

SERVICES AND FINANCE AGREEMENT

between

EAST AYRSHIRE COUNCIL

and

EAST AYRSHIRE LEISURE TRUST

2013

Re: the provision of cultural, sport and leisure related services  
within East Ayrshire

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## SERVICES AND FINANCE AGREEMENT

between

- (1) EAST AYRSHIRE COUNCIL, incorporated in terms of the Local Government etc. (Scotland) Act 1994 and having a principal office at Council Headquarters, London Road, Kilmarnock, KA3 7BU (the Council"); and
- (2) EAST AYRSHIRE LEISURE TRUST, a Scottish Charitable Incorporated Organisation (SCIO) Registered Number SC043987 and having its principal office at The Dick Institute, 14 Elmbank Avenue, Kilmarnock, KA1 3BU (the Trust").

WHEREAS:-

- (A) In terms of Section 14 of the Local Government and Planning (Scotland) Act 1982 the Council is obliged to ensure that there is adequate provision of facilities for the inhabitants of its area for recreational, sporting, cultural and social activities.
- (B) The Council has resolved to appoint the Trust to maintain and manage numerous sports, leisure, social and cultural facilities owned by the Council within East Ayrshire (all as described in Part A of the Schedule) and that on the terms and conditions of this Agreement, the Asset Transfer Agreement and the Leases.
- (C) The Trust has agreed to accept that appointment on those terms and conditions.
- (D) The Parties agree that the Services constitute services of general economic interest (representing public service obligations) in terms of EU law which are being entrusted by the Council to the Trust, and which the Trust is required to discharge, on the terms of this Agreement.

NOW THEREFORE IT IS AGREED as follows:-

### 1. DEFINITIONS AND INTERPRETATION

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

**"Additional Services and Facilities"** means those services and facilities identified by the Council which are:-

- (a) sporting, cultural, leisure or recreational services and facilities; and
- (b) for use by members of the public,

and which the Council may propose to transfer to the Trust after the Commencement Date;

**"ADR Notice"** has the meaning given to it in Clause 18.4;

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

**"Asset Transfer Agreement"** means the agreement entered into between the Trust and the Council on or about the date of this Agreement relating to the transfer to the Trust of certain assets of the Council as relate to the provisions of sport, cultural, social and leisure related services within East Ayrshire;

**"Break Option"** means the Landlords right to terminate the Lease(s) pursuant to Clause of the Lease(s);

**"Business Day"** means any day which is not a Saturday, a Sunday or a bank holiday in Scotland;

**"Business Plan"** means an annual plan prepared in writing by the Trust in respect of the provision of the Services to identify the expected income and expenditure for the next Financial Year, the Payment and the projected income and expenditure for the two Financial Years following the next Financial Year together with an indication of the likely Payment for each of those two Financial Years, which plan will provide sufficient detail of the specification of services, facilities, proposed improvements or other information as is necessary to vouch for the projected income and expenditure;

**"Business Plan Review"** a Business Plan review carried out pursuant to Clause 3.13;

**"Commencement Date"** means 1st July 2013, notwithstanding the date or dates of the Agreement;

**"Confidential Information"** means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by any party hereto in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, contractors and advisers of any party and all personal data and sensitive personal data within the meaning of the DPA;

**"Council Instructions"** means instructions given by the Council Officer pursuant to Clause 10.1.2;

**"Council Officer"** means the officer appointed by the Council and notified by it in writing to the Trust as being the Council's representative for the purposes of this Agreement;

**"Data Controller"** shall have the same meaning as set out in the DPA;

**"Dispute"** has the meaning given to it in Clause 18.1;

**"Dispute Notice"** has the meaning given to it in Clause 18.2.1;

**"DPA"** means the Data Protection Act 1998;

**"East Ayrshire"** means the municipal area of the Council.

**"Educational Services"** means the Council's Educational and Social Services Department;

**"Emergency Event"** means any civil emergency including but not limited to flood, fire, gas leak or chemical spillage;

**"Employees"** shall have the meaning given to it in the Asset Transfer Agreement;

**"Employee Liability Information"** means the information that a transferor is obliged to notify to a transferee under Regulation 11 (2) of TUPE:

(a) the identity and age of the employee;

- (b) the employees written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Trust arising out of the employees employment with the transferor;
- (e) information about any collective agreement that will have effect after the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**"Employment Liabilities"** means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;

**"Environmental Information"** has the meaning given under section 2(1) of the Environmental Information Regulations;

**"EIRs"** means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issues by the Scottish Information Commissioner or relevant Government department in relation to such regulations;

**"Exit Management Plan"** means any plan agreed between the Council and the Trust from time to time in respect of the provision of the Services on termination of this Agreement and designated as such;

**"Expiry Date"** means the date twenty five years following the Commencement Date, or such later date as may be determined pursuant to Clause 15;

**"Financial Year"** means the period from 1 July 2013 to 31 March 2014 and each period of twelve calendar months ending on 31 March thereafter throughout the Services Period provided that the last such period will be deemed to begin on the 1 April of the year in which this Agreement expires or is terminated and shall end on the date on which this Agreement expires or is terminated;

**"FOI Act"** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time together with any binding guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government department in relation to such legislation;

**"Force Majeure Event"** has the meaning given to it in Clause 26.1;

**"Payment"** means the level of payment identified in the Business Plan and agreed by the Council as the consideration to be paid to the Trust in exchange for the delivery of the Services in the relevant Financial Year having regard to all the contractual commitments of the Trust in relation to the provision by it of the Services;

**"Intellectual Property Rights"** means any and all patents, patent applications and supplementary certificates, petty patents, rights in inventions, registered and unregistered trade marks and service marks (including any trade, brand or business names, and any distinctive smells or sounds used to differentiate goods and/or services), trade and business names (including rights in any get-up or trade dress), registered designs, design rights, utility models, copyright (including all such rights in computer software and any databases), database rights, moral rights and semiconductor topography rights, (in each case for the full period thereof and all extensions and renewals thereof), anywhere in the world, applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world and any similar rights situated in any country; and the benefit (subject to the burden) of any and all agreements and licences in connection with any of the foregoing;

**"Law"** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any legislation or notice of any Regulatory Body;

**"Leases"** means the leases and the licences to occupy entered or to be entered into between the Council and the Trust pursuant to the Asset Transfer Agreement in terms of which the Properties are leased or licensed (as the case may be) by the Council to the Trust, and any future leases or licences to occupy between the Council and the Trust in relation to any additional properties, and 'Lease' shall mean any one of such leases or licences to occupy;

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

**"Overcompensation"** has the meaning given to it in Clause 3.3.2.2;

**"Parties"** means the Council and the Trust;

**"Personal Data"** shall have the same meaning as set out in the DPA;

**"PPP Schools"** means St Joseph's Academy Campus, Grange Academy Campus, Shortlees Primary and Mauchline Primary;

**"Processing"** has the meaning given to it under the DPA and "Process" shall be construed accordingly;

**"Properties"** means the properties owned by the Council, brief particulars of which are set out in Part A of the Schedule;

**"PVG Act"** has the meaning given to it in Clause 2.2.9;

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

**"Rectification Notice"** means a notice served on the Trust by the Council pursuant to Clause 9.1 of this Agreement;

**"Rectification Plan"** means an action plan established by the Trust in response to a Rectification Notice;

**"Regulatory Bodies"** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;

**"Requests for Information"** means a request for information or an apparent request under the FOI Act and/or the Environmental Information Regulations, and "Information" shall be construed accordingly;

**"Required Action"** shall have the meaning given in Clause 10.3;

**"Relevant Transfer"** means a relevant transfer for the purposes of TUPE;

**"Relevant Employees"** means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Trust by virtue of the application of TUPE;

**"Replacement Services"** means any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Trust;

**"Replacement Trust"** means any third party supplier of Replacement Services appointed by the Council from time to time;

**"Schedule"** means the schedule in parts annexed as relative hereto;

**"Schools Estate"** means any school operated or owned by the Council from time to time;

**"Service Employees"** has the meaning given to it in Clause 5.8;

**"Service Transfer Date"** means the date on which the Services (or any part of the Services), transfer from the Trust or Sub-contractor to the Council or any Replacement Trust;

**"Services"** means the services to be delivered by the Trust in respect of each of the Properties as described in the Services Specification;

**"Services Performance Standards" means:-**

- (a) in respect of the first Financial Year, the performance standards and related reporting obligations set out in the Services Specification;
- (b) in respect of each subsequent Financial Year, the performance standards agreed between the Council and the Trust pursuant to Clause 2.5 as being applicable to that Financial Year;

**"Services Period"** means the period commencing on the Commencement Date and expiring on the Expiry Date or (if earlier) the date of termination of this Agreement;

**"Services Specification"** means the standards, specifications, procedures and other requirements set out in Part B of the Schedule;

**"sportscotland"** means the Scottish Sports Council trading as sportscotland in its capacity as the Scottish national agency for sport;

**"Staffing Information"** means, in relation to all persons detailed on the Trust's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;

**"Sub-Contractor"** means the contractors or Trusts engaged by the Trust to provide goods, services or works to, for or on behalf of the Trust for the purposes of providing the Services to the Council;

**"Subsequent Transfer"** shall have the meaning given to it in Clause 12.1;

**"Support Services Agreement"** means the agreement entered into on or about the date of this Agreement between the Council and the Trust pursuant to which the Council shall provide services to the Trust;

**"Trust Business and Assets"** means the business and assets transferred to the Trust pursuant to the Asset Transfer Agreement;

**"Trust Representative"** means the representative appointed by the Trust and notified by it in writing to the Council as being the Trust's representative for the purposes of this Agreement;

**"Trust's Final Staff List"** means the list of all the Trust's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;

**"Trust's Provisional Staff List"** means the list prepared and updated by the Trust of all the Trust's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

**"VAT"** shall have the meaning given in the Value Added Tax Act 1994 and shall include any similar tax whether in substitution thereof or in addition thereto;

**"Warning Notice"** means a notice served by the Council on the Trust pursuant to Clause 9.3 or Clause 9.4;

1.2. References to Clauses or the Schedule are to Clauses of, or the Schedule to, this Agreement and references to sub-clauses are to sub-clauses of the relevant clause, and the Schedule is deemed to be incorporated in this Agreement, and a reference to "this Agreement" includes a reference to the Schedule.

1.3. In this Agreement:-

1.3.1. the table of contents and the clause headings are included for convenience only and shall not affect the construction of this Agreement;

1.3.2. words denoting the singular shall include the plural and vice versa;

1.3.3. a reference to a person includes a reference to his executors, administrators, successors and assignees;



- 1.3.4. references to persons shall be deemed to include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, foundations, trusts, government, supra-governmental body, state agency or local or municipal Council (in each case whether or not having separate legal personality); and
- 1.4. References in this Agreement to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted (whether before or after the date of this Agreement) and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.
- 1.5. Any reference to "writing" or "written" includes faxes and any non-transitory form of visible reproduction of words.
- 1.6. Any reference to the date of this Agreement' shall be deemed to refer to the last date of execution of this Agreement.

