writing within two months of receipt of the offer, the Trust shall procure (subject to the receipt by the Replacement Scheme of a transfer amount from the LGPS) that the Replacement Scheme shall provide benefits which, in the opinion of an actuary nominated by the Council, and (if so required by the Council) in the opinion of the Government Actuary's Department, in respect of past service are equal in value to and no less favourable and in respect of future service are broadly comparable in value to and no less favourable than the benefits to which the Employee was entitled under the LGPS; and

13.3.6 the transfer value paid under this clause shall be wholly applied under the Replacement Scheme in the provision of benefits for and in respect of the Employees in respect of whom that transfer was made, in respect of service before the Cessation Date.

13.4 **Undertaking by the Trust**

13.4.1 The Trust undertakes to the Council:-

13.4.1.1 not to consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Employee greater than the cost which would have been payable in respect of that Employee had that consent, instigation, encouragement or assistance not been given;

13.4.1.2 to procure that until the Effective Time, no announcements (whether in writing or not) shall be, or have been, made to the Employees concerning pension matters without the prior consent of the Council;

13.4.1.3 to ensure that it shall (where permitted) award benefits to the Employees under the Compensation Regulations in circumstances where the Employees would have received such benefits had they still been employed by the Council;

13.4.1.4 where the award of benefits under paragraph 13.4.1.3 is not permitted under the Compensation Regulations, to award benefits to the Employees which are equivalent to the benefits which the Employees would have received under the Compensation Regulations in circumstances where the Employees would have received such benefits had they still been employed by the Council; and

13.4.1.5 where benefits under the LGPS Regulations or the Compensation Regulations are of a discretionary nature, to award such benefits on the basis of the Council's written policy in relation to such benefits at Completion (which the Council shall provide upon request); or, where the payment of such benefits is not possible, to compensate the Employees in a manner which is broadly comparable or equivalent in cash terms.

13.5 Claims from Employees or Trade Unions

13.5.1 The Trust hereby agrees to indemnify and keep indemnified the Council from and against all liabilities, costs, losses or expenses (including legal expenses on a solicitor/client basis) incurred by it which arise out of or in connection with claims by Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Employees to the extent that such liabilities, costs, losses or expenses:-

13.5.1.1 relate to pension rights in respect of periods of employment on and after the Effective Time;
or

13.5.1.2 arise out of the failure of the Trust to comply with the provisions of this clause 13.

13.6 Transfer to another Employer

13.6.1 If the employment of any Employee transfers to another employer (by way of a transfer under the TUPE Regulations), the Trust shall:-

13.6.1.1 consult with and inform those Employees of the pension provisions relating to that transfer;
and

13.6.1.2 unless the Council otherwise agrees, procure that the employer to which the Employees are transferred complies with the provisions of this clause 13.

13.7 Additional Pension Cost

13.7.1 Notwithstanding anything to the contrary in this clause 13, in relation to Additional Pension Costs, as defined below, the Council and the Trust hereby agree as follows:-

13.7.1.1 each of them (and their successors) will meet the Additional Pension Costs (if any) arising by virtue of its own actions and omissions;

13.7.1.2 neither of them (nor their successors) will be liable for the Additional Pension Costs in respect of the other's actions and omissions;

13.7.1.3 each of them (and their successors) will meet the requirements of the LGPS in respect of the Employees during the employment of such employees and will indemnify and keep

indemnified (to the extent not already done) the other against any Additional Pension Costs which may be incurred as a result of any failure by it to comply with its obligations under the provisions of the LGPS;

13.7.1.4 "**Additional Pension Costs**" means any new, increased or additional costs, fees, charges, liabilities or penalties of whatever nature (including, without limitation, administration, legal or professional advisers' fees) which may arise (directly or indirectly) and be due to the LGPS (as applicable) as a result of an Employee being made redundant or being allowed to retire early and draw an immediate pension from the LGPS.

The provisions of clause 13.7.2 below shall apply.

13.7.2 In the circumstances set out in clause 13.7.1 above, the Council and the Trust shall co-operate fully in relation to such benefits, including, but not limited to:-

13.7.2.1 providing any and all required information in connection with the Employees;

13.7.2.2 liaising as appropriate with the LGPS; and

13.7.2.3 communicating with the Employees.

13.8 For the avoidance of doubt, as from the Effective Time the Trust shall be obliged to account for pension liabilities in respect of the Employees through its accounts in accordance with accounting standard FRS17 (or any successor).

14 . VAT

14.1 The Parties do not intend that the Undertaking and Assets to be transferred under the Agreement shall be transferred under this Agreement as a going concern.

15 TRANSFERRING RECORDS

15.1 The Council undertakes:-

15.1.1 to preserve such of the records which it holds as relate to the Undertaking and Assets as are required by the Trust to comply with any internal management requirements or other obligations it may have in relation to VAT or otherwise in accordance with its approved documentation retention policies for that purpose;

15.1.2 to afford the Trust facilities to examine and take copies (at no cost to the Trust) of the records referred to in paragraph 15.1.1 from time to time during normal business hours and (if required by the Council) under the supervision of the Council.

15.2 The Trust shall give to the Council not less than two Business Days' notice of each occasion on which it wishes to have access to records and facilities in pursuance of clause 15.1.

16 GOVERNANCE ARRANGEMENTS

16.1 The Trust undertakes to the Council to establish, within a reasonable period following Completion, financial processes which ensure that the Council is able to meet its obligations of proper accounting practice, and any internal financial reporting obligations which exist for the Council in meeting its statutory duty to prepare annual accounts. To facilitate this, the Trust agrees to provide financial information to the Council as reasonably required, based so far as possible on a timetable defined by the Council and in a format prescribed by the Council.

16.2 Where the Council requires access to financial information to meet the obligations referred to in clause 16.1,

the Trust shall procure that all reasonable assistance is granted by the Trust and its employees and agents.

- 16.3 Where the Council's internal audit service requires access to the Trust's records to achieve assurance on the arrangements in place for governance and probity issues, then this will be granted by the Trust on the same basis as envisaged in clauses 16.1 and 16.2.
- 16.4 The Trust agrees to provide information on the financial performance of its business to the Council on a regular basis. The timing and format of the information to be provided will be so far as possible on such basis as reasonably requested by the Council's Head of Finance and otherwise in accordance with the reasonable requests of the Council.
- 16.5 Where required in the discharge of its or their duties, the Trust will procure that access to the records (and where appropriate, employees) of the Trust is granted where such access is required by the Council's auditor(s) to discharge its or their duty; such access shall, however, be subject to the Council exercising a duty of care and confidentiality in respect of the records involved.
- 16.6 The Trust undertakes to the Council to establish and put in place as soon as reasonably practicable following Completion, having regard to the reasonable requests of the Council and in particular taking account of any specific regulations or obligations incumbent on the Council in relation to its own, or any Council-controlled body's, activities as regards reporting, accounting, or general governance, appropriate governance and decision-making arrangements as are appropriate to oversee and supervise operation of the Undertaking.

17 TITLE TO, AND CONDITION OF, ASSETS

- 17.1 The Trust shall accept without objection such title as the Council may have to the Assets.
- 17.2 The Assets are to be transferred in their present state, and no warranty, condition, term or representation (express or implied, statutory or otherwise) as to the condition, quality, accuracy, performance, merchantability or fitness for intended purpose, or the existence or extent of any third party rights or claims in relation to the Assets, is given or assumed by the Council; all such warranties, conditions, terms and representations are excluded to the fullest extent permitted by law.

18 WARRANTIES

- 18.1 The Council warrants and undertakes to the Trust that the Warranties are true and accurate in all respects as at the date of this Agreement and will be true and accurate as at the Effective Time by reference to the circumstances pertaining at that time.
- 18.2 The Council undertakes:-
- 18.2.1 not by any act or omission to cause (directly or indirectly) any of the Warranties to be breached after the date of this Agreement;
- 18.2.2 to disclose promptly to the Trust any event or circumstance which arises or becomes known to the Council after the date of this Agreement which is inconsistent with any of the Warranties.
- 18.3 The Council's liability in respect of any breach of the Warranties shall be extinguished with effect from 31 March 2014, except to the extent of any claim in respect of which formal written intimation, accompanied by details of the circumstances which are regarded by the Trust as representing a breach of the Warranties, is given by the Trust to the Council prior to that date.

19 CO-OPERATION

- 19.1 The Council undertakes to provide all such information, execute all such documents and take all such other steps as the Trust may reasonably request to vest the Assets in the Trust or otherwise give effect to the

provisions of this Agreement.

19.2 The Council undertakes to notify the Trust in writing as soon as reasonably practicable:-

19.2.1 upon becoming aware that any information provided by or on behalf of the Council to the Trust in respect of the transfer of the Undertaking and Assets under clause 2.1 or the assumption of liabilities by the Trust under clause 2.2 was or has become inaccurate, incomplete or misleading; or

19.2.2 upon becoming aware of any other event or circumstance arising during the period between the date of this Agreement and the Effective Time which could reasonably be regarded as relevant to the Trust in the context of the transfer of the Undertaking and Assets and/or the assumption of such liabilities.

19.3 Without prejudice to the provisions of clause 19.1 :-

19.3.1 the Council undertakes to provide to the Trust all such information and exhibit to the Trust all such records and documentation relating to the conduct of the Undertaking by the Council, or any events or circumstances which occurred or pertained on or prior to close of business on the Effective Time in relation to the Undertaking, as the Trust may reasonably request from time to time (whether before or after the Effective Time);

19.3.2 the Council undertakes (subject to the Trust indemnifying it in relation to all costs (on a solicitor-client basis) and other expenses and liabilities thereby incurred by the Council (including any award of, expenses made against the Council) to exercise any rights or remedies (whether under a guarantee or otherwise) which may be available to the Council against any manufacturer, supplier or installer in respect of any defect or deficiency in any of the Assets which emerges after the Effective Time.

19.4 Each Party shall reimburse such reasonable costs (internal and/or external) as are incurred by the other in providing information, assistance or access to its staff in pursuance of clauses 19.1 to 19.3.

19.5 Where insurance representatives require access to premises/plant room etc for the purposes of carrying out fire/security services or undertaking statutory plant inspections the Trust shall facilitate such access and access shall not be unreasonably refused or withheld.

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 ANNOUNCEMENTS

- 21.1 Save as required by law, no announcement or other publicity relating to any matter referred to in this Agreement shall be made or issued by or on behalf of either of the parties without the prior written approval of the other.

22 CONTINUING OBLIGATIONS

- 22.1 Each of the obligations undertaken by' either of the parties under this Agreement (excluding any obligation fully performed at Completion) shall continue in full force and effect notwithstanding Completion.

23 NOTICES

- 23.1 All notices and notifications under this Agreement shall be given or issued by letter or by other written document, or by way of facsimile transmission or other visible electronic means.
- 23.2 A notice or notification under this Agreement shall (subject to clauses 23.3 and 23.4) be deemed to be duly given:-
- 23.2.1 in the case of a letter or other written document, when delivered;
- 23.2.2 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 the notice or (as the case may be) at the facsimile number then current of the Party to which it is given.
- 23.3 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.
- 23.4 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 23.2.
- 23.5 For the purposes of clauses 23.3 and 23.4, "business hours" shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

- 23.6 Unless and until some other address or facsimile number or contact name is supplied in pursuance of clause 23.2, the respective addresses, contact names, and facsimile numbers for the respective parties are as follows:

East Ayrshire Council facsimile number: 01563 576000 For the attention of: Fiona Lees, Chief Executive

East Ayrshire Leisure Trust facsimile number: 01563 For the attention of: John Griffiths, Chief Executive.

24 COSTS

- 24.1 Each of the parties shall meet its own costs in connection with the preparation, adjustment, completion and implementation of this Agreement.

25 WAIVER

- 25.1 The failure of either Party to insist upon strict performance of any provision of the Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under the 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.
- 25.2 No waiver of any of the provisions of the 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).

26 AMENDMENTS TO THIS AGREEMENT

- 26.1 The 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 Trust and by a duly authorised representative of the Council on behalf of the Council.

27 DISPUTE RESOLUTION

- 27.1. 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 27.
- 27.2. 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.
- 27.3. 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 Services Provider and the Chief Executive of the Council who shall attempt in good faith to resolve the dispute.
- 27.4. If the Chief Executive of the Services Provider 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 Services Provider shall remain responsible for the provision of the Services throughout the period of mediation.
- 27.5. The fees of the mediator and the cost of mediation shall be borne equally by the Parties.

27.6. 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.

28 SEVERABILITY

28.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court or authority 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.

28.2.1 circumstances arise of the nature referred to in clause 28.1; or

28.2.2 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.

29 NO IMPLIED WARRANTIES ETC

29.1 Each of the parties acknowledges that in entering into this Agreement it has not relied on any representation or warranty or undertaking not set out in this Agreement and that (in the absence of fraud) it will not have any right or remedy arising out of any such representation, warranty or undertaking.