## **2. SERVICES AND SERVICES PERFORMANCE STANDARDS**

### Services

- 2.1. The Trust agrees to supply the Services during the Services Period in accordance with the terms of this Agreement.
- 2.2. The Trust shall:-
  - 2.2.1. provide the Services in an efficient, effective and safe manner to the reasonable satisfaction of the Council and in accordance with the Services Performance Standards and any policies and guidance related to the Services issued by the Council (acting reasonably) to the Trust from time to time;
  - 2.2.2. provide the Services in such a manner as shall promote and enhance the image and reputation of the Council and East Ayrshire in respect of cultural, leisure, recreational and sporting activities and in accordance with the law from time to time in force;
  - 2.2.3. establish a system for dealing with any oral or written enquiry (including enquiries in terms of the FOI Act and/or the EIRs) or complaint in a prompt, courteous and efficient manner and record all such communications, all in accordance with relevant statutory requirements and in pursuance of best practice;
  - 2.2.4. not less than four months prior to the commencement of each Financial Year, provide an annual report to the Depute Chief Executive/Executive Director of Neighbourhood Services at East Ayrshire with summaries of the records referred to in Clause 2.2.3 above;
  - 2.2.5. introduce internal systems for monitoring quality assurance performance and outputs. An annual report on performance shall be submitted to the Council each year no later than 1 September in each calendar year commencing in 2014.
  - 2.2.6. not act in a manner, whether in the delivery of the Services or otherwise, which could reasonably be viewed as bringing the Council into disrepute;

- 2.2.7. ensure that appropriate health and safety measures are put in place and carried out within all land and premises (including the Properties) from which the Services are delivered;
  - 2.2.8. only utilise, in the provision of the Services, such personnel as shall possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with this Agreement;
  - 2.2.9. ensure that all staff who are or may undertake Regulated Work (as defined in the Protection of Vulnerable Groups (Scotland) Act 2007 (the PVG Act")), in delivery of the Services, are suitable for the performance of the duties they will undertake, and that all staff are not whether in terms of the PVG Act or any other appropriate legislation, deemed to be a risk either to the service users, the Trust, the Properties or the Council;
  - 2.2.10. employ sufficient staff to ensure that the Services are provided at all time and in all respects in accordance with the Services Specification;
  - 2.2.11. ensure that no advertising shall be displayed at the Properties or in relation to the Services which could reasonably be expected to cause offence or which has been prohibited by the Council, and no advertising of a political nature and no material which could be considered indecent, racial or obscene may be displayed;
  - 2.2.12. ensure that all of its stationery and signage and all advertising, publicity and promotional material relating to the Services clearly indicates in a manner approved by the Council in writing the relationship between the Trust and the Council in relation to the provision of the Services; and
  - 2.2.13. have regard to all reasonable requests by the Council to act in a manner which assists the Council to meet its legal obligations, except insofar as such request may involve significant expenditure of resources or may otherwise prevent the Trust from delivering the Services or meeting its wider obligations.
- 2.3. The Trust recognises that the Council must comply with Sections 1 and 2 of the Local Government in Scotland Act 2003 and the Trust shall facilitate, support and assist the Council in so complying, in so far as it is able to do so.

#### Services Performance Standards

- 2.4. The Trust shall meet the Services Performance Standards in its provision of the Services.
- 2.5. Not less than six months prior to the commencement of the second and each subsequent Financial Year the Council and the Trust shall consult in good faith with a view to agreeing whether the then applicable Services Performance Standards require to be varied for the forthcoming Financial Year and, if so, the nature and extent of such variation.
- 2.6. The Council may require more regular review of the Services Performance Standards where they are reasonably deemed to be required by the Council in order (1) to address any audit observation or requirement, (2) to comply with any statutory or wider legal requirement, (3) to meet any binding guidance or (4) to allow the Council to assess any substantial payment or other resource. In such circumstances both Parties will be bound to act reasonably and in a manner which seeks to meet such requirements, whilst limiting any adverse impact on both parties.

Exercise of Council landlord Lease rights

- 2.7. The Parties agree that, to the extent that the Trust shall be prevented from carrying out the Services as a result of an exercise by the Council (or by a third party authorised to do so by the Council) of the Council's rights as landlord under any Lease, and provided that the Trust shall have taken reasonable steps to mitigate such result, the Trust shall be relieved of its obligation to carry out such Services to such extent.

**3. BUSINESS PLAN**

- 3.1. Not less than three months prior to the commencement of each Financial Year the Trust shall submit its draft Business Plan to the Council for approval. The draft Business Plan shall be prepared on a rolling two year basis and identify:-
- 3.1.1. the resources which the Trust intends to use during the next two Financial Years in performing the Services;
  - 3.1.2. the expected expenditure required to implement the Trust's obligations under this Agreement and the Leases during those Financial Years; and
  - 3.1.3. its proposal for Payment for the two year period.
- 3.2. The Council is committed to ensuring best value and compliance with Scottish Government proposals on continuous improvement in local authorities. To ensure that the Trust can demonstrate best value in delivery of the Services it shall include provisions within its Business Plan to demonstrate its intentions for assisting the Council in delivery of that commitment.
- 3.3. The Parties acknowledge and agree that:-
- 3.3.1. in the context of the current EU law in relation to the provision of state aid the Council requires to ensure that:-
    - 3.3.1.1. the parameters on the basis of which Payment is determined are set out in an objective and transparent manner; and
    - 3.3.1.2. Payment does not exceed what is necessary to cover all or part of the costs incurred in discharging the Services, taking into account all relevant receipts in discharging those obligations;
  - 3.3.2. without prejudice to the other provisions of this Agreement regarding the provision by the Trust of information, the Trust shall provide the Council with such information and access to its records and staff as the Council may reasonably request to allow the Council to:-
    - 3.3.2.1. monitor the level of compensation received by the Trust from time to time in the context of the Services and the Trust's cost base; and
    - 3.3.2.2. form a view as to whether the Payment is at a level that may exceed the overall operating costs of the Trust; and
  - 3.3.3. if the Council (acting reasonably) considers that the payment level is in excess of the Trust's overall operating costs and provides the Trust in writing with reasonable details

of the same then the Council shall be entitled by notice in writing to the Trust to address such by way of:-

- 3.3.3.1. adjustment of the level of the Payment; and/or
  - 3.3.3.2. reduction of, or delay in, the payment of all or part of any instalment the Payment; and/or
  - 3.3.3.3. requiring the repayment of all or part of any instalment of the Payment; and/or
  - 3.3.3.4. any combination of such measures.
- 3.4. The Council and the Trust shall liaise to identify any issues within the draft Business Plan that require to be discussed and agreed. The Trust shall make available to the Council such additional information as the Council may reasonably require to consider the draft Business Plan. The Trust may, as a result of this process, adjust the draft Business Plan.
- 3.5. As soon as reasonably practicable the Council shall either:-
- 3.5.1. approve the draft Business Plan and associated two year payment; or
  - 3.5.2. propose an alternative Payment and/or Services Specification for the relevant Financial Years.
- 3.6. Prior to the Council proposing an alternative Payment and/or Services Specification in accordance with Clause 3.5.2, the Council and the Trust shall consult in good faith with a view to ensuring that the alternative Payment and/or Services Specification is appropriate. Thereafter, the Trust shall consider the Council's proposal and prepare a revised draft Business Plan. Any revised draft Business Plan will be submitted to the Council for approval in terms of the process set out in Clauses 3.2 to 3.5.
- 3.7. The Council and the Trust, shall endeavour to agree a rolling three year Business Plan as soon as possible after the date on which the Council sets the Council Tax and in any event no later than 1 March in each calendar year.
- 3.8. If, following a period of eight months from submission by the Trust of its draft Business Plan in accordance with Clause 3.1, the Business Plan has not been agreed with the Council and the Trust in good faith, after careful consideration and acting properly and reasonably, believes that the alternative Payment and/or Services Specification and/or Business Plan proposed by the Council would not allow the Trust to perform its obligations pursuant to this Agreement then the Trust may terminate this Agreement in accordance with Clause 11.2.
- 3.9. The Parties confirm that the Business Plan for the Financial Year 2013/2014 has been prepared and approved by both the Council and the Trust.
- 3.10. The Trust shall at all times perform the Services in accordance with the Business Plan and the Services Specification. If during the Services Period the Council (acting reasonably) considers that the performance of the Services does not conform to the agreed Business Plan then the Council shall be entitled to:-
- 3.10.1. require the Trust to produce a revised Business Plan reflecting the actual operations of the Services as being performed by the Trust; or
  - 3.10.2. require the Trust to comply with the agreed Business Plan.

## 3.11. Where:-

- 3.11.1. required by the Asset Transfer Agreement or the Leases;
- 3.11.2. the Council exercises its right to terminate the Leases or any of them;
- 3.11.3. there is a claim under Intellectual Property Licence;
- 3.11.4. there is a request by the Trust pursuant to Clause 3.12; or
- 3.11.5. Clause 7.3 applies,

then the Council shall complete a review of the Business Plan in accordance with the provisions of Clause 3.12.

## 3.12. Subject to Clause 3.15, where an additional liability not identified by the Business Plan for the relevant Financial Year or any other unforeseen costs arise the Trust may request the Council to review the Business Plan for the relevant Financial Year to:-

- 3.12.1. identify the extent of the additional liability or costs;
- 3.12.2. assess the impact of the additional liability or cost on the Business Plan, the Services Specification, the Council's obligations under this Agreement and the existing contractual obligations of the Trust; and
- 3.12.3. identify any changes to the Payment or Services Specification required to allow the Trust to properly account for and assume responsibility for that liability or those costs, and the Trust shall make available to the Council such financial, operational and other information as the Council shall reasonably require to complete that review.

## 3.13. The Council and the Trust shall use all reasonable endeavours to ensure that the review of the Business Plan is completed as soon as possible and in any event within one month of the date of the Trust's request pursuant to Clause 3.11.

## 3.14. Following the review of the Business Plan, the Council may, acting reasonably (having regard to all of the relevant circumstances including, but not limited to, the ongoing Services that the Trust will be required to perform following the review, and the level of the Payment), but at its sole option:-

- 3.14.1. adjust the Payment; and/or
- 3.14.2. approve amendments to the Services Specification as appropriate; or
- 3.14.3. determine that no change is required to existing arrangements.

The Council acknowledges that in exercising its option under this Clause 3.14 it shall duly take into account the requirement for the Trust and its Charity Trustees to comply with good business practice and, if requested to do so, will provide explanatory information in respect thereof.

## 3.15. The Parties agree that (unless they agree otherwise in writing) no review of the Business Plan (in accordance with Clause 3.12 or otherwise) shall require to be carried out where the cumulative value of all additional liabilities or unforeseen costs that have arisen in the relevant Financial Year is less than one per cent of the Payment.

- 3.16. If the Council is unable to fund the reinstatement or replacement of any part of the Properties, any item of fixed plant or any item of fixed equipment in accordance with the Parties' obligations under any provision of any Lease or under the Support Services Agreement then the Council and the Trust shall undertake a review of the Business Plan, the Services Specification and the Parties respective obligations under this Agreement the Leases and the Support Services Agreement. Such review shall identify any changes to the Payment and/or the Services Specification required to enable the Trust to provide the Services notwithstanding the Council's inability to fund the reinstatement or replacement of the relevant part of the Properties or item of fixed plant or fixed equipment (as the case may be) and the Parties acknowledge that in such circumstances the Trust shall be deemed not to be in breach of its relevant obligations under the said Lease and the Council shall be deemed not to be in breach of its relevant obligations under the Support Services Agreement.

#### **4. PAYMENT ARRANGEMENTS**

- 4.1. The Business Plan prepared by the Trust on a rolling three year basis and approved by the Council shall identify the Payment for those Financial Years.
- 4.2. The Payment for each Financial Years 1 and 2 is £7,200,000 and shall be paid by the Council to the Trust with any VAT due in respect of such payment.
- 4.3. Subject to Clause 4.2, the Council shall pay the Payment on a financial period basis commencing with an initial payment no later than 1st July 2013 and thereafter on the basis of a schedule of payments to be agreed between the parties.
- 4.4. The Trust shall be responsible for the payment of all tax liabilities which it incurs in the supply of the Services.
- 4.5. The Trust shall issue the Council with a valid VAT invoice not less than ten Business Days in respect of all agreed payment dates referred to in Clause 4.3.
- 4.6. Payment by the Council of the Payment should not be interpreted as approval of the outputs in any period by the Trust with any subsequent unresolved disputes subject to a potential recovery of funds.
- 4.7. In the event that the Council has not approved a Business Plan pursuant to Clause 3, the Council shall continue to pay the Payment at the level for the previous Financial Year agreed at the commencement of or during the previous Financial Year, and with reference to the services required by the previous year's Business Plan (as the same may have been adjusted in accordance with this Agreement) until such time as the Business Plan for the new Financial Year is approved. Following approval of the Business Plan there shall be an adjustment to the Payment to address any under or overpayment already made.
- 4.8. The Council may require the Trust to accept the transfer of any of the Additional Facilities on the same basis and subject to the same terms and conditions as the Asset Transfer Agreement applicable to the Properties, in which case the Payment shall be reviewed and agreed by the Parties in accordance with a Business Plan Review.
- 4.9. It is hereby expressly declared and agreed between the parties that in consideration of the payment as detailed above the Trust will provide the Services as detailed in the Schedule 1 annexed hereto to the Council.

## **5. EMPLOYEES**

- 5.1. The Trust shall, in respect of all persons employed or seeking to be employed in respect of the provision of the Service comply with each and every provision of law governing the employment relationship including any laws which prohibit discrimination in relation to employment.
- 5.2. Other than in relation to the engagement of the Employees, the Trust shall at all times act with all due diligence and care, in the manner of a prudent employer, in the engagement of any person in connection with the provision of the Services and in particular the Trust shall not engage any such person unless it shall have obtained satisfactory references in respect of any such person and subject to the provisions of the Data Protection Act 1998 and the Police Act 1997, has carried out such checks as the Trust may lawfully undertake to establish that no such person has any unspent and, where appropriate, spent criminal convictions in terms of the Rehabilitation of Offenders Act 1974 that makes them unsuitable for employment in the provision of the Services.
- 5.3. The Trust shall recognise the freedom of its employees to be members of Trade Unions in accordance with the provisions of Section 23 of the Employment Protection (Consolidation) Act 1978.
- 5.4. The Trust shall ensure that appropriate health and safety measures are detailed and carried out within each of the Properties and normal operating procedures are detailed, reviewed as required.
- 5.5. The Trust shall not make any award in relation to the early retirement or voluntary early retirement of any employee employed in relation to the Services without having obtained the prior consent of the Council, such consent not to be unreasonably withheld or delayed and subject always to financial arrangements in respect of any such award being agreed between the Parties.
- 5.6. The Trust undertakes that it will not exercise any power to increase benefits, or provide different benefits, or exercise any discretions under the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland Regulations 2008, the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 or the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, in respect of any Employee without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.
- 5.7. The Trust shall develop and adopt a code of conduct for its employees, which will define the responsibilities of its employees on matters of probity, in accordance with all regulatory requirements with which the Trust is obliged to comply and the Trust shall produce a copy of such code of conduct to the Council for examination upon request. The Trust shall keep a register of gifts and hospitality in a form consistent with regulatory requirements and shall produce a copy to the Council for examination upon request.
- 5.8. The Trust will not be entitled to change the terms and conditions of employment of the Employees or any of the terms and conditions offered to Service Employees without first negotiating and consulting on the same with all recognised trade unions, or in the event of there being no recognised Trade Unions, duly appointed employee representatives appointed by the employees for that purpose. In particular the Trust will not be entitled to impose any new terms or conditions on any Employee or Service Employee without such agreement except where

such imposition is explicitly required (and not simply permitted) by any statutory provision. Declaring further that no such change will be permitted unless and until the Council has had reasonable opportunity to comment on the same and the parties have taken account of such reasonable comments in determining the provisions of any amendment to the terms and conditions, always having regard to the Council's role as reversionary employer as narrated in Clause 5.11.

- 5.9 The parties hereto agree that the Council has an interest in the terms and conditions of employment and other provisions governing the relationship between the Trust and its Service Employees as it may be the reversionary employer on the operation of the Transfer Regulations and the Section 52 Guidance upon the expiry or termination of this Agreement. Accordingly the Trust will have regard at all times to the reasonable observations and suggestions of the Council in respect of the terms and conditions and wider employee relations where they may subsequently impact on the Council's relationships with the Service Employees upon such reversion.

## **6. ONGOING OBLIGATIONS OF THE TRUST**

### Corporate Governance

- 6.1 The Trust shall adopt a Code of Conduct, in terms approved by the Council, which will define the roles and responsibilities of the members of its Board of Charity Trustees, provide guidance on matters of probity and establish a process for the resolution of representation and control issues such as conflicts of interest.
- 6.2 The Trust shall ensure that it has in place appropriate policies of insurance against any loss or liability which its Charity Trustees may sustain or incur in connection with the execution of their duties of office.
- 6.3 It will be the responsibility of the Trust to ensure that adequate and comprehensive systems of internal control are in place, which should include consideration of establishing an Audit Committee, and to identify an officer within the Trust's structure who shall have responsibility for the financial stewardship of the Trust

### Financial Control and Rights of Audit

- 6.4 The Trust shall adopt financial regulations and guidance for financial management in terms approved by the Council.
- 6.5 The Trust shall arrange for regular audits of its financial systems, and shall ensure that appropriate internal financial control mechanisms are in place. Detailed records of income and expenditure, admission figures and bookings shall be kept by the Trust. The Council reserves the right to inspect such records at any reasonable time on giving reasonable notice during the Services Period. In carry out any such inspection the Council shall use all reasonable endeavours to minimise disruption to the Trust's activities and delivery of the Services. The Trust shall arrange for regular audits of its financial systems and shall appoint an independent external auditor to carry out at least an annual audit of the financial records by a registered auditor. The accounts of the Trust should be prepared on an accruals basis.
- 6.6 The Trust shall permit the Council's internal and external auditors access to its records (financial and non-financial), staff and assets at reasonable times and on reasonable notice. The Trust shall assist the Council in discharging its statutory and other obligations to disclose information to any government department, the Scottish Government, the Scottish Ministers,



the Scottish Parliament, and/or regulatory or fiscal body or other body responsible for the audit of the Council by providing copies of such information and records as is reasonable in the circumstances.

- 6.7 The Trust shall permit the Council's internal auditors to have access to the Trust's external auditors and their outputs.
- 6.8 The Trust will report any suspected or known defalcations or corrupt practices to the Council timeously.

#### Periodic Reporting

- 6.9 The Trust shall provide to the Council;
- 6.9.1 reports in accordance with the Services Specification. In particular, the Trust will provide a written report on an agreed frequency for consideration by the Council's Cabinet but in any event no less than every eight weeks. The report will include financial information and performance information in a format to be agreed by the Head of Finance and will be sufficiently detailed to allow the Council to assess the effectiveness with which the Trust is carrying out its operational and financial affairs. In addition, the Trust will provide the Council on a four weekly basis a financial projection in a format to be agreed by the Head of Finance of the anticipated financial position at the end of the current Financial Year;
- 6.9.2 a copy of:-
- 6.9.2.1 the unaudited accounts for each Financial Year within two months of the end of that Financial Year;
- 6.9.2.2 the audited accounts for each Financial Year within six months of the end of that Financial Year;
- 6.9.2.3 an Annual Governance Certificate in a format and at a time to be determined by the Council; and
- 6.9.3 such further information as the Council requires to enable the Council to assess any financial and operational estimates which are included within the Business Plan, the written reports referred to in Clause 6.8.1, or any other financial or operating reports to the Council.

#### Indemnity

- 6.10 The Trust agrees to indemnify the Council in respect of any losses, claims, liabilities, damages and costs arising from the acts or omissions of the Trust or anyone for whom the Trust is responsible at law resulting in:-
- 6.10.1 death or personal injury to any person;
- 6.10.2 damage to the property of the Council of any kind; and
- 6.10.3 breach of any applicable law or legislation, and which arise out of or in consequence of the Trust exercising its rights under, performing or failing to perform its obligations under this Agreement, the Asset Transfer Agreement, the Leases or the Support

Services Agreement or the presence of the Trust and anyone for whom the Trust is responsible at law on any of the Properties.

- 6.11 The indemnity contained in Clause 6.9 shall not extend to any loss, liability or claim which arises directly out of any breach by the Council of its obligations under this Agreement.

#### Property

- 6.12. In the event that the Council exercises a Break Option the Parties agree that the Payment and/or the Services Specification will be reviewed as a Business Plan Review.

## **7. ONGOING OBLIGATIONS OF THE COUNCIL**

#### Schools Estate

- 7.1. The Parties agree that within 3 months of the Commencement Date, they shall agree a protocol to allow the Trust reasonable access to the Schools Estate for the delivery of the any element of the Services. Such protocol will address the following matters:
- 7.1.1. that the Trust will be granted such access as permits them to deliver, (1) the level of service previously delivered by the Council, and (2) such reasonable enhancements as may be required to meet agreed improvements or enhancements to the the Services;
  - 7.1.2. the areas within the Schools Estate which may be accessed by the Trust on a school by school basis;
  - 7.1.3. the times during which the Trust will have access to the Schools Estate, on a school by school basis, including a provision for an annual review of such times;
  - 7.1.4. the provision of an outline annual programme of events by both Parties (commencing in August of each year) to identify dates when access is anticipated as necessary for particular purposes and when the premises may not be available due to school requirements;
  - 7.1.5. an agreed procedure for ensuring that use by the Trust does not interfere with school use, community lets nor the maximisation of income from the school premises, whilst also ensuring that such uses permit sufficient leeway for the Trust to meet its obligations under this Agreement;
  - 7.1.6. an agreement that where the proposed or actual use by the Trust results in costs to the Council which would not have occurred but for the use or proposed use by the Trust (including for the avoidance of doubt, use of any bank of community hours within PPP Schools resulting in a year-end shortfall of such hours and a charge being levied on the Council by any operator of such schools), then the Trust will reimburse such sums, or if agreed between the parties acting reasonably, such percentage of these sums as arises directly from such use by the Trust;
  - 7.1.7. an agreement between the Parties to co-operate to minimise the costs of such use of the Schools Estate through co-ordinating periods of use so far as possible, whilst still permitting the Trust to meet its obligations under this Agreement;
  - 7.1.8. an agreement that the Trust will have access to such facilities within the Schools Estate as are necessary for the purpose of delivering initiatives and programmes in conjunction with Educational Services;

- 7.1.9. an agreement that the Council will use all reasonable endeavours (not involving substantial additional cost) to facilitate the Trust having access to the Schools Estate for the purposes of the provision of Sports Development services.
- 7.2. Until such time as such protocol shall have been agreed, and subject to the other provisions of this Agreement, the Trust will be granted such access to the Schools Estate on the same basis as the current Sports Development service had access to it prior to the Commencement Date.
- 7.3. Following the agreement or any adjustment to the protocol referred to in Clause 7.1 the Parties agree that the Payment and/or the Services Specification will be reviewed as a Business Plan Review.

## **8. FAILURE TO PERFORM**

- 8.1. At any time during the Services Period the Council may investigate each instance where it appears to the Council that the Trust has failed to perform all or any of the Services in accordance with the provisions of this Agreement. Where the Council is satisfied that a failure has occurred it shall be entitled to instruct the Trust to remedy the failure and to comply therewith within such period as it may determine acting reasonably and with full regard to the nature of the failure.
- 8.2. Where the Trust fails to remedy a failure in accordance with Clause 8, the Council may issue a Rectification Notice in accordance with Clause 9.