30 LAW AND JURISDICTION

30.1 The Agreement is governed by and shall be construed in accordance with Scots Law and the Parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF this Agreement, consisting of this and the preceding pages together with the schedule in parts annexed, is executed as follows:-

SEALED with the Common Seal of the said EAST AYRSHIRE COUNCIL and SUBSCRIBED for and on its behalf at Kilmarnock

on 1st July 2013

Print Full Name

SUBSCRIBED for and on behalf of EAST AYRSHIRE LEISURE TRUST

by
and
at
on the day of
in the presence of:-

.....
Charity Trustee

.....
Charity Trustee

Witness:

Full Name:

Address:

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

SCHEDULE PART 1 -LIST OF' PROPERTIES WITH OUTSTANDING POINTS

Property	Matter(s) outstanding

SCHEDULE PART 2 -MODEL LEASE

LEASE

between

EAST AYRSHIRE COUNCIL

and

EAST AYRSHIRE LEISURE TRUST

East Ayrshire Council
London Road
Kilmarnock
KA1 3BN

CLAUSES

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 - 2. The Grant**
 - 3. Rent and Other Payments**
 - 4. Repair and Maintenance**
 - 5. Statutory and Other Compliance**
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- Schedule 1 - The Premises**
- Schedule 2 – Additional Rights**
- Schedule 3 – Reserved Rights**
- Schedule 4- Third Party Rights**
- Schedule 5- Tenants Maintenance Obligations**
- Schedule 6 – Landlords Maintenance Obligations**

LEASE

between

EAST AYRSHIRE COUNCIL, a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal office at Council Headquarters, London Road, Kilmarnock KA3 7BU (the “Landlords”);

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 “Tenants”);

1. DEFINITIONS AND INTERPRETATION

1.1 In this Lease (including this sub-clause and the Schedule) the following words and expressions shall have the following meanings:-

“Additional Rights and Obligations” means the rights and obligations specified in Part 2 of the Schedule;

“Asset Transfer Agreement “ means the Asset Transfer Agreement entered into between the Landlord and the Tenant on or about the date of this Lease

“Collections Agreement” means the Collections Agreement entered into between the Landlords and the Tenants on or around the date of this Lease;

“Date of Entry” means 1st July 2013;

“Duration” means the period of 25 years from (and including) the Date of Entry unless the Lease is earlier terminated.

“Independent Expert” means a suitably qualified independent person with substantial experience relevant to the dispute in question, such person to be appointed by agreement between the Landlords and the Tenants and failing such agreement to be appointed on the recommendation of the President for the time being of the Law Society of Scotland on the application of either the Landlords or the Tenants;

“Insured Risks” means fire, lightning, aircraft and explosion and/or such other normal commercial risks and insurances as the Landlords may from time to time deem expedient in respect of the Premises (but in each case only for so long as and to the extent that the Landlord is able to obtain cover for the Insured Risks at reasonable commercial rates and subject to such excesses, exclusions and limitations as the Landlords insurers may require or impose);

“Landlords Maintenance Obligations” means the Landlords Maintenance Obligations set out in Part 6 of the Schedule.

“Landlords’ Policies, Procedures, means the policies, procedures and standards of the

and Standards ”

Landlords impacting on the operation of the Premises including but not limited to those in relation to property and energy management (including property repairs procedures) IT systems (including hardware, software and voice/data networks), health and safety and incident reporting (including insurance claims protocols) in existence as at the Date of Entry, as the same may reasonably be amended, supplemented or replaced by the Landlord from time to time throughout the Duration.

“Landlords Property Contracts”

means any contracts entered into by the Landlords impacting on the operation of the Premises including but not limited to those in relation to property repairs and maintenance (including planned maintenance and capital works) in existence as at the Date of Entry, as the same may reasonably be amended, supplemented or replaced by the Landlord from time to time throughout the Duration.

“Permitted Use”

means use as (please insert existing use) and all uses incidental thereto but only in so far as same subsist as at the Date of Entry for the benefit of the general public in the East Ayrshire area and its neighbourhood.

“Plan”

means the plan annexed and executed as relative hereto;

“the Planning Acts”

mean the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Local Government and Planning (Scotland) Act 1982 and the Town and Country Planning Act 1984, the Planning and Compensation Act 1991, and any other legislation from time to time in force relating to planning matters throughout the Duration ;

“Premises”

means those subjects described in Part 1 of the Schedule;

“Reserved Rights”

mean the rights and reservations set out in Part 3 of the Schedule.

“Schedule”

means the Schedule in six parts annexed and executed as relative hereto;

“Services and Finance Agreement”

means the Services and Finance Agreement entered into between the Landlords and the Tenants on or around the date of this Lease.

“Service Level Agreement”

means any Service Level Agreement entered into between the Landlords and the Tenants impacting on the operation of the Premises during the Duration.

“ Statutory Works “

means work in respect of the Premises which requires to be executed in order to secure compliance with statutory requirements (whether currently in force or introduced during the Duration including without prejudice to the foregoing generality the installation of fire fighting equipment or other fixtures and fittings

“Support Services Agreement”

means the Support Services Agreement entered into between the Landlord and the Tenant on or around the date of this Lease or any such subsequent agreement entered into between the Landlords and the Tenants impacting on the operation of the Premises during the Duration.

“Tenants Maintenance Obligations”

means the Tenants’ maintenance obligations set out in Part 5 of the Schedule.

“Third Party”

means any other person other than the Landlord or Tenant.

“Third Party Rights”

means the sub-leases, licences and other rights to use the Premises or part thereof listed in Part 4 of the Schedule (if any).

1.2 In this Lease:-

- 1.2.1 Words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and vice versa. The word “person” shall mean an individual, partnership, company, public authority or any other body whatsoever.
- 1.2.2 Any reference to a statute or subordinate legislation shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders and regulations for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.2.3 Any obligation by the Tenants not to do an act or thing shall be deemed to include an obligation not to agree or suffer or permit such act or thing to be done by any agent, employee, invitee, contactor or others for whom the Tenants are responsible in law.
- 1.2.4 Any reference to an act, omission or default of the Tenants shall be deemed to include an act, omission or default of their sub-tenants, agents, employees, invitees, contractors, licensees and others for whom they are responsible in law and/or the Tenants or their sub-tenants’ respective predecessors in title.
- 1.2.5 The clause, paragraph and schedule headings in this Lease are for reference only and shall not affect the construction or interpretation of this Lease.
- 1.2.6 No consent, permission or approval granted by the Landlords under this Lease shall be deemed to imply or constitute the granting of any consent, permission or approval by the Landlords in any capacity other than as heritable proprietors of the Premises and as such landlords.

2. The Grant

The Landlords hereby let the Premises (together with any Additional Rights) to the Tenants under reservation of the Reserved Rights and subject to the Third Party Rights and that for the Duration at a rent of ONE POUND STERLING (£1) per annum (if asked) exclusive of any Value Added Tax which may be payable thereon annually in arrears in consideration of the grant of this Lease.

3. Rent and Other Payments

- 3.1 The Tenants bind and oblige themselves during the Duration to pay (a) the rent specified in clause 2 hereof (if demanded) from time to time payable in terms of this Lease without deduction (b) any additional charges specified within part 2 of the Schedule to ensure compliance with the obligations specified therein (c) any contra-charge imposed in terms of Clause 4.5 hereof (d) any insurance related charges imposed in terms of clauses 10.2 and 10.7 hereof and (e) all existing and future rates, taxes, charges (including without prejudice to the foregoing generality charges for utilities irrespective of how these are charged), assessments, impositions on (including without prejudice to the foregoing generality those imposed in terms of the titles ,statute , or common law) and outgoings whatsoever charged (whether payable by an owner or occupier),

assessed or imposed on in respect of the Premises (excepting any tax, charge, assessment or imposition payable in respect of the rent or any other sums payable hereunder to the Landlords or by virtue of the grant of this Lease or any disposal or dealing with the Landlords' interest in the Premises or any part hereof) together with any Value Added Tax and /or any other tax or charge of a similar nature as shall be properly chargeable in respect of all monies undertaken to be paid by the Tenant under this lease all of which moneys are for the avoidance of doubt expressed exclusive of Value Added Tax or such other tax as aforesaid .

- 3.2 The demand for or acceptance of rent (or other sums) by the Landlords or their agents at any time shall not in any circumstances constitute nor be construed to be a waiver of any of the Tenants' obligations under this Lease nor of the Landlords' remedies for breach thereof.

4. Repair and Maintenance

- 4.1 The Tenants accept the Premises at the Date of Entry in their present condition and state of repair and decoration and undertake to carry out throughout the Duration the Tenants Repairing Obligations (subject to the provisions of clause 4.3 below) in accordance with the Landlord's Policies, Procedures and Standards, the Asset Transfer, Services and Finance Agreement and any Support Services Agreement or Service Level Agreement from time to time in place during the Duration

- 4.2 The Tenants shall permit the Landlords and others authorised by them at all reasonable times throughout the Duration and on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Premises and upon notice being served by the Landlords to execute all works of cleaning , decoration , maintenance and repair to the Premises as the Landlords may require to procure compliance by the Tenants with the Tenants Repairing Obligations within such reasonable period as is specified in such notice, and that to the satisfaction of the Landlords and, in case of default by the Tenants, the Landlords and others as aforesaid shall be entitled to enter the Premises to execute all such works as aforesaid and the whole costs and expenses incurred by the Landlords in so doing shall be due and payable by the Tenants to the Landlords on demand.

- 4.3 Notwithstanding the foregoing provisions of clause 4.1 above or any other provision indicating the contrary, the Tenants shall not be liable for any of the Tenants' Repairing Obligations required as a result of damage or destruction to the Premises caused by (a) an insured Risk, save to the extent that the insurance monies are rendered irrecoverable in consequence of some act, omission or default of the Tenants, or (b) the negligence of the Landlords.

- 4.4 The Landlords shall at their own cost, subject to availability of financial resources carry out throughout the Duration the Landlords Repairing Obligations in accordance with the Landlord's Policies, Procedures and Standards, the Landlords' Property Contracts, the Asset Transfer Agreement, Services and Finance Agreement and any Support Services Agreement or Service Level Agreement from time to time in place during the Duration.

- 4.5 The Tenants shall notify the Landlords of any specific items of repair and/or maintenance deemed by the Tenants to be required to the Premises which fall within the Landlords' Repairing Obligations immediately on same being identified by the Tenants , said notification to be made in accordance with the Council's Policies , Procedures and Standards for reporting of property repairs .In the event of any such item of repair and /or maintenance not being notified to the Landlords in accordance with the provisions of this clause 4.5 , the Landlords may at their discretion contra-charge the Tenants for the value of any additional works required as a result of the said item of repair and /or maintenance not being notified to the Landlords.

- 4.6 The Tenants shall permit the Landlords and others authorised by them at all reasonable times and on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Premises and execute all works of repair to the Premises as the Landlords may deem necessary and of which the Landlords shall be the sole judge to procure compliance by the Landlords with the Landlords' Repairing Obligations within such time period as is deemed by the Landlords to be reasonable in the circumstances .

5 Statutory and Other Compliance

- 5.1 The Tenants shall comply at their own expense with the provisions and requirements of all European Union, United Kingdom and Scotland statutes and subordinate legislation, regulations and directives, and any notices and directions issued thereunder (including without prejudice to the foregoing generality the Planning Acts, the Factories Act 1961 The Workplace (Health, Safety and Welfare) Regulations 1992 and Provision and Use of Work Equipment Regulations 1998, the Offices, Shops and Railway Premises Act 1963, the Fire Precautions Act 1971, the Health and Safety at Work etc. Act 1974, the Environmental Protection Act 1990, the Disability Discrimination Act 1995 Equality Act 2010, the Environmental Act 1995, the Construction (Design and Management) Regulations 2007 , the Control of Asbestos Regulations 2012, the Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006, and any other legislation from time to time in force throughout the Duration (save that the Tenants' obligations under this Clause 5.1 shall not extend to any actions required to be carried out by the Landlords in terms of the Landlords Repairing Obligations or to the Landlords' obligations in respect of statutory works as detailed in Clauses 5.2, 5.3,5.4 and 5.5 below)
- 5.2 Subject to the availability of funding the Landlords shall carry out all Statutory Works which may require to be executed from time to time to the Premises throughout the Duration in order to secure compliance with statutory requirements (including without prejudice to the fore-going generality Health and Safety Legislation whether currently in force or introduced during the Duration). In order to ensure compliance with this Clause 5. 2 and Clauses 5.3, 5.4 and 5.5 below the Landlords shall have and shall maintain control of the Premises throughout the Duration.
- 5.3 The Landlords shall carry out fire risk assessments and make documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 in relation to the Premises throughout the Duration in accordance with the Landlords Policies Procedures and Standards.
- 5.4 The Landlords shall carry out asbestos assessments and make written plans required under the Control of Asbestos Regulations 2012 in relation to the Premises throughout the Duration in accordance with the Landlords Policies Procedures and Standards.
- 5.5 The Landlords shall carry out risk assessments required under Health and Safety Legislation in respect of the risks posed by legionella bacteria in relation to the Premises throughout the Duration in accordance with the Landlords Policies, Procedures and Standards.
- 5.6 The Tenants shall comply with the whole provisions contained in the title deeds and all existing servitudes and rights of way leave whether or not formally constituted (including without prejudice to the foregoing generality those for laying and maintaining of sewers ,drains , pipes ,cables ,wires and stays) relating to the Premises ,all requirements or regulations of the Landlords' insurers or of any competent authority relating to the Premises and their use and the Landlords Policies and Standards.
- 5.7 The Tenants shall provide to the Landlords at any time during the Duration on request and at the Tenants' expense copies of the Health and Safety file (if a Health and Safety file is required at the time in respect of the Premises) and any certificates, consents, warrants, notices and other documentation relating to the Premises as the Landlords may require as evidence of compliance with Clause 5.1 and 5.6 above.

6 Planning, Alteration and Signage

- 6.1 The Tenants shall not make any application, representation or objection, nor commence any development permitted under the Planning Acts except with prior written consent of the Landlords which consent shall not be unreasonably withheld and shall give the Landlords forthwith upon receipt a copy of any notice received under the Planning Acts or any other statutory provision.
- 6.2 The Tenants shall not make or permit to be made any alterations or additions structural or otherwise in or upon the Premises ,nor to place or permit to be placed in or upon the Premises any additional erection or building and not to exhibit or affix any light, sign, aerial or other articles (including without prejudice to the foregoing generality any hoarding or advertisement) whatsoever on the exterior of any building upon the

Premises or of which the Premises comprise part except with the prior written consent of the Landlords and only in accordance with such conditions as the Landlords may impose and with plans and specifications approved in writing by the Landlords in advance, which consent and approval shall not be unreasonably withheld. The Landlords reserve the right to erect hoardings for public advertising but such right shall be exercised in such a way as to cause the minimum disruption or hindrance to the Tenant in his occupation or use of the Premises.

7. Use

- 7.1 The Tenant shall occupy and use the Premises for the Permitted Use and for no other purposes whatsoever, except with the prior written consent of the Landlords in respect of any proposed change to any incidental use subsisting at the Date of Entry, in and only in accordance with such conditions as the Landlords may impose, which consent shall not be unreasonably withheld. For the avoidance of doubt the Tenants shall not use the Premises for residential purposes nor shall the Tenants shall the tenants keep livestock, pets or guard dogs in or about the Premises except in so far as same are necessary and incidental to the Permitted Use of which the Landlords acting reasonably shall be the sole judge.
- 7.2 The Tenants shall not use the Premises for any noxious, noisy, offensive, dangerous or immoral trade or business including without prejudice to the foregoing generality the sale or disposal or advertisement of solvents, combat knives and handguns from the Premises or for any purpose which, in the reasonable opinion of the Landlord may be undesirable or cause a nuisance, annoyance, disturbance or inconvenience to the Landlords or any of their tenants or to any occupier of premises in the neighbourhood nor shall the Tenants display or suspend goods or articles for sale out-with the Premises.
- 7.3 The Tenants shall not overload any floor surfaces in the Premises and shall keep the Premises free from any undue deposit or refuse or other materials (not being refuse) or things which may in the reasonable opinion of the Landlords be deemed to be offensive or a nuisance or injurious to the amenity of the Premises.
- 7.4 The Tenants shall not overload the electrical or ICT system in the Premises, terminate any ICT Services or Network Connection provided by the Landlords and shall not install within the Premises any ICT equipment or software except with the written consent of the Landlord and in accordance with such conditions as the Landlords may impose which consent shall not be unreasonably withheld.
- 7.5 The Tenants shall take reasonable precautions against fire and shall not bring onto the Premises any hazardous, explosive, dangerous or combustible goods or materials save for any such goods or materials used by the Tenants in the normal course of business provided they are stored and used in accordance with the relevant Health & Safety regulations, the Landlords' Policies, Procedures and Standards and the requirements of the Landlords' Insurers.
- 7.6 In the event of an Automatic Fire Suppression System being installed in the Premises the Tenants shall ensure that the weekly test/ test card is completed and that during winter months heating is maintained in accordance with the manufacturer's specification in accordance with the Landlords' Policies, Procedures and Standards and the requirements of the Landlords' Insurers. It is a specific requirement notwithstanding the foregoing generality that the ambient temperature throughout the period 1st October to 31st March annually should be maintained at a sufficient level to provide frost protection.
- 7.7 The Tenants shall not cease to use the Premises for any period throughout the Duration of more than 30 days except with the prior written consent of the Landlords which consent will not be unreasonably withheld and in accordance with such conditions as the Landlords and /or their insurers may impose including without prejudice to the foregoing generality an obligation to take such steps and continue to take such steps as may be required by the Landlords and/or the Landlords' insurers in respect of security of the Premises (in addition to those required whilst the Premises are in use) and/or any other matter during such period as the Tenants cease to use the Premises.
- 7.8 The Tenants shall only engage security contractors holding all appropriate licences from the Security Industry Authority as required in terms of the Private Security Industry Act 2001 and registered with the Security Industry Authority's voluntary Approved Contractor Vetting Scheme for the relevant category of service to be provided

7.9 The Tenants shall not pass or allow to pass into the pipes, drains, sewers or others serving the Premises any polluting agent or noxious or deleterious effluent or other substance which might cause any obstruction or injury to said pipes and others or otherwise cause contamination (the normal operation of a swimming pool facility been taken to fall out -with the preceding provisions of this Clause 7.9) but to employ such plant for treating such effluent before it enters the drains as may be required by any local or public authority or by the Landlords and to make good and remedy any such injury or contamination which occurs to the satisfaction of the Landlords, and not to permit any smoke, effluvia, vapour or grit to be emitted from the Premises.

8 Alienation

The Tenants shall not assign this Lease in whole or in part nor to part with or share possession or occupation of the whole or any part of the Premises, nor sublet the whole or any part of the Premises, nor charge nor grant rights over the same in favour of third parties, except in the case of the Third Party Rights, so long as they subsist or as otherwise provided for in the Services and Finance Agreement except with the prior written consent of the Landlords, and in accordance with such conditions as the Landlords may impose, which consent shall not be unreasonably withheld.

9 Indemnity

The Tenants shall free, relieve and indemnify the Landlords from and against liability in respect of any injury to or the death of any person, damage to any property, heritable or moveable, any interdict or court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise or any other loss, liability, third party claim or additional costs by reason of or arising directly or indirectly out of the repair, state of repair or condition of the Premises (notwithstanding that the Tenants are not in breach of their obligations as specified at Clause 4.1 hereof but not where such liability arises out of any act, neglect or default of the Landlords) or any alteration or addition or improvement to the Premises or the use of the Premises or from any act, omission or default of the Tenants in the implementation and observance of the obligations contained in this Lease and from all fees, penalties, charges, proceedings, costs, claims, expenses and demands of whatsoever nature in respect of any such liability or alleged liability or any such act, omission or default.

10. Insurance

10.1 The Landlords shall for the Duration (unless prevented from doing so by any act, omission or default of the Tenants or otherwise) keep the Premises constantly insured against loss or damage by or in consequence of the Insured Risks (but only for so long as and to the extent that the Landlords are reasonably able to obtain such cover at reasonable commercial rates subject to reasonable policy excesses of which the Landlords shall be the sole judge) in their full reinstatement value (as determined by the Landlords) together with an amount to cover the costs of shoring up, propping, hoarding, demolition, site clearance and incidental expenses and architects' and other professional fees in relation to the rebuilding, repairing or restoring of the Premises or any part thereof and any Value Added Tax properly chargeable on such costs and others all in the name of the Landlords (and such other names as the Landlords may require) with the interest of the Tenants noted thereon. For the avoidance of doubt, the Insurance cover provided by the Landlords shall not cover subsidence, accident damage; damage caused in the furtherance of theft or attempted theft, and Tenants' improvements.

The Landlords shall not be liable for any property damage, loss of property or injury arising directly or indirectly as a result of the Tenants' use of the subjects or the use thereof by third parties (if any). The Landlords shall use reasonable endeavours to procure that the foregoing policy of insurance shall contain a waiver of subrogation rights, either generically or specifically, against the Tenants. In addition, the Landlords shall effect insurance against property owners' and third party liability and such other risks as the Landlords may require, for such amounts and on such terms as the Landlords may require.

10.2 If requested by the Tenants, the Landlords shall provide the Tenants with a summary of the risks insured against and amount of cover provided by the Landlords' insurances. If requested by the Tenants following exhibition of summary of risks and amount of cover provided the Landlords will give consideration to increasing the level of insurance cover but will not be obligated to do. Any increase to the level of cover will be subject to the Tenants being responsible for payment of any additional premium.

- 10.3 The Tenants shall be responsible for effecting and maintaining at their own cost with a reputable insurance company Trustees Indemnity insurance at a level deemed adequate by the Landlords in respect of the Tenants' occupancy and use of the Premises. If requested by the Landlords the Tenants shall provide the Landlords with a summary of the said insurance (including the amount of cover provided) and a receipt for the payment of the last premium or other evidence that the insurances are in force.
- 10.4 The Tenants shall comply with the terms and conditions of all insurance covers taken out in respect of the Premises by the Landlords throughout the Duration in accordance with the Landlord's insurance obligations specified in clause 10.1 above and any warranties imposed upon the Landlord by its insurers. The Tenants shall notify the Landlords immediately of any incident likely to give rise to an insurance claim in compliance with the Council's Policies, Procedures and Standards.
- 10.5 The Tenants shall, without prejudice to the provisions of clause 10.4 above, notify the Landlords immediately of any material change in risk impacting on the terms and conditions of any insurance cover taken out by the Landlords in respect of the Premises, in accordance with the Landlord's insurance obligations specified in clause 10.1 above and any warranties imposed upon the Landlords by its insurers, including but not limited to those arising in respect of the premises becoming unoccupied, any alarm, security systems or CCTV systems failing and the hiring of any plant or equipment.
- 10.6 The Tenants shall take all reasonable precautions to avoid injury loss or harm and shall not do or permit on the Premises any act or omission or default whereby any insurance policy effected by the Landlords relating to the Premises or any other property in which the Landlords have an interest, may be or become void or voidable or whereby any shortfall may arise in the insurance monies which would otherwise have been recovered by the Landlords or whereby there may be any increase in the cost of insuring the Premises or any other property in which the Landlords have an interest above the rate which would otherwise be payable.
- 10.7 In the event of the cost of the insurance cover arranged by the Landlords in accordance with their insurance obligation specified in clause 10.1 above and / or the terms thereto being prejudiced as a result of any act or omission by the Tenants or any loss to the Tenants howsoever realised throughout the Duration the Landlords shall review the current insurance arrangements and at their own discretion acted reasonably apportion the insurance costs between the Landlords and the Tenants.
- 10.8 In the event of each and every claim made by the Tenants against the insurance cover arranged by the Landlords in accordance with their insurance obligations specified in clause 10.1 above to pay to the Landlords or their Insurers any policy excess applied by the Landlords' Insurers in respect of any claim made by the Landlords for an insured loss in respect of the Premises or any part or part thereof.

11 Reinstatement

- 11.1 If and whenever during the Duration the Premises or any part or part thereof are damaged or destroyed by any of the Insured Risks and provided always that the relative policy of insurance is not vitiated nor payment of any of the policy monies refused in whole or in part by reason of any act, omission or default of the Tenants then as soon as reasonably practicable the Landlords shall, subject to all requisite statutory or other consents being obtained, apply all monies received under the policy of insurance (other than monies in respect of loss of rent, property owners' and third party liability insurance) in reinstating (which in this context may include works and fees which the Landlords and/or their insurers deem to be a prerequisite of reinstatement) the Premises or such part of the Premises as shall have been so destroyed or damaged to provide accommodation and facilities approximately equivalent to that which existed prior to such damage or destruction and shall make good from their own resources and shall make good from their own resources any shortfall in the monies required to carry out such re-instatement save where any shortfall is caused by the negligent act of the Tenants
- 11.2 This Lease shall not be determined by reason of any damage to or the destruction in whole or in part of the Premises by the Insured Risks or otherwise but shall nevertheless continue in full force and effect and the rent (if demanded) shall be payable for the Duration provided however that without prejudice to the foregoing, in the event that the Site or the Buildings or any part thereof shall be destroyed or damaged by any of the Insured Risks so as to be unfit for occupation and use and such destruction or damage shall not have been made good

within a period of three years following its occurrence then either the Landlords or the Tenants may terminate this Lease by giving written notice within six months of the expiry of said three year period and this Lease shall terminate on the date of any such notice but without prejudice to any claims by either party in relation to any prior breach of the obligations under this Lease.