## **9. RECTIFICATION PROCEDURE**

- 9.1. If the Trust fails to comply with the Council's requirement under Clause 3.10.1, or an instruction of the Council under Clause 8.1, the Council may issue to the Trust a notice in writing (a "Rectification Notice") advising the Trust of that fact and requiring the Trust to prepare in writing and provide to the Council an action plan to rectify the situation.
- 9.2. Following the service of a Rectification Notice, the Trust shall prepare and provide to the Council for its agreement a Rectification Plan. Both Parties shall act reasonably in agreeing the Rectification Plan.
- 9.3. Where the Trust fails to establish a Rectification Plan within two months of the issue of a Rectification Notice, the Council may issue to the Trust a notice in writing of that fact (a "Warning Notice").
- 9.4. Where the Trust fails to implement a Rectification Plan in accordance with its terms the Council may issue to the Trust a notice in writing of that fact (also a "Warning Notice").
- 9.5. Following the service of a Warning Notice, the Trust will establish and agree with the Council a Final Rectification Plan. Both Parties shall act reasonably in agreeing the Final Rectification Plan.
- 9.6. If in a period of six consecutive months following the issue of a Warning Notice referred to in Clause 9.3, the Trust has:-
- 9.6.1. failed to establish and agree with the Council a Final Rectification Plan; or

- 9.6.2. failed to implement a Final Rectification Plan in accordance with its terms, then the Council will be entitled to terminate this Agreement, the Asset Transfer Agreement, the Leases and the Support Services Agreement.

## **10. EMERGENCY EVENTS**

- 10.1. If an Emergency Event occurs the Council shall be entitled:-
- 10.1.1. to occupy all or any part of the Properties and use the equipment therein; and/or
- 10.1.2. to issue instructions ('Council Instructions') to the Trust in respect of any of the Properties, in order to discharge the Council's statutory obligation to prevent, eliminate, mitigate or accommodate the effects of the Emergency Event. The provisions of Part E of the Schedule shall apply in relation to such occupancy.
- 10.2. Without prejudice to Clause 10.1, the Council shall use reasonable endeavours to liaise with the Trust in connection with the Emergency Event as soon as reasonably practicable after the occurrence of the Emergency Event. In doing so the Council shall inform the Trust of the action being taken by the Council and provide such information as may be reasonably required by the Trust for management purposes.
- 10.3. Where the Council is occupying all or any part of the Properties under Clause 10.1 the Council shall take such action as it reasonably believes is necessary (the "Required Action") to address the Emergency Event and the Trust shall give all reasonable assistance to the Council (including without prejudice to the foregoing, instructing keyholders and janitorial staff) while it is taking such Required Action.
- 10.4. For so long as and to the extent that the Required Action is taken and/or Council Instructions are issued, and this prevents the Trust from providing any part of the Service:-
- 10.4.1. the Trust shall be relieved from its obligations to carry out or provide such part of the Service as is affected by the Required Action and/or Council Instructions and the Trust will not be in breach of its obligations under this Agreement by not doing so; and
- 10.4.2. in respect of the period in which the Council is taking the Required Action and/or issuing Council Instructions the Payment due from the Council to the Trust shall equal the amount the Trust would receive if it were discharging all its obligations and providing the Services affected by the Required Action or Council Instructions in full over that period together with any incremental costs incurred by the Trust in complying with the Council's Instructions. There shall also be factored in to the Business Plan and taken account of in the setting of the Payment any sum received or receivable by the Council from any governmental body in respect of the use of such part of the Properties in relation to such Emergency Event.
- 10.5. The Council shall indemnify the Trust against losses, claims, liabilities, damages and costs suffered by the Trust as a direct result of the Council exercising its rights under Clause 10.1.
- 10.6. The Council shall as soon as reasonably practicable notify the Trust that:-
- 10.6.1. the Required Action has been completed; or
- 10.6.2. that the Trust is required to commence delivery of the Service affected by the Required Action on the expiry of not less than five Business Days notice or such shorter period as is agreed between the Parties. The Council shall remain responsible for the provision

of the Service affected by the Required Action up to expiry of such notice or, if later, the end of the period agreed between the Parties pursuant to this Clause 10.

## **11. TERMINATION**

### **11.1. If:-**

11.1.1. the Trust fails to observe or perform any of its material obligations under this Agreement and such failure is not capable of being remedied; or

11.1.2. the Trust fails to observe or perform any of its material obligations under this Agreement (other than a failure which is capable of being the subject of a Rectification Notice) and such failure is capable of being remedied but is not remedied within fifteen Business Days (or such longer period as the Parties may agree taking into account the nature of the failure) after the Trust being required by notice in writing to do so by the Council; or

11.1.3. the Trust fails to establish and agree or implement a Final Rectification Plan pursuant to Clause 9.6; or

11.1.4. the Council exercises its right to terminate all, or a majority, of the Leases; or

11.1.5. the Trust ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or undertaking, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order is made or resolution passed for its dissolution whether compulsorily or voluntarily or shall suffer any analogous event, then the Council shall be entitled by notice in writing given to the Trust terminate this Agreement and the provision of the Services hereunder with immediate effect.

11.2. The Trust may terminate this Agreement in accordance with Clause 3.8 by giving not less than twelve months prior written notice to the Council.

## **12. EMPLOYMENT EXIT PROVISIONS**

12.1. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ('Subsequent Transfer'). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Trust will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

12.2. The Trust shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Trust in the provision of the Services, the Trust's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Trust shall notify the Council of any material changes to this information as and when they occur.

12.3. At least 14 days prior to the Service Transfer Date, the Trust shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Trust, the Trust's Final Staff List, which shall be complete and accurate in all material respects. The Trust's Final Staff List shall identify which of the Trust's personnel named are Relevant Employees.

- 12.4. The Council shall be permitted to use and disclose the Trust's Provisional Staff List, the Trust's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Trust for any services that are substantially the same type of services as (or any part of) the Services.
- 12.5. The Trust warrants that the Trust's Provisional Staff List, the Trust's Final Staff List and the Staffing Information (the TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Trust's Final Staff List
- 12.6. The Trust shall and shall procure that any Sub-contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 12.7. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Trust shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 12.8. In the six months prior to termination of this Agreement, the Trust shall not materially increase or decrease the total number of staff listed on the Trust's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.
- 12.9. The Trust shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Trust against all Employment Liabilities relating to:
- 13.9.1. any person who is or has been employed or engaged by the Trust or any Sub-Contractor in connection with the provision of any of the Services; or
  - 13.9.2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Trust and/or any Sub-Contractor),
  - 13.9.3. arising from or connected with any failure by the Trust and/or any Sub-Contractor to comply with any legal obligation, (including but not limited to) whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 12.10. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

### **13. CONSEQUENCES OF TERMINATION**

- 13.1. Termination or expiry of this Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 13.2. The provisions of Clauses 17 to 27 (inclusive) shall survive termination (for whatever reason) or expiry of this Agreement.
- 13.3. In the event of termination or expiry of this Agreement for any reason:

- 13.3.1. the Trust shall grant a renunciation of the Leases (if the Council has not exercised its right to terminate them) and the Council shall be bound to accept that renunciation accordingly;
  - 13.3.2. the Council shall be entitled to terminate the Support Services Agreement;
  - 13.3.3. the provisions of the Exit Management Plan shall, if directed by the Council, come into effect and the Trust shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a New Supplier;
  - 13.3.4. if requested to do so by the Council, the Trust shall assign to the Council or to a New Supplier (as the Council may direct) any contracts relating to the Services to which the Trust is party;
  - 13.3.5. the Trust shall (subject to Clause 14.4) transfer to the Council or to a New Supplier (as the Council may direct) ownership of the Trust Business and Assets (insofar as it owns the same) and of all other assets acquired by the Trust using funds (wholly, or in conjunction with other funds) and used by it in connection with the Services;
  - 13.3.6. the Trust shall (subject to Clause 14.4) assign to the Council or to a New Supplier (as the Council may direct) its whole right, title and interest in and to all Intellectual Property Rights owned by the Trust and used by it in connection with the Services;
  - 13.3.7. the Trust shall transfer to the Council or to a New Supplier (as the Council may direct) all records held by it (or on its behalf) in connection with the Services; and
  - 13.3.8. the Trust will immediately pay to the Council all sums then due to the Council under this Agreement.
- 13.4. The transfers and assignments of referred to in Clause 13.3 shall be conditional upon the Council undertaking in writing to the Trust that the Council shall (or shall procure that the New Supplier shall) use the relevant assets, contracts and rights solely for charitable purposes (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005).

## **14. ELECTIONS**

- 14.1. The Council shall be entitled to occupy any part of the Properties upon giving reasonable notice to the Trust for the purposes of elections and referenda and the Trust shall give all reasonable assistance to the Council (including without prejudice to the foregoing, instructing keyholders and janitorial staff) for the purposes of such occupation. The provisions of Part D of the Schedule shall apply in relation to such occupancy.
- 14.2. The Trust shall in terms of East Ayrshire Council's Special Leave Policy grant to Employees Special Leave where such Employees have volunteered to perform public service duties in connection with any elections or referenda held at any of the Properties or otherwise organised or administered by the Council.
- 14.3. A reasonable letting fee in respect of such occupancy by the Council shall be factored in to the Business Plan and taken account of in setting the Payment. Such fee shall fairly reflect any sum received or receivable by the Council from any governmental authority in respect of the use of such part of the Properties for the purpose of such elections and referenda.
- 14.4. The Trust shall be relieved from its obligations to carry out or provide such part of the Service as is affected by the Council's actions pursuant to this Clause and the Trust will not be in

breach of its obligations under this Agreement by not doing so. The Council acknowledges and agrees that the Business Plan may, if appropriate, be adjusted to reflect any loss of revenue by the Trust arising from the Council's actions pursuant to this Clause.

## **15. COUNCIL OPTION TO EXTEND**

- 15.1. The Council shall be entitled to extend the period of this Agreement by a period of up to three years by giving notice in writing to that effect to the Trust no later than twelve months prior to the Expiry Date. If the Council exercises its right under this Clause 15.1 the Expiry Date shall be revised accordingly. If the Council does not exercise its right under this Clause 15.1 this Agreement shall terminate on the Expiry Date.
- 15.2. If the Council exercises its right under Clause 15.1 it shall be entitled, no later than twelve months prior to the Expiry Date (as revised in accordance with Clause 15.1) to give written notice to the Trust that this Agreement will terminate on such revised Expiry Date. If the Council fails to give written notice in terms of this Clause 15.2, this Agreement shall continue on a rolling two-year basis until terminated by either Party giving not less than twelve months' notice in writing to that effect.

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

- 16.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.
- 16.2 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:-
- 16.2.1 act only on instructions from the Trust; and
- 16.2.2 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
- 16.2.3 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.
- 16.3 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.
- 16.4 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.
- 16.5 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.
- 16.6 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.



- 16.7 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.
- 16.8 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.

## **17. DISPUTE RESOLUTION PROCEDURE**

- 17.1. If a dispute arises out of or in connection with this Agreement (a Dispute") then, except as expressly otherwise provided in this Agreement, the Parties shall follow the procedure set out in this Clause 18.
- 17.2. Either Party shall give to the other notice in writing of the dispute (the Dispute Notice"), setting out its nature and reasonable particulars with the relevant supporting documentation. On service of the Dispute Notice, the Council Officer and the Trust Representative shall seek in good faith to resolve the dispute.
- 17.3. If the Council Officer and the Trust Representative are unable to resolve the dispute within twenty Business Days of service of the Dispute Notice then the dispute shall be referred to the Chief Executive of the Trust and the Chief Executive of the Council who shall attempt in good faith to resolve the dispute.
- 17.4. If the Chief Executive of the Trust and the Chief Executive of the Council are unable to resolve the dispute with twenty Business Days of it being referred to them, then the matter may, if agreed by the Parties, be referred to a mediator for mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("ADR notice") to the other Party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice. Unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator. If any matter arising out of or in connection with this Agreement is referred to mediation the Trust shall remain responsible for the provision of the Services throughout the period of mediation.
- 17.5. The fees of the mediator and the cost of mediation shall be borne equally by the Parties.
- 17.6. No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## **18. NOTICES**

- 18.1. Without prejudice to Clause 18.4, any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the Party giving it and may be served by delivering it personally to the address of the relevant Party set out in Clause 18.3 or by sending it by facsimile to the facsimile number set out in Clause 18.3 (provided that a copy shall be sent by first class mail), pre-paid recorded delivery to the address of the relevant Party set out in Clause 18.3.
- 18.2. Any notice so served shall be deemed to have been received:-
- 18.2.1. if delivered personally, at the time of delivery;

18.2.2. in the case of a notice sent by pre-paid recorded delivery, forty eight hours after the date of posting;

18.2.3. in the case of a notice sent by facsimile, if the notice was sent during the business hours of the addressee then on the day of transmission, and otherwise on the next following Business Day.