12 Termination

- 12.1 In the event of the Tenants determining that they have no long term use for the Premises or any part or parts thereof for the Permitted Use, the Tenants shall intimate the proposed closure in writing and withdrawal of service to the Landlords at least three months in advance of any proposed closure date (“the Tenants Trigger Notice”)
- 12.2 In the event of the Tenants intimating any proposed closure and withdrawal of service to the Landlords by the service of the Tenants Trigger Notice in accordance with the provisions of clause 12.1 above it shall be for the Landlords at their sole discretion acting reasonably to determine if they are prepared to consent to the proposed closure and withdrawal of service. Any consent granted in terms of this clause will be in writing and will be subject to such terms and conditions as the Landlords may impose and will not be unreasonably withheld .In the event of the Landlords granting consent in terms of this clause the Lease shall nevertheless continue in full force and effect until terminated by the Landlords in accordance with the provisions of Clause 12.3 below
- 12.3 The Landlords may ((other than in a case where the Lease is being terminated in pursuance of the right of irritancy conferred on the landlords in terms of Clause 15.1 below) terminate the Lease at any time during the Duration by serving a written notice to quit to the Tenants specifying the date at which the Lease) is to come to an end ("the Date of Termination"). The notice shall be served at least 40 days prior to the Date of Termination.
- 12.4 The Landlords’ option to terminate under Clause 12.2 above may be validly exercised for any purpose of without prejudice to the foregoing generality in the event of legislation being passed removing either in whole or in part the National Non- Domestic Rates relief available in respect of the Premises or to enable re-development or use by the Landlords for any operational purpose or to enable servitude or other heritable and irredeemable rights to be granted to a third party by the Landlords over the Premises or part thereof.
- 12.5 The date of termination of the Lease in respect of the Premises or part thereof pursuant to the exercise of the Landlords’ option shall be the date specified in the relevant notice or such other date as may be agreed. On the date of termination the Tenants shall deliver to the Landlords a Partial Renunciation or Renunciation of this Lease and as from such date of termination the provisions of this Lease shall cease to apply to the Premises or relevant part thereof but (in the case of partial renunciation) the Lease shall otherwise continue in full force and effect subject to such variations as the Landlords and Tenants (both acting reasonably) may agree are required as a consequence of the subdivision of the Premises or any building or buildings erected thereon .

13 Removal and Dilapidations

- 13.1 On the expiry or earlier termination of this Lease the Tenants shall flit and remove from the Premises without any process of removal being used against them to that effect and to surrender the Premises to the Landlords together with all additions and improvements made thereto (without any compensation being payable by the Landlords to the Tenants in respect thereof), and all Landlords' fixtures and fittings in a state of repair and condition which is consistent with the due performance of the Tenants' obligations under this Lease.
- 13.2 The Tenants shall further permit the Landlords at any time throughout the Duration or after the date of expiry or earlier termination of this Lease reasonable prior to enter, examine and record the condition of the Premises and compile a Schedule of Dilapidations being a list of those works which are in the opinion of the Landlords required to restore the Premises to a state of repair and condition commensurate with full compliance with the Tenants' obligations under this Lease and the Tenants shall be required upon notice being served by the Landlords to carry out such works specified in the Schedule of Dilapidations within such reasonable period as is specified in such notice.

14 Landlords' Warranty

The Landlords warrant that the Tenants may, on paying the rent (if demanded) and performing the obligations herein contained, and subject to all Reserved Rights and Third Party Rights, quietly enjoy the Premises during the Duration. Nothing contained in this Lease shall however be deemed to constitute any warranty by the Landlords that the Premises or any part thereof are authorised for the Permitted Use under the Planning Acts or otherwise for any specific purpose or that the Premises are fit for any of the Tenants' purposes under this Lease.

15 Irritancy

- 15.1 If the rent (if demanded) or any other sums due by the Tenants to the Landlords under this Lease (whether or not the same has been demanded) shall remain unpaid for 21 days after demand or if the Tenants ceases to occupy the Premises or any part thereof for the Permitted use except with the consent of the Landlord or shall fail to perform or observe any of the obligations undertaken by them in this Lease or if the Services and Finance Agreement or the Collections Agreement or the Asset Transfer Agreement is terminated or if the Tenants (being a SCIO) is removed from the Charities Register , is dissolved or otherwise ceases to operate (except in the event of an amalgamation with or transfer of undertakings to another SCIO with the prior written consent of the Landlords which consent shall not be unreasonably withheld) in accordance with the provisions of the provisions of the Charities and Trustees Investment (Scotland) Act 2005 ,as amended , the Scottish Charitable Incorporated Organisations Regulations 2011 , the Scottish Charitable Incorporated Organisations (Removal from the Register and Dissolution Regulations) 2011 and any other legislation or Statutory Instrument from time to time in force in relation to SCIOs throughout the Duration , it shall be at the option of the Landlords by notice to bring this Lease to an end forthwith without any declarator or process of law to that effect and to remove the Tenants from possession of the Premises, and repossess and enjoy the same as if this Lease had not been granted, provided always that in a case of a breach or non-performance by the Tenants (including the non-payment of rent) which is capable of being remedied albeit late the Landlords will not exercise such option of termination unless and until it shall first have given under express threat of irritancy, written notice to the Tenants and any creditor under any fixed or floating charge previously intimated to the Landlords requiring the same to be remedied and the Tenants and any such creditor shall have failed to remedy the same within such reasonable period as shall be provided in the notice which in the case of non-payment of rent or other sum of money shall be 21 days only. Further, it shall be lawful for the Landlords to enter into and upon the Premises with full power to hold and dispose thereof as if the Lease had not been entered into without prejudice, however, to the Landlords' rights and remedies hereunder, at common law or otherwise, which irritancy is hereby declared to be pactional and not penal and not purgeable at the bar.
- 15.2 Termination of this Lease in pursuance of Clause 12.3 or 15.1 shall be without prejudice to any other remedy of the Landlords in respect of any antecedent breach of any of the Tenants' obligations hereunder, and such termination shall be under reservation of all rights and claims competent to the Landlords in terms of this Lease (including those in respect of rent and other monies due to the date of removal and termination).

16. Notices

All notices which require to be given in terms of this Lease shall be in writing and shall be deemed to be sufficiently given if sent by recorded delivery post addressed (One) in the case of the Tenants, to their registered office or to such other address as the Tenants may have notified in writing to the Landlords and (Two) in the case of the Landlords to their headquarters or such other such alternative address as the Landlords may have notified in writing to the Tenants and any such notice shall be deemed to have been served on the second business day after the date on which the same Was posted (excluding weekends and public and statutory holidays). In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Landlords or the Tenants, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

17 Stamp Duty and Registration Dues

The Landlord shall be responsible for the payment of the Stamp Duty Land Tax (if any) payable on any land transaction pursuant to which this Lease is entered into together with the recording and registration dues of these presents as provided for in the Asset Transfer Agreement

18. Arbitration

- 18.1 All disputes between the parties arising out of or in connection with this Lease may be escalated by either party, to the Chief Executive of the Landlords and to the board of Charity Trustees of the Tenants for resolution.
- 18.2 If the dispute cannot be resolved pursuant to Clause 18.1 within 10 Business days, the dispute may at any time thereafter be referred for final determination to the Independent Expert who shall be deemed to act as expert and not as arbiter.
- 18.3 Within 14 days after the Expert has accepted the appointment the parties shall submit to the Independent Expert a written report on the dispute.
- 18.4 Following the submission of the report in pursuance of Clause 13.3, both parties shall afford the Independent Expert all information and assistance which the Independent Expert requires to consider the dispute.
- 18.5 The Independent Expert shall be instructed to deliver his/her determination to the parties within 10 Business Days after the submission of the written report pursuant to Clause 18.3.
- 18.6 Save in the case of manifest error, decisions of the Independent Expert shall be final and binding and not subject to appeal.
- 18.7 The Independent Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbiter; and each party shall in any event supply to him/her all such information held by that party or to that party's order which is material to the matter to be resolved and which it could be required to produce on discovery.
- 18.8 The fees of the Independent Expert shall be borne by the parties in such proportion as shall be determined by the Independent Expert having regard (amongst other factors) to the conduct of the parties.

19. Jurisdiction

The construction , validity and performance and all other matters arising out or in connection with this Lease shall be governed by the Law of Scotland and be subject to the exclusive jurisdiction of the Scottish Courts

And

20. Registration

The Landlords and the Tenants consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding pages together with the Schedule in 6 Parts and Plan annexed are executed as follows:-

SEALED with the Common Seal of the said EAST AYRSHIRE COUNCIL and SUBSCRIBED for and on its behalf

at

on

By _____

Print Full Name

Authorised Signatory

SUBSCRIBED for and on behalf of

The

at

on

by _____

Print Full Name

Trustee

before this witness

Print Full Name

Witness

Address

SCHEDULE

PART 1

THE PREMISES

Insert Conveyancing Description; refer to plan and foundation writ

Part 2 The Additional Rights and Obligations

1. The right to free and uninterrupted passage and running of water, soil, drainage. Gas, electricity, telephone and all other services in and through the sewers, pipes, wires and cables which currently serve the Premises now lying in, on, under, over or through adjoining property currently owned by the Landlords so far as any of the same are necessary for the reasonable use and enjoyment of the Premises,

and

2. Subject to (1) any existing or future proper regulations made by the Landlords (acting reasonably), (2) making good any damage caused thereby, and (3) causing as little inconvenience as reasonably practicable, the right of pedestrian and vehicular access to and egress from the Premises over such route or routes in the ownership of the Landlords (**if specific add in ref to plan**) and by such means as are now enjoyed by the Premises or such alternative sufficient route or routes as may be substituted by the Landlords from time to time.

3. **Insert Site Specific Rights and Obligations to include if appropriate common services arrangements and details of any costs to the Trust as Tenants.**

Part 3

The Reserved Rights

1. There are excepted and reserved to the Landlords and their tenants and all other persons to whom the Landlords may grant such rights:-
 - 1.1 the right to free and uninterrupted passage and running of water, soil, drainage, gas, electricity, telephone and all other services in and through the sewers, pipes, wires and cables now or at any time hereafter lying in, on, under, over or through the Premises;
 - 1.2 the right of pedestrian and vehicular access over such route or routes if any within the Premises for any reasonable purpose, subject to making good any damage caused to the Premises thereby;
 - 1.3 the right to enter upon the Premises, with or without workmen and appliances, on all necessary occasions and on reasonable prior notice (except in case of emergency) for any other reasonable, subject to making good any damage caused to the Premises thereby;
 - 1.4 the right to erect and/or permit the erection of any new building or to alter, demolish or rebuild and/or permit the alteration, demolition or rebuilding of any building on any land forming part of the Premises or on any land adjacent to, neighbouring or opposite the Premises;
 - 1.5 the right of full use and occupation of the Premises without notice in the case of a civil emergency until a return to normality is achieved (as more particularly provided for in the Asset Transfer Agreement and/or the Services and Finance Agreement).
 - 1.6 **the right to make use of the Premises for special local events (including without prejudice to the foregoing generality elections and as more particularly provided for in the Asset Transfer Agreement and/or the Services and Finance Agreement)**
2. There are excepted and reserved to all statutory undertakers rights of wayleave for all existing supply pipes, cables, drains and other service media within the Premises with all necessary rights of access to the same for the purpose of inspection, maintenance, repair and renewal thereof subject always to minimising any disruption to the Tenants and making good all damage caused thereby.

Part 4

Third Party Rights

Add in specific rights / details of leases sub-leases etc

Burdens Writs Applicable to the premises

Specify

PART FIVE**TENANTS' MAINTENANCE OBLIGATIONS**

1. To keep the Premises clean and tidy so as to be suitable for their relevant operational use and to carry out any rudimentary property maintenance and repairs in so far as such works would be within the scope and responsibility of an ordinary building caretaker as shall be determined by the Landlords from time to time throughout the Duration acting reasonably.
2. To collect and dispose of any litter, rubbish or waste in the Premises or on any ground pertaining thereto on a regular basis.
3. To undertake premises management .
4. To undertake Key- holding responsibilities including without prejudice to the foregoing generality to be primary key-holders and attendees in cases of urgent or emergency works to the Premises .
5. To comply with the Landlords Procedures, Policies and Standards in all instances.
6. To carry out any additional works as may be required by the Tenants in terms of the Asset Transfer Agreement , the Collections Agreement , the Services and Finance Agreement and Support Services Agreement or Service Level Agreement.

PART SIX**LANDLORDS' MAINTENANCE OBLIGATIONS**

1. Subject to the availability of funding to maintain and repair and when necessary reinstate the Premises in good tenable condition (normal fair wear and tear excepted).
2. To comply with the Landlords' Policies, Procedures and Standards and the Landlords' Property Contracts in all instances
3. To carry out any works (including capital works) as may be required by the Landlords in terms of the Asset Transfer Agreement, the Collections Agreement, the Services and Finance Agreement and Support Services Agreement or Service Level Agreement.

SCHEDULE PART 3 -LICENCE TO OCCUPY

LICENCE TO OCCUPY

between

EAST AYRSHIRE COUNCIL

and

EAST AYRSHIRE LEISURE TRUST

East Ayrshire Council
London Road
Kilmarnock
KA1 3BN

CLAUSES

1. Definitions and Interpretation

2. The Grant

3. Rent and Other Payments

4. Repair and Maintenance

5. Statutory and Other Compliance

6. Planning, Alteration and Signage

7. Use

8. Alienation

9. Indemnity

10. Insurance

11. Re-instatement

12. Termination

13. Removal and Dilapidations

14. Landlords Warranty

15. Irritancy

16. Notices

17. Stamp Duty and Registration Dues

18. Arbitration

19. Jurisdiction

20. Registration

Schedule 1 - The Premises

Schedule 2 – Additional Rights

Schedule 3 – Reserved Rights

Schedule 4- Third Party Rights

Schedule 5- Tenants Maintenance Obligations

Schedule 6 – Landlords Maintenance Obligations

LICENCE TO OCCUPY

between

EAST AYRSHIRE COUNCIL, a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal office at Council Headquarters, London Road, Kilmarnock KA3 7BU (the “Landlords”);

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 “Tenants”);

1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence to occupy (including this sub-clause and the Schedule) the following words and expressions shall have the following meanings:-

“Additional Rights and Obligations” means the rights and obligations specified in Part 2 of the Schedule;

“Asset Transfer Agreement “ means the Asset Transfer Agreement entered into between the Landlord and the Tenant on or about the date of this Lease

“Collections Agreement” means the Collections Agreement entered into between the Landlords and the Tenants on or around the date of this Lease;

“Date of Entry” means 1st July 2013;

“Duration” means the period of 25 years from (and including) the Date of Entry unless the Lease is earlier terminated.

“Independent Expert” means a suitably qualified independent person with substantial experience relevant to the dispute in question, such person to be appointed by agreement between the Landlords and the Tenants and failing such agreement to be appointed on the recommendation of the President for the time being of the Law Society of Scotland on the application of either the Landlords or the Tenants;

“Insured Risks” means fire, lightning, aircraft and explosion and/or such other normal commercial risks and insurances as the Landlords may from time to time deem expedient in respect of the Premises (but in each case only for so long as and to the extent that the Landlord is able to obtain cover for the Insured Risks at reasonable commercial rates and subject to such excesses, exclusions and limitations as the Landlords insurers may require or impose);

“Landlords Maintenance Obligations” means the Landlords Maintenance Obligations set out in Part 6 of the Schedule.

“Landlords’ Policies, Procedures, means the policies, procedures and standards of the

and Standards ”

Landlords impacting on the operation of the Premises including but not limited to those in relation to property and energy management (including property repairs procedures) IT systems (including hardware, software and voice/data networks), health and safety and incident reporting (including insurance claims protocols) in existence as at the Date of Entry, as the same may reasonably be amended, supplemented or replaced by the Landlord from time to time throughout the Duration.

“Landlords Property Contracts”

means any contracts entered into by the Landlords impacting on the operation of the Premises including but not limited to those in relation to property repairs and maintenance (including planned maintenance and capital works) in existence as at the Date of Entry, as the same may reasonably be amended, supplemented or replaced by the Landlord from time to time throughout the Duration.

“Permitted Use”

means use as (please insert existing use) and all uses incidental thereto but only in so far as same subsist as at the Date of Entry for the benefit of the general public in the East Ayrshire area and its neighbourhood.

“Plan”

means the plan annexed and executed as relative hereto;

“the Planning Acts”

mean the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Local Government and Planning (Scotland) Act 1982 and the Town and Country Planning Act 1984, the Planning and Compensation Act 1991, and any other legislation from time to time in force relating to planning matters throughout the Duration ;

“Premises”

means those subjects described in Part 1 of the Schedule;

“Reserved Rights”

mean the rights and reservations set out in Part 3 of the Schedule.

“Schedule”

means the Schedule in six parts annexed and executed as relative hereto;

“Services and Finance Agreement”

means the Services and Finance Agreement entered into between the Landlords and the Tenants on or around the date of this Lease.

“Service Level Agreement”

means any Service Level Agreement entered into between the Landlords and the Tenants impacting on the operation of the Premises during the Duration.

“ Statutory Works “

means work in respect of the Premises which requires to be executed in order to secure compliance with statutory requirements (whether currently in force or introduced during the Duration including without prejudice to the foregoing generality the installation of fire fighting equipment or other fixtures and fittings

“Support Services Agreement”

means the Support Services Agreement entered into between the Landlord and the Tenant on or around the date of this Lease or any such subsequent agreement entered into between the Landlords and the Tenants impacting on the operation of the Premises during the Duration.

“Tenants Maintenance Obligations”

means the Tenants’ maintenance obligations set out in Part 5 of the Schedule.

“Third Party”

means any other person other than the Landlord or Tenant.

“Third Party Rights”

means the sub-leases, licences and other rights to use the Premises or part thereof listed in Part 4 of the Schedule (if any).

1.2 In this Licence:-

- 1.2.1 Words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and vice versa. The word “person” shall mean an individual, partnership, company, public authority or any other body whatsoever.
- 1.2.2 Any reference to a statute or subordinate legislation shall include any modification, extension or re-enactment thereof for the time being in force and shall also include all instruments, orders and regulations for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.2.3 Any obligation by the Tenants not to do an act or thing shall be deemed to include an obligation not to agree or suffer or permit such act or thing to be done by any agent, employee, invitee, contactor or others for whom the Tenants are responsible in law.
- 1.2.4 Any reference to an act, omission or default of the Tenants shall be deemed to include an act, omission or default of their sub-tenants, agents, employees, invitees, contractors, licensees and others for whom they are responsible in law and/or the Tenants or their sub-tenants’ respective predecessors in title.
- 1.2.5 The clause, paragraph and schedule headings in this Lease are for reference only and shall not affect the construction or interpretation of this Lease.
- 1.2.6 No consent, permission or approval granted by the Landlords under this Lease shall be deemed to imply or constitute the granting of any consent, permission or approval by the Landlords in any capacity other than as heritable proprietors of the Premises and as such landlords.

2. The Grant

The Landlords hereby grants a licence to occupy the Premises (together with any Additional Rights) to the Tenants under reservation of the Reserved Rights and subject to the Third Party Rights and that for the Duration at a rent of ONE POUND STERLING (£1) per annum (if asked) exclusive of any Value Added Tax which may be payable thereon annually in arrears in consideration of the grant of this Licence.

3. Rent and Other Payments

- 3.1 The Tenants bind and oblige themselves during the Duration to pay (a) the rent specified in clause 2 hereof (if demanded) from time to time payable in terms of this Licence without deduction (b) any additional charges specified within part 2 of the Schedule to ensure compliance with the obligations specified therein (c) any contra-charge imposed in terms of Clause 4.5 hereof (d) any insurance related charges imposed in terms of clauses 10.2 and 10.7 hereof and (e) all existing and future rates, taxes, charges (including without prejudice to the foregoing generality charges for utilities irrespective of how these are charged), assessments, impositions on (including without prejudice to the foregoing generality those imposed in terms of the titles ,statute , or common law) and outgoings whatsoever charged (whether payable by an owner or occupier),

assessed or imposed on in respect of the Premises (excepting any tax, charge, assessment or imposition payable in respect of the rent or any other sums payable hereunder to the Landlords or by virtue of the grant of this Licence or any disposal or dealing with the Landlords' interest in the Premises or any part hereof) together with any Value Added Tax and /or any other tax or charge of a similar nature as shall be properly chargeable in respect of all monies undertaken to be paid by the Tenant under this licence all of which moneys are for the avoidance of doubt expressed exclusive of Value Added Tax or such other tax as aforesaid .

3.2 The demand for or acceptance of rent (or other sums) by the Landlords or their agents at any time shall not in any circumstances constitute nor be construed to be a waiver of any of the Tenants' obligations under this Licence nor of the Landlords' remedies for breach thereof.

4. **Repair and Maintenance**

4.1 The Tenants accept the Premises at the Date of Entry in their present condition and state of repair and decoration and undertake to carry out throughout the Duration the Tenants Repairing Obligations (subject to the provisions of clause 4.3 below) in accordance with the Landlord's Policies, Procedures and Standards, the Asset Transfer, Services and Finance Agreement and any Support Services Agreement or Service Level Agreement from time to time in place during the Duration

4.2 The Tenants shall permit the Landlords and others authorised by them at all reasonable times throughout the Duration and on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Premises and upon notice being served by the Landlords to execute all works of cleaning , decoration , maintenance and repair to the Premises as the Landlords may require to procure compliance by the Tenants with the Tenants Repairing Obligations within such reasonable period as is specified in such notice, and that to the satisfaction of the Landlords and, in case of default by the Tenants, the Landlords and others as aforesaid shall be entitled to enter the Premises to execute all such works as aforesaid and the whole costs and expenses incurred by the Landlords in so doing shall be due and payable by the Tenants to the Landlords on demand.

4.3 Notwithstanding the foregoing provisions of clause 4.1 above or any other provision indicating the contrary, the Tenants shall not be liable for any of the Tenants' Repairing Obligations required as a result of damage or destruction to the Premises caused by (a) an insured Risk, save to the extent that the insurance monies are rendered irrecoverable in consequence of some act, omission or default of the Tenants, or (b) the negligence of the Landlords.

4.4 The Landlords shall at their own cost, subject to availability of financial resources carry out throughout the Duration the Landlords Repairing Obligations in accordance with the Landlord's Policies, Procedures and Standards, the Landlords' Property Contracts, the Asset Transfer Agreement, Services and Finance Agreement and any Support Services Agreement or Service Level Agreement from time to time in place during the Duration.

4.5 The Tenants shall notify the Landlords of any specific items of repair and/or maintenance deemed by the Tenants to be required to the Premises which fall within the Landlords' Repairing Obligations immediately on same being identified by the Tenants , said notification to be made in accordance with the Council's Policies , Procedures and Standards for reporting of property repairs .In the event of any such item of repair and /or maintenance not being notified to the Landlords in accordance with the provisions of this clause 4.5 , the Landlords may at their discretion contra-charge the Tenants for the value of any additional works required as a result of the said item of repair and /or maintenance not being notified to the Landlords.

4.6 The Tenants shall permit the Landlords and others authorised by them at all reasonable times and on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Premises and execute all works of repair to the Premises as the Landlords may deem necessary and of which the Landlords shall be the sole judge to procure compliance by the Landlords with the Landlords' Repairing Obligations within such time period as is deemed by the Landlords to be reasonable in the circumstances .

5 Statutory and Other Compliance

- 5.1 The Tenants shall comply at their own expense with the provisions and requirements of all European Union, United Kingdom and Scotland statutes and subordinate legislation, regulations and directives, and any notices and directions issued thereunder (including without prejudice to the foregoing generality the Planning Acts, the Factories Act 1961 The Workplace (Health, Safety and Welfare) Regulations 1992 and Provision and Use of Work Equipment Regulations 1998, the Offices, Shops and Railway Premises Act 1963, the Fire Precautions Act 1971, the Health and Safety at Work etc. Act 1974, the Environmental Protection Act 1990, the Disability Discrimination Act 1995 Equality Act 2010, the Environmental Act 1995, the Construction (Design and Management) Regulations 2007 , the Control of Asbestos Regulations 2012, the Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006, and any other legislation from time to time in force throughout the Duration (save that the Tenants' obligations under this Clause 5.1 shall not extend to any actions required to be carried out by the Landlords in terms of the Landlords Repairing Obligations or to the Landlords' obligations in respect of statutory works as detailed in Clauses 5.2, 5.3,5.4 and 5.5 below)
- 5.2 Subject to the availability of funding the Landlords shall carry out all Statutory Works which may require to be executed from time to time to the Premises throughout the Duration in order to secure compliance with statutory requirements (including without prejudice to the fore-going generality Health and Safety Legislation whether currently in force or introduced during the Duration). In order to ensure compliance with this Clause 5. 2 and Clauses 5.3, 5.4 and 5.5 below the Landlords shall have and shall maintain control of the Premises throughout the Duration.
- 5.3 The Landlords shall carry out fire risk assessments and make documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 in relation to the Premises throughout the Duration in accordance with the Landlords Policies Procedures and Standards.
- 5.4 The Landlords shall carry out asbestos assessments and make written plans required under the Control of Asbestos Regulations 2012 in relation to the Premises throughout the Duration in accordance with the Landlords Policies Procedures and Standards.
- 5.5 The Landlords shall carry out risk assessments required under Health and Safety Legislation in respect of the risks posed by legionella bacteria in relation to the Premises throughout the Duration in accordance with the Landlords Policies, Procedures and Standards.
- 5.6 The Tenants shall comply with the whole provisions contained in the title deeds and all existing servitudes and rights of way leave whether or not formally constituted (including without prejudice to the foregoing generality those for laying and maintaining of sewers ,drains , pipes ,cables ,wires and stays) relating to the Premises ,all requirements or regulations of the Landlords' insurers or of any competent authority relating to the Premises and their use and the Landlords Policies and Standards.
- 5.7 The Tenants shall provide to the Landlords at any time during the Duration on request and at the Tenants' expense copies of the Health and Safety file (if a Health and Safety file is required at the time in respect of the Premises) and any certificates, consents, warrants, notices and other documentation relating to the Premises as the Landlords may require as evidence of compliance with Clause 5.1 and 5.6 above.