For the purposes of this Clause "business hours" means the hours of 9.00am to 4.45pm.

18.3. Any notice required to be given under this Agreement shall be sent to the following:-

18.3.1. in the case of the Council:-

Position: Chief Executive

Address: Council Headquarters, London Road, Kilmarnock, KA3 7BU

Facsimile Number: 01563 576500

18.3.2. in the case of the Trust:-

Position: Chief Executive East Ayrshire Leisure Trust

Address: The Dick Institute, 14 Elmbank Avenue, Kilmarnock, KA1 3BU

Facsimile Number: 01563 554311

or to such other address or facsimile number as is notified in writing from time to time by the Council or the Trust (as the case may be) to the other Party to this Agreement.

18.4. Notwithstanding any other provision of this Agreement, any notice to be served or instruction to be given pursuant to Clause 10 (*Emergency Events*) may be validly served or given by email to such electronic address as shall be notified to each Party from time to time in which case the notice shall be deemed to have been received on receipt of an electronic read-receipt from the recipient of the notice or on the expiration of four hours from the time it was sent, whichever is the later.

## **19. VARIATION AND WAIVER**

19.1. No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the Parties.

19.2. Any waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving or consenting Party and it applies only in the circumstances for which it is given and shall not prevent the Party who has given the waiver or consent from subsequently relying on the provision it has waived.

19.3. No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

19.4. No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

- 19.5. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**20. COSTS**

Save as expressly provided otherwise in relation to any matter in this Agreement, the Parties shall pay their own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.

**21. SEVERABILITY**

If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

**22. ASSIGNATION**

The Trust shall not be entitled to assign or transfer its rights and/or obligations under this Agreement (in whole or in part) without the prior written consent of the Council.

**23. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

**24. ENTIRE AGREEMENT**

This Agreement and all agreements entered, or to be entered into, pursuant to the terms of this Agreement or entered into between the Council and the Trust in writing and expressly referring to this Agreement:-

- 24.1. together constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and
- 24.2. (in relation to such subject matter) supersede all prior discussions, understandings and agreements between the Parties and their agents (or any of them) and all prior representations and expressions of opinion by any Party (or its agent) to any other Party (or its agent).

Each of the Parties acknowledges that it is not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter hereof, save those expressly set out in this Agreement and other documents referred to above, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any Party.

**25. FORCE MAJEURE**

- 25.1. A Party, provided that it has complied with the provisions of Clause 25.3, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents

beyond its reasonable control (including, without prejudice to that generality, strikes or lockout) (a "Force Majeure Event").

- 25.2. The corresponding obligations of the other Party will be suspended to the same extent as those of the Party first affected by the Force Majeure Event.
- 25.3. Either Party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
  - 25.3.1. it promptly notifies the other Parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
  - 25.3.2. it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
  - 25.3.3. it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 25.4. If the Force Majeure Event prevails for a continuous period of more than six months, either Party may terminate this Agreement by giving not less than fifteen Business Days notice in writing to the other Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

**26. APPLICABLE LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the Law of Scotland and each of the Parties submits to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding pages together with the Schedule are executed as follows:-

SUBSCRIBED for and on behalf of  
EAST AYRSHIRE COUNCIL  
by  
at

on the    day of

.....

Authorised Signatory

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 foregoing Service Agreement between East Ayrshire Council and East Ayrshire Leisure Trust

SCHEDULE

Part A - The Properties

<b>Facility Name</b>	<b>Facility Address</b>
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

Part B - The Services Specification

**1. DEFINITIONS**

In this Services Specification each of the following expressions has, except where the context otherwise requires, the meaning shown opposite it:-

**"Community Facilities"** means those Facilities denoted as such in paragraph 3.3;

**"Dry Activities"** means all activities made available and undertaken at the Facilities other than the Wet Activities;

**"Event Services"** means the management of certain events by the Trust on behalf of the Council in accordance with Section 7 of this Services Specification;

**"Facilities"** means the community facilities and leisure facilities in place at the Properties as set out in clause 3.3;

**"Good Industry Practice"** means the standard which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Performance Standards, the term, the pricing structure and either relevant factors;

**"Leisure Facilities"** means those Facilities denoted as such in paragraph 3.3;

**"Leisure Services"** means the operation of the Facilities to be carried out by the Trust in accordance with Section 4 of this Services Specification;

**"Service Users"** means users of the Services including, without limitation, users of the Facilities;

**"Single Outcome Agreement"** means the local authority single outcome agreement between the Council and the Scottish Government;

**"Sports Development Service"** means the sports development service operated by the Council prior to the date of this Agreement and to be operated by the Trust in accordance with Section 5 of this Service Specification;

**"Strategic Objectives"** means the strategic objectives of the relevant Services to be delivered by the Trust as set out in the relevant section of this Services Specification;

**"Training Courses"** means the training courses on First Aid at Work to be delivered by the Trust pursuant to section 8 of this Services Specification and the expression "Training Course" shall mean any one of them;

**"Training Services"** means the training in First Aid at Work to be provided by the Trust in accordance with Section 8 of this Services Specification;

**"User Charges"** has the meaning given in paragraph 3.4.1;

**"Wet Activities"** means all swimming pool and health suite activities made available and conducted at the Facilities.

## **2. FRAMEWORK**

### **2.1. Legal Framework**

2.1.1. The Council is required to ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities, pursuant to Section 14 (1) of the Local Government and Planning Scotland Act 1982.

2.1.2. The Trust, is a Scottish Charitable Incorporated Organisation which was registered/incorporated on 2 May 2013 as a vehicle for delivery of leisure and cultural facilities by the Council. The Trust is a charitable leisure trust registered with the Office of the Scottish Charity Regulator (OSCR) with Scottish Charity Number SC043987.

2.1.3. The Trust acquired the title and interest of certain assets owned and used by the Council for delivery of leisure services on 1 July 2013 in terms of the Business Transfer Agreement and entered into the Leases and Licences to Occupy in respect of the Properties. The Trust has been appointed to manage and operate the Properties on behalf of the Council on the terms of this Agreement and plays a key role in assisting the Council in meeting its statutory obligations.

2.1.4. This Services Specification details the services to be provided by the Trust in managing and operating the Properties in consideration for which the Trust will receive the Payment from the Council. This Services Specification is neither exhaustive, exclusive, nor prescriptive, but provides a broad indication of the outcomes of the service provision, and levels of service delivery and outlines the responsibilities of the parties in accordance with the corporate vision and policies of the Council in order to support the Council in carrying out its statutory duty for sport and leisure provision.

2.1.5. The Council is keen to ensure that the successful partnership arrangement with the Trust is maintained and improved in order to continue to provide excellent best value cultural, sport and physical activity services to the residents of and visitors to East Ayrshire.

2.1.6. This Services Specification forms a constituent part of, and should be read in conjunction with the other provisions of this Agreement and the following documents:

- The East Ayrshire Leisure Trust Three Year Business Plan;
- East Ayrshire Community Plan 2003-2015;
- The Leases and Licences to Occupy;
- The Asset Transfer Agreement;
- The Constitution of East Ayrshire Leisure Trust.

### **2.2. Policy & Strategic Framework**

#### **2.2.1. National & Local Strategic Context**

The Council operates within a policy framework with regard to sport and leisure services enshrined in the following documents:-

- 2.2.1.1. East Ayrshire Community Plan 2003-2015;
- 2.2.1.2. East Ayrshire Sports Strategy 2009-2013;
- 2.2.1.4. East Ayrshire Community Planning Partnership Single Outcome Agreement 2013-2015
- 2.2.1.5. East Ayrshire Council Transformation Strategy
- 2.2.1.6. Curriculum for Excellence;
- 2.2.1.7. GIRFEC;
- 2.2.1.9. East Ayrshire Council and Education Authority Equality Outcomes 2013-2017.
- 2.2.2. The Trust will co-operate with the Council in implementing, as appropriate, action plans in accordance with the strategies listed in paragraph 2.2.1 above as such strategies are amended, renewed or replaced from time to time.
- 2.2.3. The Trust shall have regard to the strategies and policies set out in paragraph 2.2.1 above when delivering the Services.
- 2.2.4. Equality Impact Assessment

The Council has carried out an Equality Impact Assessment in connection with delivery of the Services receipt of which the Trust acknowledges by its execution of this Agreement. The Trust shall be mindful of the Council's approach to promoting and ensuring equality of opportunity and the terms of the Equality Impact Assessment when developing policies and delivering the Services.

- 2.2.5. The Trust, being the major provider of cultural, sport and leisure services in the East Ayrshire area will be required to assist the Council by jointly leading in the formulation of cultural, sport and physical activity related strategies.
- 2.2.6. The Trust will co-operate with the Council in progressing the development and implementation of the Review of Community Facilities.

### **2.3. Outcomes of the Services**

- 2.3.1. This Agreement represents a working partnership between the Trust and the Council to achieve identified outcomes for the communities of and visitors to East Ayrshire, associated with the effective management and development of culture, sport and leisure.
- 2.3.2. The Council aims to provide, or enable to be provided, working in partnership with the Trust, the very best sport and physical activity services that current resources allow.

The Trust undertakes to have regard to the outcomes set by the Council from time to time in furtherance of this aim when delivering the Services.

## **2.4. The General Conditions of the Services Specification**

### **2.4.1. Revenue Expenditure**

The Trust shall be responsible for all revenue expenditure relating to the operation of the Properties and delivery of the Services unless it is detailed in this Services Specification as being the responsibility of the Council. In particular and for the avoidance of doubt, the Trust is responsible for the payment of the following:

- National Non Domestic Rates, Water and Sewerage Rates;
- Payment of utility charges;
- The purchase of all consumables relating to the operation of the Services;
- The purchase, repair and maintenance of items of plant, equipment, furniture and fittings unless expressly identified as being the responsibility of the Council;

The Council is responsible for the payment of the following:

- Capital charges;
- The payment of costs relating to the Council maintenance and repair responsibilities as detailed in this Agreement, the Leases and the Licences to Occupy.
- Property Insurance in respect of the Properties
- Insurances of fixed items of plant and equipment and any other insurances in connection with the Business (as defined in the Asset Transfer Agreement) or provision of the Services;

### **2.4.2. Following the Public Pound**

The Council and the Trust will apply the Accounts Commission and the Convention of Scottish Local Authorities "Code of Guidance on Funding External Bodies and Following the Public Pound" to the operation of the relationship between the Trust and the Council to ensure clear public accountability and robust monitoring of the performance of the Trust with a view to securing quality services in the most effective, efficient and economic manner.

Both parties will also ensure that the principles of openness, integrity and accountability are enshrined within the operation of this Agreement

### **2.4.3. Freedom of Information and Data Protection**

The Trust shall comply with the requirements of the Freedom of Information (Scotland) Act 2002 and Data Protection Act 1998 and assist the Council with any requests relating to the Services or the provision thereof by the Trust.

## **3. GENERAL DESCRIPTION OF SERVICES**

### **3.1. Services to be provided by the Trust**

- 3.1.1. The Properties to be managed and operated by the Trust in accordance with this Agreement are set out in Part A of the Schedule and includes a wide range of cultural, sports and leisure facilities, including museums, country parks, swimming pools, sports centres, athletics facilities, sports pitches and public theatres.

- 3.1.2. The Properties are occupied by the Trust pursuant to the Leases and the Licences to Occupy.
- 3.1.3. The Trust will be responsible for providing cultural activities, sports facility management, sports development, community fitness, sport and physical activity access, and sports based inclusion and health improvement services and recreational activities within the Properties and throughout East Ayrshire. Without prejudice to the generality of the foregoing, the Trust will be responsible for providing the following Services:-
  - 3.1.3.1. Leisure Services as detailed in Section 3 below;
  - 3.1.3.2. the Events Services as detailed in Section 6 below;
- 3.1.4. The Trust will be responsible for providing any catering, vending and hospitality services within the Properties.
- 3.1.5. The Council will provide maintenance and repairs services to all of the Properties in accordance with the Leases, the Licences to Occupy and the Transitional Services Agreement.
- 3.1.6. Where any Service is stated in this Services Specification to be subject to a specific Service Performance Standard, the Trust shall provide that Service in such manner as will ensure that the standard of performance actually achieved by the Trust in provision of that Service is equal to or higher than such specific Service Performance Standard in accordance with Clause 2 of the Agreement.

### **3.2. Improvements, Expansion, Reduction and Variations to the Service**

- 3.2.1. The Council acknowledges that the Trust must be responsive to changing trends in the sport and leisure industry, evolving customer needs and expectations, legislative and regulatory changes, new Government and Council policy relating to sport and physical activity and the use of new technology etc. The Trust accepts that such changes may necessitate an increase or decrease in the Services or other charge to the nature of the Services during the course of this Agreement.
- 3.2.2. Additionally, the Council acknowledges that there may be certain unforeseen circumstances and market forces that could significantly affect the provision of Services as described in this Services Specification.
- 3.2.3. The Trust shall inform the Council of opportunities to improve, expand or reduce the provision of the Services in accordance with the policies of the Council.
- 3.2.4. The Council will keep under review the opportunity to improve, expand or reduce the Services and will work with the Trust to agree and implement any changes that may be required in accordance with the Agreement.

### **3.3. Annual Review of the Services Specification**

- 3.3.1. The Services Specification shall be reviewed annually during the period of this Agreement ('a Trust) and adjusted if required in accordance with the relevant Business Plan to take into account any changes in service requirements of the Council or to accommodate changes in internal and/or external circumstances of the Council.

3.3.2. On completion of any Services review in accordance with paragraph 3.3.1, either Party may make a proposal for a change to the Services.

### **3.4. Charges**

3.4.1. All prices and charges levied on Service Users by the Trust for use of the Facilities (the "User Charges") shall be reviewed annually by the Trust and take effect on such date in each year as shall be agreed between the Council and the Trust.

3.4.2. The Trust shall ensure that the User Charges are of a level which encourages usage from all parts of the community with special consideration being given to how the proposed User Charges will contribute to inclusion and achieving optimum community participation, whilst at the same time providing cost effective services.

3.4.3. The Trust shall have discretion to fix and alter User Charges and fix promotional User Charges in accordance with a sound business strategy whilst ensuring that the policies of the Council are adhered to provided that the Trust gives 90 days' prior written notice of any change to the User Charges.

3.4.4. The Council reserves the right to instruct the Trust to amend prior to implementation any proposed increase or reduction to User Charges which may conflict with the policies of the Council or adversely affect the provision of other Council services.

### **3.5. Vetting (Employees/Volunteers and Hirers of Facilities)**

3.5.1. The Trust is responsible for training employees and volunteers in the Council's policy on the Protection of Vulnerable Group (Scotland) Act 2007.

3.5.2. The Trust shall:-

3.5.2.1. ensure that all individuals engaged in provision of the Services, all volunteers and all hirers of the Facilities are subject to a valid enhanced disclosure check undertaken through Disclosure Scotland or other appropriate vetting procedures in accordance with the Council's policy on Protecting Vulnerable Groups and the Protection of Vulnerable Group (Scotland) Act 2007;

3.5.2.2. monitor the level and validity of such checks for each such individual.

## **4. LEISURE SERVICES: CULTURAL, LEISURE AND COMMUNITY FACILITIES**

### **4.1. Policy and Strategic Framework**

4.1.1. The Trust shall operate all facilities at each of the Properties in a manner which meets the strategic objectives of the Council. The Trust will provide accessible and safe facilities to give citizens of all ages within East Ayrshire the opportunity to participate in a wide range of Culture, Leisure and Community Facilities ("the Services") which contribute positively to their health and well being.

4.1.2. The national and local strategic context of the Council will govern the service output of the Services. The Trust will maintain a close relationship with the Council and its partners.

4.1.3. Without prejudice to its general obligation to provide the Services described in paragraph 4.1.1, the Trust shall actively consult and engage with relevant partners who may assist the Trust in meetings its obligations and objectives pursuant to this Agreement.

4.1.4. The Services Descriptions and Services Performance Standards set out in this Services Specification may be added to or otherwise modified from time to time to meet any changes to the Strategic Objectives of the Council (as defined in paragraph 4.4.1 below) and where otherwise required by the Council. Costs incurred by such additions or modifications shall be met by the Council.

## **4.2 The Trust**

4.2.1 The purposes of the Trust include:

- i) To advance the arts, heritage, culture and science;
- ii) To advance public participation in sport;
- iii) To provide recreational facilities, and organise recreational activities with such facilities/activities being made available to members of the public at large with the object of improving their conditions of life;
- iv) To advance education;
- v) To advance health;
- vi) To advance citizenship and/or community development (which may include the promotion of civic responsibility, volunteering, the voluntary sector and/or the effectiveness or efficiency of charities);
- vii) To relieve those in need by reason of age, ill health, disability, financial hardship or other disadvantage; and
- viii) To promote, establish, operate and/or support other similar schemes and projects which further charitable purposes.

### **Scope of Services**

4.2.2 The Trust will be responsible for a wide range of facilities and activities currently delivered by East Ayrshire Council covering the following service areas:

- i) Management of sports and community facilities, including joint use facilities on school sites. Facilities include Ayrshire Athletics Arena, Stewarton Sports Centre, Doon Valley Leisure Centre and sports pitches and pavilions. Community facilities may also include those currently in the Community Learning and Development remit.
- ii) Management of Arts and Museum Services, Dean Castle Country Park and Countryside Ranger Service. Buildings include Dean Castle, Palace Theatre/Grand Hall, Dick Institute (Museums and Galleries), Doon Valley Museum, Baird Institute and Burns House Museum.
- iii) Management of community library/buildings and mobile libraries, and Family History services. Facilities include: Dick Institute (Library), Cumnock Library, Burns Monument Centre, Galston Library, (Local Office and Registration Services, currently located in a few of these properties, will remain with the Council).



- iv) A Sports Development Officer will transfer from Leisure Development Services to co-ordinate sports development activities in the Trust. (Leisure Development Services will remain with The Council's Community Learning and Development Services)

### **Priorities and Objectives**

- 4.2.3 The initial priority will be to the business objectives agreed by East Ayrshire Council defined within the Business Plan.
- 4.2.4 The delivery of the core objectives outlined in the Trust's Action Plans will form its operational framework. This is a detailed set of objectives, shown in the Business Plan, which charts the core operational outputs and outcomes that East Ayrshire Council wishes to achieve through the Trust and links directly to the Community Plan and the Council's Leisure and Cultural Strategy. These plans will be further developed in future by the Trust's Board in who will subsequently seek East Ayrshire Council agreement to any revisions.

### **Service Realignment/Redesign**

- 4.2.5 During the first year of the Business Plan the Trust will review operational requirements and functions. It will create a strong brand identity, based around a whole service ethos, coupled with a sharp and customer focused Service delivery.
- 4.2.6 The Trust will assist the Council to make £2.1m of savings during the first three years of operation. This will be achieved through NDR exemption and other efficiencies associated with the transfer along with a review of community facilities to be implemented during the early years of the Trust business.

## **4.3 National and Local Initiatives**

### **Legislation**

- 4.3.1 The work of the Trust will be set within the context of the core legislative framework which drives the business. Most notably, this legislation includes the following: The Public Libraries Consolidation (Scotland) Act 1887, The Local Government (Scotland) Act 1973, The Local Government (Scotland) Act 1994, and the Land Reform (Scotland) Act 2003.
- 4.3.2 All Trust Services also have a duty to comply with various pieces of equality legislation, including the Disability Discrimination Act (1995) and (2005), the Race Relations Act (1976) and Race Relations (Amendment) Act (2000), and the Equality Act 2006.

## **4.4 Leisure and Cultural Strategy**

- 4.4.1 The Leisure and Cultural Strategy was adopted by East Ayrshire Council in 2009 and was developed by all sections of the Service. It consists of two parts. The first is a general overview of leisure and culture. It shows why they are important, what drives the services, where Leisure can demonstrate partnership working and work towards meeting other targets, such as improving health and lowering crime statistics and lastly sets out the key aims for leisure and culture over a three year period.
- 4.4.2 The second part contains action plans which detail key delivery partners and shows strategic links with the Community Plan and other linked plans.

- 4.4.3 The Leisure and Cultural Strategy will continue to be developed and implemented by The Trust. The overall document will be reviewed by 2014 to take account of the structural changes that have taken place to facilitate the establishment of The Trust and to develop a more co-ordinated approach to the delivery of leisure and cultural services.

#### **4.5 Links to the Community Plan and Single Outcome Agreement**

- 4.5.1 The Trust, in developing and maintaining service plans, will continually seek to meet the priorities of the Community Plan and the Single Outcome Agreement. All sections within the Trust will deliver services that reflect the 4 underlying themes, as set out below.
- 4.5.2 The Trust will also provide, on an annual basis, the information necessary for the Council to achieve its commitments as defined by East Ayrshire's Community Plan, including relevant Thematic Action Plans, and reported annually through the East Ayrshire Community Planning Partnership Single Outcome Agreement:

##### **Delivering Community Regeneration**

- 4.5.3 The Trust will contribute to the Delivering Community Regeneration theme of the Community Plan under Local Outcome *"Increasing visitor numbers to each of our key attractions and area"*.

##### **Improving Health and Wellbeing**

- 4.5.4 The Trust will contribute to the Improving Health and Wellbeing theme of the Community Plan under Local Outcomes *"Active, healthy lifestyles and positive behaviour change promoted"* and *"Children and young people, including those in early years and their carers, assisted to be active, healthy, nurtured and included"*

##### **Promoting Lifelong Learning**

- 4.5.5 The Trust will contribute to the Promoting Lifelong Learning theme of the Community Plan under Local Outcome *"Literacy and numeracy skills for children, young people and adults improved"*.

#### **4.6 Public Performance Reporting.**

- 4.6.1 In accordance with statutory requirements, performance information relevant to the services covered by the Trust will be incorporated within the Council's arrangements for public performance reporting to ensure coherent and regular reporting to stakeholders.
- 4.6.2 The Trust will provide to the Council all necessary information (on a 4 weekly period basis) which allows it to measure performance against all previously identified statutory and non-statutory performance indicators. This will be done by the Trust populating EPMS (the Council's Electronic Performance Management System) or providing the Council with the necessary information to allow it do so.
- 4.6.3 The Trust will keep public performance reports information up to date. In addition, the Council will require other business performance information in support of its corporate reporting requirements including, budgetary control, absence management, customer complaints, and other actions associated with service plans.