6 Planning, Alteration and Signage

- 6.1 The Tenants shall not make any application, representation or objection, nor commence any development permitted under the Planning Acts except with prior written consent of the Landlords which consent shall not be unreasonably withheld and shall give the Landlords forthwith upon receipt a copy of any notice received under the Planning Acts or any other statutory provision.
- 6.2 The Tenants shall not make or permit to be made any alterations or additions structural or otherwise in or upon the Premises ,nor to place or permit to be placed in or upon the Premises any additional erection or building and not to exhibit or affix any light, sign, aerial or other articles (including without prejudice to the foregoing generality any hoarding or advertisement) whatsoever on the exterior of any building upon the

Premises or of which the Premises comprise part except with the prior written consent of the Landlords and only in accordance with such conditions as the Landlords may impose and with plans and specifications approved in writing by the Landlords in advance, which consent and approval shall not be unreasonably withheld. The Landlords reserve the right to erect hoardings for public advertising but such right shall be exercised in such a way as to cause the minimum disruption or hindrance to the Tenant in his occupation or use of the Premises.

7. Use

- 7.1 The Tenant shall occupy and use the Premises for the Permitted Use and for no other purposes whatsoever, except with the prior written consent of the Landlords in respect of any proposed change to any incidental use subsisting at the Date of Entry, in and only in accordance with such conditions as the Landlords may impose, which consent shall not be unreasonably withheld. For the avoidance of doubt the Tenants shall not use the Premises for residential purposes nor shall the Tenants shall the tenants keep livestock, pets or guard dogs in or about the Premises except in so far as same are necessary and incidental to the Permitted Use of which the Landlords acting reasonably shall be the sole judge.
- 7.2 The Tenants shall not use the Premises for any noxious, noisy, offensive, dangerous or immoral trade or business including without prejudice to the foregoing generality the sale or disposal or advertisement of solvents, combat knives and handguns from the Premises or for any purpose which, in the reasonable opinion of the Landlord may be undesirable or cause a nuisance, annoyance, disturbance or inconvenience to the Landlords or any of their tenants or to any occupier of premises in the neighbourhood nor shall the Tenants display or suspend goods or articles for sale out-with the Premises.
- 7.3 The Tenants shall not overload any floor surfaces in the Premises and shall keep the Premises free from any undue deposit or refuse or other materials (not being refuse) or things which may in the reasonable opinion of the Landlords be deemed to be offensive or a nuisance or injurious to the amenity of the Premises.
- 7.4 The Tenants shall not overload the electrical or ICT system in the Premises, terminate any ICT Services or Network Connection provided by the Landlords and shall not install within the Premises any ICT equipment or software except with the written consent of the Landlord and in accordance with such conditions as the Landlords may impose which consent shall not be unreasonably withheld.
- 7.5 The Tenants shall take reasonable precautions against fire and shall not bring onto the Premises any hazardous, explosive, dangerous or combustible goods or materials save for any such goods or materials used by the Tenants in the normal course of business provided they are stored and used in accordance with the relevant Health & Safety regulations, the Landlords' Policies, Procedures and Standards and the requirements of the Landlords' Insurers.
- 7.6 In the event of an Automatic Fire Suppression System being installed in the Premises the Tenants shall ensure that the weekly test/ test card is completed and that during winter months heating is maintained in accordance with the manufacturer's specification in accordance with the Landlords' Policies, Procedures and Standards and the requirements of the Landlords' Insurers. It is a specific requirement notwithstanding the foregoing generality that the ambient temperature throughout the period 1st October to 31st March annually should be maintained at a sufficient level to provide frost protection.
- 7.7 The Tenants shall not cease to use the Premises for any period throughout the Duration of more than 30 days except with the prior written consent of the Landlords which consent will not be unreasonably withheld and in accordance with such conditions as the Landlords and /or their insurers may impose including without prejudice to the foregoing generality an obligation to take such steps and continue to take such steps as may be required by the Landlords and/or the Landlords' insurers in respect of security of the Premises (in addition to those required whilst the Premises are in use) and/or any other matter during such period as the Tenants cease to use the Premises.
- 7.8 The Tenants shall only engage security contractors holding all appropriate licences from the Security Industry Authority as required in terms of the Private Security Industry Act 2001 and registered with the Security Industry Authority's voluntary Approved Contractor Vetting Scheme for the relevant category of service to be provided

7.9 The Tenants shall not pass or allow to pass into the pipes, drains, sewers or others serving the Premises any polluting agent or noxious or deleterious effluent or other substance which might cause any obstruction or injury to said pipes and others or otherwise cause contamination (the normal operation of a swimming pool facility been taken to fall out -with the preceding provisions of this Clause 7.9) but to employ such plant for treating such effluent before it enters the drains as may be required by any local or public authority or by the Landlords and to make good and remedy any such injury or contamination which occurs to the satisfaction of the Landlords, and not to permit any smoke, effluvia, vapour or grit to be emitted from the Premises.

8 **Alienation**

The Tenants shall not assign this Licence in whole or in part nor to part with or share possession or occupation of the whole or any part of the Premises, nor sublet the whole or any part of the Premises, nor charge nor grant rights over the same in favour of third parties, except in the case of the Third Party Rights, so long as they subsist or as otherwise provided for in the Services and Finance Agreement except with the prior written consent of the Landlords, and in accordance with such conditions as the Landlords may impose, which consent shall not be unreasonably withheld.

9 **Indemnity**

The Tenants shall free, relieve and indemnify the Landlords from and against liability in respect of any injury to or the death of any person, damage to any property, heritable or moveable, any interdict or court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise or any other loss, liability, third party claim or additional costs by reason of or arising directly or indirectly out of the repair, state of repair or condition of the Premises (notwithstanding that the Tenants are not in breach of their obligations as specified at Clause 4.1 hereof but not where such liability arises out of any act, neglect or default of the Landlords) or any alteration or addition or improvement to the Premises or the use of the Premises or from any act, omission or default of the Tenants in the implementation and observance of the obligations contained in this Licence and from all fees, penalties, charges, proceedings, costs, claims, expenses and demands of whatsoever nature in respect of any such liability or alleged liability or any such act, omission or default.

10. **Insurance**

10.1 The Landlords shall for the Duration (unless prevented from doing so by any act, omission or default of the Tenants or otherwise) keep the Premises constantly insured against loss or damage by or in consequence of the Insured Risks (but only for so long as and to the extent that the Landlords are reasonably able to obtain such cover at reasonable commercial rates subject to reasonable policy excesses of which the Landlords shall be the sole judge) in their full reinstatement value (as determined by the Landlords) together with an amount to cover the costs of shoring up, propping, hoarding, demolition, site clearance and incidental expenses and architects' and other professional fees in relation to the rebuilding, repairing or restoring of the Premises or any part thereof and any Value Added Tax properly chargeable on such costs and others all in the name of the Landlords (and such other names as the Landlords may require) with the interest of the Tenants noted thereon. For the avoidance of doubt, the Insurance cover provided by the Landlords shall not cover subsidence, accident damage; damage caused in the furtherance of theft or attempted theft, and Tenants' improvements.

The Landlords shall not be liable for any property damage, loss of property or injury arising directly or indirectly as a result of the Tenants' use of the subjects or the use thereof by third parties (if any). The Landlords shall use reasonable endeavours to procure that the foregoing policy of insurance shall contain a waiver of subrogation rights, either generically or specifically, against the Tenants. In addition, the Landlords shall effect insurance against property owners' and third party liability and such other risks as the Landlords may require, for such amounts and on such terms as the Landlords may require.

10.2 If requested by the Tenants, the Landlords shall provide the Tenants with a summary of the risks insured against and amount of cover provided by the Landlords' insurances. If requested by the Tenants following exhibition of summary of risks and amount of cover provided the Landlords will give consideration to increasing the level of insurance cover but will not be obligated to do. Any increase to the level of cover will be subject to the Tenants being responsible for payment of any additional premium.

- 10.3 The Tenants shall be responsible for effecting and maintaining at their own cost with a reputable insurance company Trustees Indemnity insurance at a level deemed adequate by the Landlords in respect of the Tenants' occupancy and use of the Premises. If requested by the Landlords the Tenants shall provide the Landlords with a summary of the said insurance (including the amount of cover provided) and a receipt for the payment of the last premium or other evidence that the insurances are in force.
- 10.4 The Tenants shall comply with the terms and conditions of all insurance covers taken out in respect of the Premises by the Landlords throughout the Duration in accordance with the Landlord's insurance obligations specified in clause 10.1 above and any warranties imposed upon the Landlord by its insurers. The Tenants shall notify the Landlords immediately of any incident likely to give rise to an insurance claim in compliance with the Council's Policies, Procedures and Standards.
- 10.5 The Tenants shall, without prejudice to the provisions of clause 10.4 above, notify the Landlords immediately of any material change in risk impacting on the terms and conditions of any insurance cover taken out by the Landlords in respect of the Premises, in accordance with the Landlord's insurance obligations specified in clause 10.1 above and any warranties imposed upon the Landlords by its insurers, including but not limited to those arising in respect of the premises becoming unoccupied, any alarm, security systems or CCTV systems failing and the hiring of any plant or equipment.
- 10.6 The Tenants shall take all reasonable precautions to avoid injury loss or harm and shall not do or permit on the Premises any act or omission or default whereby any insurance policy effected by the Landlords relating to the Premises or any other property in which the Landlords have an interest, may be or become void or voidable or whereby any shortfall may arise in the insurance monies which would otherwise have been recovered by the Landlords or whereby there may be any increase in the cost of insuring the Premises or any other property in which the Landlords have an interest above the rate which would otherwise be payable.
- 10.7 In the event of the cost of the insurance cover arranged by the Landlords in accordance with their insurance obligation specified in clause 10.1 above and / or the terms thereto being prejudiced as a result of any act or omission by the Tenants or any loss to the Tenants howsoever realised throughout the Duration the Landlords shall review the current insurance arrangements and at their own discretion acted reasonably apportion the insurance costs between the Landlords and the Tenants.
- 10.8 In the event of each and every claim made by the Tenants against the insurance cover arranged by the Landlords in accordance with their insurance obligations specified in clause 10.1 above to pay to the Landlords or their Insurers any policy excess applied by the Landlords' Insurers in respect of any claim made by the Landlords for an insured loss in respect of the Premises or any part or part thereof.

11 **Reinstatement**

- 11.1 If and whenever during the Duration the Premises or any part or part thereof are damaged or destroyed by any of the Insured Risks and provided always that the relative policy of insurance is not vitiated nor payment of any of the policy monies refused in whole or in part by reason of any act, omission or default of the Tenants then as soon as reasonably practicable the Landlords shall, subject to all requisite statutory or other consents being obtained, apply all monies received under the policy of insurance (other than monies in respect of loss of rent, property owners' and third party liability insurance) in reinstating (which in this context may include works and fees which the Landlords and/or their insurers deem to be a prerequisite of reinstatement) the Premises or such part of the Premises as shall have been so destroyed or damaged to provide accommodation and facilities approximately equivalent to that which existed prior to such damage or destruction and shall make good from their own resources and shall make good from their own resources any shortfall in the monies required to carry out such re-instatement save where any shortfall is caused by the negligent act of the Tenants
- 11.2 This Licence shall not be determined by reason of any damage to or the destruction in whole or in part of the Premises by the Insured Risks or otherwise but shall nevertheless continue in full force and effect and the rent (if demanded) shall be payable for the Duration provided however that without prejudice to the foregoing, in the event that the Site or the Buildings or any part thereof shall be destroyed or damaged by any of the Insured Risks so as to be unfit for occupation and use and such destruction or damage shall not have been made good

within a period of three years following its occurrence then either the Landlords or the Tenants may terminate this Licence by giving written notice within six months of the expiry of said three year period and this Licence shall terminate on the date of any such notice but without prejudice to any claims by either party in relation to any prior breach of the obligations under this Licence.

12 Termination

- 12.1 In the event of the Tenants determining that they have no long term use for the Premises or any part or parts thereof for the Permitted Use, the Tenants shall intimate the proposed closure in writing and withdrawal of service to the Landlords at least three months in advance of any proposed closure date (“the Tenants Trigger Notice”)
- 12.2 In the event of the Tenants intimating any proposed closure and withdrawal of service to the Landlords by the service of the Tenants Trigger Notice in accordance with the provisions of clause 12.1 above it shall be for the Landlords at their sole discretion acting reasonably to determine if they are prepared to consent to the proposed closure and withdrawal of service. Any consent granted in terms of this clause will be in writing and will be subject to such terms and conditions as the Landlords may impose and will not be unreasonably withheld. In the event of the Landlords granting consent in terms of this clause the Licence shall nevertheless continue in full force and effect until terminated by the Landlords in accordance with the provisions of Clause 12.3 below
- 12.3 The Landlords may ((other than in a case where the Licence is being terminated in pursuance of the right of irritancy conferred on the landlords in terms of Clause 15.1 below) terminate the Licence at any time during the Duration by serving a written notice to quit to the Tenants specifying the date at which the Licence) is to come to an end ("the Date of Termination"). The notice shall be served at least 40 days prior to the Date of Termination.
- 12.4 The Landlords’ option to terminate under Clause 12.2 above may be validly exercised for any purpose of without prejudice to the foregoing generality in the event of legislation being passed removing either in whole or in part the National Non- Domestic Rates relief available in respect of the Premises or to enable re-development or use by the Landlords for any operational purpose or to enable servitude or other heritable and irredeemable rights to be granted to a third party by the Landlords over the Premises or part thereof.
- 12.5 The date of termination of the Licence in respect of the Premises or part thereof pursuant to the exercise of the Landlords’ option shall be the date specified in the relevant notice or such other date as may be agreed. On the date of termination the Tenants shall deliver to the Landlords a Partial Renunciation or Renunciation of this Licence and as from such date of termination the provisions of this Licence shall cease to apply to the Premises or relevant part thereof but (in the case of partial renunciation) the Licence shall otherwise continue in full force and effect subject to such variations as the Landlords and Tenants (both acting reasonably) may agree are required as a consequence of the subdivision of the Premises or any building or buildings erected thereon .

13 Removal and Dilapidations

- 13.1 On the expiry or earlier termination of this Licence the Tenants shall flit and remove from the Premises without any process of removal being used against them to that effect and to surrender the Premises to the Landlords together with all additions and improvements made thereto (without any compensation being payable by the Landlords to the Tenants in respect thereof), and all Landlords' fixtures and fittings in a state of repair and condition which is consistent with the due performance of the Tenants' obligations under this Licence.
- 13.2 The Tenants shall further permit the Landlords at any time throughout the Duration or after the date of expiry or earlier termination of this Licence reasonable prior to enter, examine and record the condition of the Premises and compile a Schedule of Dilapidations being a list of those works which are in the opinion of the Landlords required to restore the Premises to a state of repair and condition commensurate with full compliance with the Tenants' obligations under this Licence and the Tenants shall be required upon notice being served by the Landlords to carry out such works specified in the Schedule of Dilapidations within such reasonable period as is specified in such notice.

14 Landlords' Warranty

The Landlords warrant that the Tenants may, on paying the rent (if demanded) and performing the obligations herein contained, and subject to all Reserved Rights and Third Party Rights, quietly enjoy the Premises during the Duration. Nothing contained in this Licence shall however be deemed to constitute any warranty by the Landlords that the Premises or any part thereof are authorised for the Permitted Use under the Planning Acts or otherwise for any specific purpose or that the Premises are fit for any of the Tenants' purposes under this Licence.

15 Irritancy

15.1 If the rent (if demanded) or any other sums due by the Tenants to the Landlords under this Licence (whether or not the same has been demanded) shall remain unpaid for 21 days after demand or if the Tenants ceases to occupy the Premises or any part thereof for the Permitted use except with the consent of the Landlord or shall fail to perform or observe any of the obligations undertaken by them in this Licence or if the Services and Finance Agreement or the Collections Agreement or the Asset Transfer Agreement is terminated or if the Tenants (being a SCIO) is removed from the Charities Register , is dissolved or otherwise ceases to operate (except in the event of an amalgamation with or transfer of undertakings to another SCIO with the prior written consent of the Landlords which consent shall not be unreasonably withheld) in accordance with the provisions of the provisions of the Charities and Trustees Investment (Scotland) Act 2005 ,as amended , the Scottish Charitable Incorporated Organisations Regulations 2011 , the Scottish Charitable Incorporated Organisations (Removal from the Register and Dissolution Regulations) 2011 and any other legislation or Statutory Instrument from time to time in force in relation to SCIOs throughout the Duration , it shall be at the option of the Landlords by notice to bring this Licence to an end forthwith without any declarator or process of law to that effect and to remove the Tenants from possession of the Premises, and repossess and enjoy the same as if this Licence had not been granted, provided always that in a case of a breach or non-performance by the Tenants (including the non-payment of rent) which is capable of being remedied albeit late the Landlords will not exercise such option of termination unless and until it shall first have given under express threat of irritancy, written notice to the Tenants and any creditor under any fixed or floating charge previously intimated to the Landlords requiring the same to be remedied and the Tenants and any such creditor shall have failed to remedy the same within such reasonable period as shall be provided in the notice which in the case of non-payment of rent or other sum of money shall be 21 days only. Further, it shall be lawful for the Landlords to enter into and upon the Premises with full power to hold and dispose thereof as if the Licence had not been entered into without prejudice, however, to the Landlords' rights and remedies hereunder, at common law or otherwise, which irritancy is hereby declared to be pactional and not penal and not purgeable at the bar.

15.2 Termination of this Licence in pursuance of Clause 12.3 or 15.1 shall be without prejudice to any other remedy of the Landlords in respect of any antecedent breach of any of the Tenants' obligations hereunder, and such termination shall be under reservation of all rights and claims competent to the Landlords in terms of this Licence (including those in respect of rent and other monies due to the date of removal and termination).

16. Notices

All notices which require to be given in terms of this Licence shall be in writing and shall be deemed to be sufficiently given if sent by recorded delivery post addressed (One) in the case of the Tenants, to their registered office or to such other address as the Tenants may have notified in writing to the Landlords and (Two) in the case of the Landlords to their headquarters or such other such alternative address as the Landlords may have notified in writing to the Tenants and any such notice shall be deemed to have been served on the second business day after the date on which the same Was posted (excluding weekends and public and statutory holidays). In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Landlords or the Tenants, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

17 Stamp Duty and Registration Dues

The Landlord shall be responsible for the payment of the Stamp Duty Land Tax (if any) payable on any land transaction pursuant to which this Licence is entered into together with the recording and registration dues of these presents as provided for in the Asset Transfer Agreement

18. Arbitration

18.1 All disputes between the parties arising out of or in connection with this Licence may be escalated by either party, to the Chief Executive of the Landlords and to the board of Charity Trustees of the Tenants for resolution.

18.2 If the dispute cannot be resolved pursuant to Clause 18.1 within 10 Business days, the dispute may at any time thereafter be referred for final determination to the Independent Expert who shall be deemed to act as expert and not as arbiter.

18.3 Within 14 days after the Expert has accepted the appointment the parties shall submit to the Independent Expert a written report on the dispute.

18.4 Following the submission of the report in pursuance of Clause 13.3, both parties shall afford the Independent Expert all information and assistance which the Independent Expert requires to consider the dispute.

18.5 The Independent Expert shall be instructed to deliver his/her determination to the parties within 10 Business Days after the submission of the written report pursuant to Clause 18.3.

18.6 Save in the case of manifest error, decisions of the Independent Expert shall be final and binding and not subject to appeal.

18.7 The Independent Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbiter; and each party shall in any event supply to him/her all such information held by that party or to that party's order which is material to the matter to be resolved and which it could be required to produce on discovery.

18.8 The fees of the Independent Expert shall be borne by the parties in such proportion as shall be determined by the Independent Expert having regard (amongst other factors) to the conduct of the parties.

19 Jurisdiction

The construction , validity and performance and all other matters arising out of or in connection with this Licence shall be governed by the Law of Scotland and be subject to the exclusive jurisdiction of the Scottish Courts

And

20 Registration

The Landlords and the Tenants consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding pages together with the Schedule in 6 Parts and Plan annexed are executed as follows:-

SEALED with the Common Seal of the said EAST AYRSHIRE COUNCIL and SUBSCRIBED for and on its behalf

at

on

By _____
Print Full Name

Authorised Signatory

SUBSCRIBED for and on behalf of

The

at

on

by _____

Print Full Name

Trustee

before this witness

Print Full Name

Witness

Address

SCHEDULE

PART 1

THE PREMISES

Insert Conveyancing Description; refer to plan and foundation writ

Part 2 The Additional Rights and Obligations

1. The right to free and uninterrupted passage and running of water, soil, drainage. Gas, electricity, telephone and all other services in and through the sewers, pipes, wires and cables which currently serve the Premises now lying in, on, under, over or through adjoining property currently owned by the Landlords so far as any of the same are necessary for the reasonable use and enjoyment of the Premises,

and

2. Subject to (1) any existing or future proper regulations made by the Landlords (acting reasonably), (2) making good any damage caused thereby, and (3) causing as little inconvenience as reasonably practicable, the right of pedestrian and vehicular access to and egress from the Premises over such route or routes in the ownership of the Landlords (**if specific add in ref to plan**) and by such means as are now enjoyed by the Premises or such alternative sufficient route or routes as may be substituted by the Landlords from time to time.

- 5. Insert Site Specific Rights and Obligations to include if appropriate common services arrangements and details of any costs to the Trust as Tenants.**

Part 3

The Reserved Rights

1. There are excepted and reserved to the Landlords and their tenants and all other persons to whom the Landlords may grant such rights:-
 - 1.1 the right to free and uninterrupted passage and running of water, soil, drainage, gas, electricity, telephone and all other services in and through the sewers, pipes, wires and cables now or at any time hereafter lying in, on, under, over or through the Premises;
 - 1.2 the right of pedestrian and vehicular access over such route or routes if any within the Premises for any reasonable purpose, subject to making good any damage caused to the Premises thereby;
 - 1.3 the right to enter upon the Premises, with or without workmen and appliances, on all necessary occasions and on reasonable prior notice (except in case of emergency) for any other reasonable, subject to making good any damage caused to the Premises thereby;
 - 1.4 the right to erect and/or permit the erection of any new building or to alter, demolish or rebuild and/or permit the alteration, demolition or rebuilding of any building on any land forming part of the Premises or on any land adjacent to, neighbouring or opposite the Premises;
 - 1.5 the right of full use and occupation of the Premises without notice in the case of a civil emergency until a return to normality is achieved (as more particularly provided for in the Asset Transfer Agreement and/or the Services and Finance Agreement).
 - 1.6 the right to make use of the Premises for special local events (including without prejudice to the foregoing generality elections and as more particularly provided for in the Asset Transfer Agreement and/or the Services and Finance Agreement)
2. There are excepted and reserved to all statutory undertakers rights of wayleave for all existing supply pipes, cables, drains and other service media within the Premises with all necessary rights of access to the same for the purpose of inspection, maintenance, repair and renewal thereof subject always to minimising any disruption to the Tenants and making good all damage caused thereby.

Part 4

Third Party Rights

Add in specific rights / details of leases sub-leases etc

Burdens Writs Applicable to the premises

Specify

PART FIVE**TENANTS' MAINTENANCE OBLIGATIONS**

1. To keep the Premises clean and tidy so as to be suitable for their relevant operational use and to carry out any rudimentary property maintenance and repairs in so far as such works would be within the scope and responsibility of an ordinary building caretaker as shall be determined by the Landlords from time to time throughout the Duration acting reasonably.
2. To collect and dispose of any litter, rubbish or waste in the Premises or on any ground pertaining thereto on a regular basis.
3. To undertake premises management .
4. To undertake Key- holding responsibilities including without prejudice to the foregoing generality to be primary key-holders and attendees in cases of urgent or emergency works to the Premises .
5. To comply with the Landlords Procedures, Policies and Standards in all instances.
6. To carry out any additional works as may be required by the Tenants in terms of the Asset Transfer Agreement , the Collections Agreement , the Services and Finance Agreement and Support Services Agreement or Service Level Agreement.

PART SIX**LANDLORDS' MAINTENANCE OBLIGATIONS**

1. Subject to the availability of funding to maintain and repair and when necessary reinstate the Premises in good tenable condition (normal fair wear and tear excepted).
2. To comply with the Landlords' Policies, Procedures and Standards and the Landlords' Property Contracts in all instances
3. To carry out any works (including capital works) as may be required by the Landlords in terms of the Asset Transfer Agreement, the Collections Agreement, the Services and Finance Agreement and Support Services Agreement or Service Level Agreement.

SCHEDULE PART 4 -INTERIM ARRANGEMENTS (TRANSFERRING CONTRACTS)

The following provisions shall apply in relation to any of the Transferring Contracts in the circumstances described in clause 8.4 of the Agreement:-

- 1 The Council shall, with effect from the Effective Time, be bound, pending the completion of the assignation (with the consent of the relevant Party or parties) of the Council's interest under that Transferring Contract (or, as the case may be, the termination of that Transferring Contract):-
 - 1.1 to continue to hold its interest under that Transferring Contract in trust for the Trust;
 - 1.2 not to assign or otherwise deal with the Council's interest under such Transferring Contract (other than as provided in clause 8 of the Agreement);
 - 1.3 not (except as required under clause 8 of the Agreement) to do anything which could constitute breach of any of the terms and conditions of such Transferring Contract;
 - 1.4 to remit promptly to the relevant party to such Transferring Contract any sum paid by the Trust to the Council under paragraph 2 of this Part 4 of the Schedule and to remit promptly to the Trust any sum received by the Council from any party to such Transferring Contract;
 - 1.5 to notify the Trust forthwith on receipt of any notice or notification from any party to such Transferring Contract;
 - 1.6 to make and pursue any application for consent or approval under such Transferring Contract which the Trust may reasonably request, and that in accordance with the Trust's reasonable directions;
 - 1.7 to take any step which the Trust may reasonably request directed towards enforcement of any obligation of any other party to that Transferring Contract or by way of challenge to any action or threatened action by any such other party.