4.6.4 The Trust will also provide performance indicators in respect of the Audit Scotland suite of Statutory Performance Indicators, namely:

- Number of attendances per 1,000 population for all pools

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	2,507	2,433	2,393	2,517	2,722
Scotland	3,502	3,515	3,446	3,320	3,466

**Calculation = (Total attendances for all pools/Mid-Year Population Estimate)\*1,000**

- Number of attendances per 1,000 population for indoor sports and leisure facilities excluding pools in a combined complex

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	5,254	6,035	7,070	7,391	7,970
Scotland	4,372	4,761	4,890	5,431	5,655

**Calculation = (Total attendance for other indoor sports and leisure facilities, excluding pools in a combined complex /Mid-Year Population Estimate)\*1,000**

- Number of visits to/usages of council funded or part funded museums expressed per 1,000 population

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	2,376	2,785	2,184	2,231	2,235
Scotland	1,907	1,836	1,917	1,837	2,314

**Calculation = (Number of visits to/usages of council funded or part funded museums/Mid-Year Population Estimate)\*1,000**

- Number of visits that were in person expressed per 1,000 population

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	1,658	1,729	1,589	1,580	1,525
Scotland	1,566	1,340	1,386	1,268	1,547

**Calculation = (Number of visits that were in person/Mid-Year Population Estimate)\*1,000**

- Number of visits to libraries expressed per 1,000 population

	2007/08	2008/09	2009/10	2010/11	2011/12
<b>East Ayrshire</b>	<b>4,444</b>	<b>4,579</b>	<b>4,748</b>	<b>4,624</b>	<b>4,274</b>
<b>Scotland</b>	<b>5,623</b>	<b>5,819</b>	<b>5,983</b>	<b>6,114</b>	<b>6,127</b>

**Calculation = (Number of visits to libraries/Mid-Year Population Estimate)\*1,000**

### **Non Statutory Performance Reporting**

4.6.5 The Trust will report on, or develop systems for reporting on, the following non statutory performance indicators on a 4 weekly basis (unless otherwise stated):

- Average number of days lost due to staff absence 2012/13:

	<b>Number of Employees</b>	<b>Total Days Lost</b>	<b>Average per employee</b>
<b>Sport</b>	<b>59</b>	<b>664</b>	<b>11.25</b>
<b>Cultural Dev/Collections Care/Palace</b>	<b>37</b>	<b>303.5</b>	<b>8.20</b>
<b>Countryside</b>	<b>14</b>	<b>33</b>	<b>2.36</b>
<b>Libraries</b>	<b>82</b>	<b>288</b>	<b>3.51</b>

- Percentage of customers satisfied with (reported annually)

	2005	2008	2011
<b>Libraries</b>	<b>74%</b>	<b>81%</b>	<b>90%</b>
<b>Arts + Museums</b>	<b>33%</b>	<b>57%</b>	<b>71%</b>
<b>Parks, Playparks, Open Spaces</b>	<b>34%</b>	<b>55%</b>	<b>62%</b>
<b>Recreation and sports facilities</b>	<b>39%</b>	<b>44%</b>	<b>60%</b>
<b>Swimming Pools/Leisure Facilities</b>	<b>37%</b>	<b>43%</b>	<b>54%</b>

**Source: East Ayrshire Council Residents Survey 2011**

## **4.7 Facilities**

4.7.1 The Trust shall maintain and operate in terms of a Licence to Occupy the following Leisure Facilities in place at each of the following Properties ("the Facilities"):-

<b>Facility Type</b>	<b>Facility</b>	<b>Use</b>	<b>Location</b>
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

## 5. Service Description and Performance

### **CULTURE – including Cultural Development/Collection Care/Palace and Grand Hall Complex/Libraries**

- 5.1 The Culture Teams deliver a range of innovative arts, museums and library services for the benefit of East Ayrshire residents and visitors to the area which meet the Council's social, cultural and economic objectives.

The teams work in partnership with a wide range of community and funding organisations to ensure programmes are delivered and opportunity and participation is realised. The team manages a wide range of buildings from which it delivers its development programmes.

The aims and performance indicators utilised to measure the success of Cultural Development, Collection Care and Palace and Grand Hall Complex and Libraries are as follows:

Section	Culture
<b>Aims</b>	<ul style="list-style-type: none"> <li>• To increase participation by young people in the arts and museums activities</li> <li>• To develop creative learning zones (education workshops spaces in venues) that are inspirational and feed aspirations</li> <li>• To develop creative communities in East Ayrshire in partnership with the arts and museums team</li> <li>• To improve awareness of East Ayrshire's cultural offer</li> <li>• To upgrade arts and museums facilities to enhance the quality of visitor experience</li> <li>• To encourage greater interaction from all sections of the community with the arts and museums programmes</li> <li>• To provide maximum physical and intellectual access to all our arts and museums services/collections</li> <li>• To provide free &amp; subsidised access to all arts and museums venues and performances</li> <li>• To provide new skills for the community through the arts and museums services</li> <li>• To implement the Percentage for Arts Policy for all new building works in East Ayrshire</li> <li>• Ensure that Libraries play a key role in communities</li> <li>• Increase participation in activities in libraries.</li> <li>• Provide a wide and balanced range of library materials for all groups.</li> <li>• Develop and enhance library buildings</li> <li>• Promote access to information to enable users to make informed choices.</li> <li>• Ensure that all residents and potential visitors are aware of what East Ayrshire Library Services has to offer</li> </ul>
<b>Indicators</b>	<ul style="list-style-type: none"> <li>➤ Total staff cost as % total cost</li> <li>➤ Cost per visit across arts and museum facilities</li> <li>➤ Attendance all arts and museum venues</li> <li>➤ No. of tickets sales per 1000 population sold at Palace and Grand Hall</li> <li>➤ No. of visits to council funded or part funded museums that were in person per 1000 population</li> <li>➤ Visits to/usage of council funded or part funded museums per 1000 population</li> <li>➤ Number of visits to <a href="http://www.eastayrshireleisure.com">www.eastayrshireleisure.com</a></li> <li>➤ Number of visits to <a href="http://www.futuremuseum.com">www.futuremuseum.com</a></li> <li>➤ Number of visitors to Libraries</li> <li>➤ Number of Visits to Council Libraries per 1000 population</li> <li>➤ % of the resident population who are Library borrowers</li> <li>➤ Number of times learning centre terminals are used per 1000 population</li> <li>➤ Percentage of resident population who use learning centres</li> <li>➤ EALRIS – time taken to satisfy requests (days)</li> <li>➤ Library additions per 1000 population - Adult</li> <li>➤ Library additions per 1000 population - Children</li> <li>➤ Library stock per 1000 population - Adult</li> <li>➤ Library stock per 1000 population - Children</li> </ul>

*Sport – including sport and facility management/Ayrshire Athletics Arena/ Sport Development*

- 5.2 The Sport team is responsible for the management of Games Halls, Sports Centres, Community Halls, Golf Clubs, Football Pavilions and event programmes.

The teams work in partnership with a variety of agencies such as schools, the Police Scotland and East Ayrshire Sport Council Clubs to ensure services are widely available and enhanced wherever possible. The team manages many of the buildings under the East Ayrshire Leisure remit. The aims and performance indicators utilised to measure the success of Sport are as follows:

Section	Sport
<b>Aims</b>	<ul style="list-style-type: none"> <li>• To manage and maintain a range of community facilities including sports, educational and community facilities</li> <li>• To provide a range of activities within facilities that meet local demand</li> <li>• To provide a range of activities that meet the sporting, play, social and educational aspirations of individuals, organisations and communities</li> <li>• To provide access to sports pitches for the people of East Ayrshire</li> <li>• To maintain the Council's golf facilities to a high standard</li> </ul>
<b>Indicators</b>	<ul style="list-style-type: none"> <li>➤ Games Hall attendance</li> <li>➤ Games Hall Revenue</li> <li>➤ Attendance at Indoor sport &amp; leisure facilities (excluding pools) per 1000 population</li> <li>➤ Swimming Pool attendance Doon Valley Leisure Centre</li> <li>➤ Swimming pool attendance per 1000 population (in conjunction with Galleon)</li> <li>➤ Number of rounds of golf played.</li> </ul>

*Countryside – including Countryside Development*

- 5.3 Countryside Development team provides high quality, innovative, countryside development services for the benefit of East Ayrshire residents and visitors to the area which meet the Council's social, cultural and economic objectives.

Countryside Development manages the Dean Castle Country Park and the access to the countryside across East Ayrshire through the path network to the River Ayr. The Ranger service provides a range of dynamic education and outreach opportunities for people of all ages. The team reaches out to all areas of East Ayrshire.

The aims and performance indicators utilised to measure the success of the Culture and Countryside Service are as follows:

Section	Countryside
<b>Aims</b>	<ul style="list-style-type: none"> <li>• To increase participation by young people in the Countryside activities</li> <li>• To develop learning zones that are inspirational and feed aspirations</li> <li>• To improve awareness of East Ayrshire's countryside offer</li> <li>• To upgrade Countryside facilities to enhance the quality of visitor experience</li> <li>• To encourage greater interaction from all sections of the community with Countryside programmes</li> <li>• To provide new skills for the community through the Countryside development</li> </ul>



	<p>activities</p> <ul style="list-style-type: none"> <li>• To promote and protect the natural environment for residents and visitors to East Ayrshire</li> </ul>
<b>Indicators</b>	<ul style="list-style-type: none"> <li>➤ Environmental education numbers</li> <li>➤ Ranger Event Numbers</li> <li>➤ Users of River Ayr walk</li> <li>➤ Visitor Centre Numbers</li> <li>➤ DCCP visitor numbers</li> </ul>

## **6. Marketing**

6.4.1 Supporting service delivery is the basis of the various marketing strategies. A critical factor in success will be the ability to develop robust customer analysis information that can test the success of programmes and indicate new ways in which the service should be developed .

6.4.2 The Marketing Plan is a critical document that will be reviewed annually and will be linked directly to the Business Plan. It shows how marketing resources will be targeted to meet the outcomes of the Action Plan referred to in the Business Plan.

## **7. FACILITY OPERATION**

### **Opening Times**

7.1.1 Current opening hours of all facilities will be maintained but will be subject to future review.

### **Maintenance**

7.1.2 To facilitate maintenance of the Facilities, the Trust shall be allowed reasonable closure periods throughout the duration of this Agreement.

7.1.3 The Trust shall be compensated by the Council for such closure periods as a result of ongoing maintenance work. The quantification of any such payments of Compensation shall take place as part of the financial review process.

7.1.4 In the event of a closure of all or part of the Facilities owing to unforeseen emergency conditions, the Trust shall notify the Council as soon as practicable.

### **The Council's Capital Programme**

7.1.5 The Leisure Trust will be expected to support the delivery of the Council's capital programme whenever capital projects involve Council facilities or buildings managed by the Trust. Staff with appropriate skills and experience may be required to lead or support Project Boards or Implementation teams established to delivery Capital programme projects. The Council will ensure that any requirement for support from Trust staff is notified to the Trust well in advance.

### **Industrial Action**

7.1.6 The Trust shall immediately inform the Council of any potential or actual industrial action, whether such action be by the Trust employees or others, which affects their ability at any time to fulfil the performance of the Services within the Services Agreement.

- 7.1.7 In the event of industrial action by the Trust's staff, the Trust shall seek written approval from the Council for the Trust's proposals to maintain the Service. Any reduction of the Service for which the Trust is responsible may result in the Council exercising its rights pursuant to clauses 10 (Rectification Procedure) or 12 (Termination) of this Agreement.
- 7.1.8 In the event of industrial action by anyone other than the Trust or the Services Provider's staff which may impinge upon the delivery of the Service, the Trust may be entitled to compensation for loss of income which shall be at the discretion of the Council.