- 2 In respect of any such Transferring Contract, for so long as the circumstances described in clause 8.4 of the Agreement pertain:-
 - 2.1 the Trust shall make payment to the Council, immediately upon receipt of notification from the Council of the sum due, of any sum due under that Transferring Contract to the other party or parties to that Transferring Contract;
 - 2.2 the Trust shall perform all obligations incumbent upon it under the Transferring Contract;
 - 2.3 the Trust shall comply with the other terms and conditions of the Transferring Contract;
 - 2.4 the Trust shall indemnify the Council in respect of any loss or liability which the Council may incur in relation to that Transferring Contract or any claim (including legal expenses, on a solicitor/client basis and any award of expenses) in respect of that Transferring Contract by any other party or parties to that Transferring Contract.

- 3 The Council and the Trust (each being bound to act reasonably in this respect) shall endeavour to agree appropriate practical arrangements (which may include the making of payments by one party as agent for the other and/or the intimation to the other party or parties to the relevant contract of one party's authority to act on behalf of the other) to give effect to the principles reflected in this Part 4 of the Schedule.

- 4 The rights and obligations of the Council and the Trust under this Part 4 of the Schedule in relation to each Transferring Contract will terminate with effect from the time when the other party or parties to the Transferring Contract recognise the Trust as party to that Transferring Contract in place of the Council or (as the case may be) on termination of that Transferring Contract; but (in either case) without prejudice to any claim by the Council against the Trust (or vice versa) arising out of such rights and obligations related to the period when they subsisted.

SCHEDULE PART 5 -THIRD PARTY LEASES

Property	Tenant/Licensee/Occupier	Area Occupied	Rent/Licence Fee	Arrangement	Length

SCHEDULE PART 6 -HEAD LEASE

Property	Head Lease

SCHEDULE PART 7 -LEASEHOLD PROPERTY

Details of any leaseheld properties to be transferred to the Trust

SCHEDULE PART 8 -PROPERTIES

Facility Name	Facility Address
Cumnock Town Hall (CG)	62 Glaisnock Street, Cumnock
Darvel Town Hall & Lesser Hall (CG)	12 West Main Street, Darvel
Fenwick Fulton Memorial & Hall	91 Main Rd, Fenwick
Stewarton Area Centre	17c Avenue Street, Stewarton
The Jougs, Kilmaurs	Kilmaurs
National Burns Memorial	Mauchline
Newmilns Morton Hall	123 Main Street, Newmilns
Darvel Library (NDR included in DTH & LH) (CG)	12 West Main Street, Darvel
Stewarton Library (part of Stewarton Area Centre)	17c Avenue Street, Stewarton
Auchinleck Library (part of Auchinleck Area Centre)	30 Well Road, Auchinleck
Crosshouse Area Centre	0A Annandale Gardens, Crosshouse
Galston Library	30 Henrietta Street, Galston
Dick Inst. Library Kilmarnock (CG)	1 Elmbank Avenue, Kilmarnock
New Cumnock Library	New Cumnock
Mauchline Library	Mauchline
Rothesay House Library	Cumnock
A M Brown Institute .Library Catrine	2 Institute Avenue, Catrine
Muirkirk Library	2 Burns Avenue, Muirkirk
Dalmellington Library	1 Townhead, Dalmellington
Patna Library	9 Doonside Avenue, Patna
Drongan Library	22A Mill of Shield Road, Drongan
Newmilns Library (CG)	2 Craigview Road, Newmilns
Bellfield Library Kilmarnock	79 Whatriggs Road, Kilmarnock
Kilmaurs Library	11 Irvine Road, Kilmaurs

Ochiltree Library	47 Main Street, Ochiltree
Dalrymple Library	38 Barbieston Road, Dalrymple
Hurlford Library	3 Blair Road, Hurlford
Burns Monument Centre (CG)	1 Kay Park, Kilmarnock
Dick Inst. Museum Kilmarnock (CG)	1 Elmbank Avenue, Kilmarnock
Baird Inst Museum Cumnock	3 Lugar Street, Cumnock
Cathcartston	9 Cathcartston, Dalmellington
Burns Museum Mauchline	4 Castle Street, Mauchline
Dean Castle Museum (CG)	Dean Estate, Kilmarnock
Palace Theatre (CG)	15 Green Street, Kilmarnock
Grand Hall Suite (CG)	1A London Road, Kilmarnock
Muirkirk Games Hall	21A Pagan Walk, Muirkirk
Mauchline Games Hall	31 Kilmarnock Road, Mauchline
Drongan Games Hall	22B Mill of Shield Road, Drongan
New Cumnock Games Hall	58 Castle, New Cumnock
Patna Games Hall	100 Whitehill Avenue, Patna
Catrine Games Hall	1 Station Yard, Catrine
Gavin Hamilton Centre	18A Jamieson Road, Darvel
Stewarton Sports Centre	Stewarton
St Joseph's Leisure Centre	Kilmarnock
Grange Leisure Centre	Kilmarnock
Hunter Fitness Suite	North West Area Centre, Kilmarnock
Ayrshire Athletics Arena	Kilmarnock
Loudoun Leisure Centre	Galston
Auchinleck Leisure Centre	Auchinleck
Doon Valley Leisure Centre	18B Ayr Road, Dalmellington
Dean Castle Country Park (CG)	Dean Estate, Kilmarnock

Caprington Golf Course	Kilmarnock
Annanhill Golf Course	Kilmarnock
Patna Golf Course	1A Hillside, Patna
Galston Community Centre	38 Orchard Street, Galston
Hurlford Comm Ed	37A Cessnock Road, Hurlford Kilmarnock
Kilmaurs Comm Ed	2A East Park Drive, Kilmaurs Kilmarnock
Stewarton Comm Ed	7 Standalane, Stewarton Kilmarnock
Crookedholm Comm Ed	50A Grougar Road, Crookedholm Kilmarnock
Hareshaw Comm Ed	21 Main Road, Waterside Kilmarnock
Gateway Comm Ed	1 Foregate Square, Kilmarnock
Onthank Comm Ed	10 Kirkton Road, Kilmarnock
Auchinleck Comm Ed	30 Well Road, Auchinleck Cumnock
Barshare Comm Wing	2A John Weir Avenue, Cumnock
Catrine Comm Ed	2 Institute Avenue, Catrine Mauchline
Dalmellington Centre Com Ed	38 Ayr Road, Dalmellington Ayr
Dalrymple Centre Comm Ed	38B Barbieston Road, Dalrymple Ayr
Barrhill Comm Ed Team	19 Bank Avenue, Cumnock
Drongan Comm Ed	2A Millmannoch Avenue, Drongan
Mauchline Comm Ed	29 Kilmarnock Road, Mauchline
Netherthird Comm Ed	9 Ryderstone Drive Cumnock
New Cumnock Comm Ed	28A Castle, New Cumnock Cumnock
Ochiltree Comm Ed	45 Main Street, Ochiltree Cumnock
Patna Comm Ed	7 Doonside Avenue, Patna Ayr
Rankinston Comm Ed	51 Littlemill Place, Rankinston Ayr
Bonnyton Community Centre	51 Garrier Place, Kilmarnock
Gatehead Village Hall	2A Fairlie View, Gatehead Kilmarnock
Riccarton Community Centre	23 Campbell Street, Kilmarnock

New Farm Loch Comm Centre	2A Fraser Walk, Kilmarnock
Cumnock Day Centre (CG)	Cumnock
Muirkirk Day Centre	Muirkirk
Catrine Day Centre	Catrine
Logan Day Centre	Logan
Patna Day Centre	Patna
Crosshouse Community Centre	Crosshouse
Muirkirk Community Centre	Muirkirk
Bellsbank Community Wing	Bellsbank
Newmilns Senior Citizens Centre (CG)	Newmilns
Galston Senior Citizens Centre	Galston
Witch Road Senior Citizens Centre	Kilmarnock
Grange Street Lunch Club	Kilmarnock
Shortlees Community Centre	Kilmarnock
Bellfield Community Centre	113 Whatriggs Rd, Kilmarnock

Facility Type	Facility	Use	Location
Pitches & Pavilions	Cocklebie Pitch and Pavilion	Sports	Stewarton
Pitches & Pavilions	Dunlop Pitch and Pavilion	Sports	Dunlop
Pitches & Pavilions	Pitch and Pavilion, Kilmaurs	Sports	Millhill Avenue, Kilmaurs
Pitches & Pavilions	Pitch and Pavilion, New Farm Loch	Sports	Kilmarnock
Pitches & Pavilions	Pitches and Pavilion, Dean Park	Sports	Kilmarnock
Pitches & Pavilions	Pitch and Pavilion, Knockentiber	Sports	Knockentiber
Pitches & Pavilions	Pitch and Pavilion, Bellfield	Sports	Kilmarnock
Pitches & Pavilions	Pavilion Only, Howard Park, Kilmarnock	Sports	Kilmarnock
Pitches & Pavilions	Lindsey Park and Pavilion, Crosshouse	Sports	Crosshouse

Pitches & Pavilions	Pitch and Pavilion, Newlands Drive	Sports	Kilmarnock
Pitches & Pavilions	Pitch and Pavilion, Riccarton	Sports	Kilmarnock
Pitches & Pavilions	Pitches and Pavilion, Scott Ellis	Sports	Kilmarnock
Pitches & Pavilions	Pitches and Pavilion, Altonhill (to be handed over from developer)	Sports	Kilmarnock
Pitches & Pavilions	Pitch and Pavilion, Moorfield (to be handed over from developer)	Sports	Kilmarnock
Pitches & Pavilions	St Marys Holm Pitch and Pavilion, Galston	Sports	Galston
Pitches & Pavilions	Barrmill Pitch and Pavilion, Galston	Sports	Galston
Pitches & Pavilions	Western Road Pitch and Pavilion, Galston	Sports	Galston
Pitches & Pavilions	Jamieson Road Pitch and Pavilion	Sports	Newmilns
Pitches & Pavilions	Richardson Park Pitch and Pavilion, Hurlford	Sports	Hurlford
Pitches & Pavilions	Pitch and Pavilion, Crookedholm	Sports	Kilmarnock
Pitches & Pavilions	Pitch and Pavilion, Fenwick	Sports	Fenwick
Pitches & Pavilions	Pitch only, Gavin Hamilton Sports Centre	Sports	Darvel
Pitches & Pavilions	Mason Avenue Pitch and Pavilion, New Cumnock	Sports	New Cumnock
Pitches & Pavilions	Beechgrove Terrace Pitch and Pavilion, Mauchline	Sports	Mauchline
Pitches & Pavilions	Park Terrace Pitch and Pavilion, Muirkirk	Sports	Muirkirk
Pitches & Pavilions	Mill Street Pitch and Pavilion, Ochiltree	Sports	Ochiltree
Pitches & Pavilions	Broomfield Park/Track and Pitch, Cumnock	Sports	Cumnock
Pitches & Pavilions	Riverside Park Pitch and Pavilion, Catrine	Sports	Catrine
Pitches & Pavilions	Pitch and Pavilion, Lugar/Logan	Sports	Lugar/Logan
Pitches & Pavilions	Netherthird Pavilion and Pitch	Sports	Netherthird
Pitches & Pavilions	Merlin Pavilion and Pitch	Sports	Auchinleck
Pitches & Pavilions	Pitch and Pavilion, Dalmellington	Sports	Dalmellington
Pitches & Pavilions	Carnshalloch Ave Pitch and Pavilion, Patna (Pavilion temp closed)	Sports	Patna

Pitches & Pavilions	Pitch and Pavilion, Drongan	Sports	Drongan
Pitches & Pavilions	Pitch and Pavilion, Dalrymple	Sports	Darymple

SCHEDULE PART 9 – TRANSFERRING CONTRACTS

Contract Description	Contract Administrator
Appointment of Producer	Janice Gilmour
Provision of Fireworks Display	Ricky Lohel
Event Security Services	Ricky Lohel

SCHEDULE PART 10 -WARRANTIES

1. That the Council has the necessary power and authority to enter into and perform the Agreement and to transfer or procure the transfer of the Assets; and the Agreement constitutes valid and binding obligations of the Council in accordance with its terms.
2. *That the execution and delivery of, and the performance by the Council of its obligations under, the Agreement will not:-*
 - 2.1 constitute a default under any statutory obligation binding upon the Council; or
 - 2.2 result in a breach of any court order, judgement, or decree by which the Council is bound.
3. That the accounts relating to the operations of Leisure Services of the Council for the year ended 31 March 2013 were prepared in accordance with the Council's normal accounting policies and were the subject of internal audit procedures in accordance with the Council's standard practices.
4. That the budget information accounts relating to Leisure Services of the Council for the months within the financial year 2013/2014 up to and including those for the month of June were prepared in accordance with the Council's normal accounting policies.
5. That the operations of Leisure Services of the Council have, throughout the period from 1 April 2013 to the date of this Agreement, been carried on in general conformity with the Budget and Service Plan for the financial year 2013/2014.

SCHEDULE PART 11 – PARTICULARS OF INSURANCES

Insurance Policy	Level of Cover

SCHEDULE PART 12 – LT DATABASE

Staff List details to be inserted