Provisions regarding elections and referenda

1. The Council shall be entitled to make use of the facilities within the Properties for the purposes of operating polling stations, counting votes and declaring results for the following elections/referenda:-
  - general elections/bye-elections to the UK Parliament
  - Scottish Parliament elections/bye-elections
  - European Parliament elections
  - local authority elections/bye/elections
  - any referendum.
2. The Council shall be entitled to use such of the Properties as shall be specified by the Council to the Trust for the purposes detailed in paragraph 1, together with such other ancillary facilities as may, in the Council's sole discretion, be required depending on the circumstances of the election/referendum being held.
3. The days and times during which the facilities specified as referred to in paragraph 2 shall be required and used for the purposes detailed in paragraph 1 shall be as specified by the Council in its sole discretion and shall vary depending on the circumstances of the election/referendum being held.
4. In the event of the facilities specified as referred to in paragraph 2 being unusable for the purposes detailed in paragraph 1, due to unforeseen circumstances beyond the control of either the Council or the Trust, the Council's business continuity arrangements provide that equivalent facilities within alternative Properties shall be used for the purposes detailed in paragraph 1.
5. In the circumstances outlined in paragraph 4, the Council shall be entitled to use facilities within the Properties which are, in the Council's sole discretion, equivalent to those specified by it pursuant to paragraph 2 for the purposes detailed in paragraph 1. The provisions of paragraph 3 shall apply in respect of such equivalent facilities.

Provisions regarding Emergency Events

1. The Properties are approved emergency centres in the event of a major incident occurring within East Ayrshire requiring the evacuation of a large number of people.  
  
It should be noted that there are other approved emergency centres which do not form part of the Properties.
2. Usage of any of the Properties as an emergency centre will usually take one or more of the following forms:-
  - **Rest Centre/Survivor Reception Centre.** A rest centre or a survivor reception centre is a place of safety where people who have been evacuated from an area of risk can

receive immediate welfare assistance, including shelter, food, and hot drinks, dry/clean clothing, comfort and support, and advice and information. It may be opened for a short or prolonged period depending on the circumstances prevailing at the time.

- **Emergency Feeding Centre.** An emergency feeding centre is opened to provide food and refreshments for people who may need to be evacuated, or who cannot remain at home. An example is houses that are without power for a prolonged period of time.

Where, by reason of the nature or locality of any emergency, the Council, acting reasonably, deems it appropriate to use any of the Premises for another use, they may do so, subject to any subsequent determination by a mediator, as to whether such use was justified. In such circumstances, the parties will apply these provisions as they would any other emergency centre use.

3. When a decision has been taken to evacuate an area at risk and to open an emergency centre, the most suitable such centre will be selected. Where the emergency centre is to be opened in one of the Properties, arrangements will be made with the manager of the Property to have the Property opened, if it is not already opened.
4. During a Property's use as an emergency centre, the Property will remain open for 24 hours a day, although the leisure facilities available to the public will only be so available for the Property's normal operational hours.
5. In the event of a Property being used as an emergency centre, the scale of the usage of the Property as such will depend on the scale of the emergency. If necessary, the normal operation of the Property will be adversely affected and activities or lets of facilities will require to be relocated, rescheduled or cancelled.
6. The operation of an emergency centre within a Property will be governed by the Council's approved Rest Centre Plan as amended from time to time. In particular, where an emergency centre has been operated within a Property, the Council will make good any damage to the Property caused by its operation as an emergency centre as soon as reasonably practicable after operation of the emergency centre has been ceased.

**EAST AYRSHIRE COUNCIL**

**EAST AYRSHIRE LEISURE TRUST**

**SUPPORT SERVICES AGREEMENT**

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**SCHEDULE**

PART 1 – SERVICES AND FEES

PART 2 – CHANGE CONTROL PROCEDURES

## AGREEMENT

between

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

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

### WHEREAS:

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

NOW IT IS HEREBY AGREED:

## 1 DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"TUPE Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purposes of implementing the Acquired Rights Directive (2001/123/EC) into UK law;

**"VAT invoice"** means a VAT invoice complying with Part II1 of the Value Added Tax Regulations 1995.

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

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

## **2 THE TERM**

- 2.1 This Agreement shall commence on the Commencement Date and, subject to clause 10, shall continue for a period of three Contract Years ("the Initial Period") unless extended by written agreement between the Parties in accordance with clause 2.2.

- 2.2 With effect from the expiry of the Initial Period and subject to clause 2.3, this Agreement, and the provision of the Services under it, shall be capable of extension for rolling periods of one Contract Year (each a "Renewal Period") by written agreement between the Parties.

- 2.3 Not less than two months prior to the expiry of the Initial Period and any Renewal Period, the Parties will conduct a business review of the Services provided during the Contract Year in which that review is taking place and shall consult with each other as to whether any of the Individual Services or all of the Services should be provided during any subsequent period, giving due consideration to the principles of best value.

- 2.4 Where the Parties agree that any of the Individual Services or all of the Services can and will be provided for a subsequent Renewal Period, the Council shall issue a written notice (the "Services Renewal Notice") to the Trust, specifying:-

2.4.1 the Individual Services to be provided (or the provision of which is to be procured) by the Council to the Trust during the subsequent Renewal Period; and

2.4.2 the charges that shall be payable by the Trust to the Council in respect of the provision (or the procurement of the provision) of those Individual Services,

and the terms of this Agreement shall be deemed to be amended to reflect the terms of the Services Renewal Notice, with effect from the expiry of the Initial Period, or as the case may be, the expiry of the previous Renewal Period.

- 2.5 For the avoidance of doubt, the information contained within any Services Renewal Notice shall reflect the outcome of the discussions between the Parties as to the scope and extent of the Individual Services to be provided and the level of the charges payable in respect of the provision (or the procurement of the provision) of those Individual Services.

## **3 PROVISION OF SERVICES**

- 3.1 In consideration of the Charges, the Council will provide the Services with effect from the Commencement Date in accordance with the terms and conditions of this Agreement.

- 3.2 The Council will provide the Services:-

3.2.1 with all reasonable skill and care and in accordance with all generally accepted standards and practices applicable to the Services or services similar to the Services;

3.2.2 in proper, diligent, expeditious and professional manner,

3.2.3 in accordance with the terms of this Agreement and in accordance with any specific obligations outlined in Sections X to X of Part 1 of the Schedule; and

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

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

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

## **5 INTELLECTUAL PROPERTY**

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

## **6 CHARGES**

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

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

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

## **7 WARRANTIES**

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

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

## **8 LIABILITY AND INDEMNITY**

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

8.1.1 a breach of any of the warranties given by the Council in this Agreement;

8.1.2 a breach or failure to perform the Council's obligations under this Agreement;

8.1.3 the negligence, recklessness or wilful misconduct of the Council or its employees, agents or contractors in the course of providing the Council Services;

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

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

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

8.3.1 a breach of any of the warranties given by the Trust in this Agreement;

8.3.2 a breach or failure to perform the Trust's Responsibilities;

8.3.3 the negligence, recklessness or wilful misconduct of the Trust, its employees, agents, contractors or otherwise,

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

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

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



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

## **9 PARTIAL TERMINATION**

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

## 10 TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

## **11. CONSEQUENCES OF TERMINATION**

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

## **12 TUPE**

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

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

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

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

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

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

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

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

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

### **13 DOCUMENTATION**

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

### **14 COSTS**

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

## **15 REVIEW**

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

## **16 REPORTS**

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

## **17 DISPUTE RESOLUTION**

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

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

## **18 HEALTH AND SAFETY**

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

## **19 SECURITY**

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

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

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

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

- 20.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.

- 20.2 Where the Council, as part of the provision of Services under this Agreement, processes personal data on behalf of the Trust, then in relation to such personal data the Council shall:-

20.2.1 act only on instructions from the Trust; and

20.2.2 comply with the Trust's instructions in relation to the processing of such personal data, as such instructions are given and varied from time to time by the Trust; and

20.2.3 take all appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data.

- 20.3 The provisions of clause 20.2 shall apply in relation to any personal data processed by the Trust on behalf of the Council under this Agreement as if each reference in that clause to the Council were a reference to the Trust and vice versa.

- 20.4 For the purposes of clause 20.2, the terms "personal data" and "processing" shall have the meanings ascribed to them in the Data Protection Act 1998.

- 20.5 The Trust acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the Act") and the Environmental Information (Scotland) Regulations 2004 ("the Regulations") and acknowledges in particular that the Council may be required to provide information relating to this Agreement or the Trust to any person on request in order to comply with the Act or the Regulations.

- 20.6 Where the Council seeks to consult the Trust in connection with a request for information made under the Act or the Regulations the Trust will facilitate the Council's compliance with the Act or the Regulations by responding timeously to the Council.

- 20.7 In the event that the Trust is or becomes a designated Scottish public authority by Order of the Scottish Ministers under Section 5 of the Act the Trust shall comply with the said Act and the Regulations.

- 20.8 Where the Trust receives a request for information, pursuant to Clause 20.7 or otherwise, which relates to or is likely to have an effect on the interests of the Council, the Trust shall consult with the Council before responding to such request.



**21 COUNCIL'S PERSONNEL**

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

**22 DISCRIMINATION**

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

**23 PUBLICITY**

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

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

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

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

## **24 AMENDMENTS TO THIS AGREEMENT**

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

## **25 NOTICES**

- 25.1 All notices and notifications under this Agreement shall be given or issues by letter or by other written document, or by way of facsimile transmission or other visible electronic means.
- 25.2 A notice or notification under this Agreement shall (subject to clauses 25.3 and 25.4) be deemed to be duly given:-
  - 25.2.1 in the case of a letter or other written document, when delivered;
  - 25.2.2 in the case of facsimile transmission or other visible electronic means (provided that any relevant answerback has been received) when despatched;

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

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

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

## **26 FORCE MAJEURE**

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

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

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

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

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

## **27 NON-SOLICITATION**

- 27.1 Subject to clause 27.2, for the duration for this Agreement and for a period of 12 months thereafter, neither Party will, without the prior written consent of the other, whether directly or indirectly, either for itself or for any other person, firm or company, engage, employ or otherwise actively solicit for employment any person who, during the relevant period, was an employee of the other.
- 27.2 Nothing in clause 27.1 shall prevent either Party from engaging or employing any person who, during the relevant period, was an employee of the other Party where that individual made an unsolicited response to a general recruitment advertisement issued by the Party which is engaging or employing him/her.

**28 AUDIT**

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

**29 ASSIGNATION AND SUB-CONTRACTING**

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

**30 SEVERABILITY**

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

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

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

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

**31 WAIVER**

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

## **32 WAIVER RIGHTS**

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

## **33. FAILURE TO PERFORM**

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

## **34. RECTIFICATION PROCEDURE**

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

**35 INDEPENDENT CONTRACTORS**

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

**36 LAW AND JURISDICTION**

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

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

SEALED with the common seal of EAST AYRSHIRE COUNCIL and SUBSCRIBED

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

..... Authorised Signatory

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

At

On

By

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

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

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

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

Before this witness

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

\_\_\_\_\_  
Address

\_\_\_\_\_

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

**PART 1 – THE SERVICES AND FEES**

**EAST AYRSHIRE COUNCIL**

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

**Schedule A – Standard Services**

**Schedule B – Non Standard Services**

**Schedule C – Service Availability**

**Schedule D – Place of Delivery**

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

**Schedule F – Contact Arrangements**

**Schedule G – Problem Escalation**

**Schedule H – Fees and Expenses**

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

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## **HUMAN RESOURCES**

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

### **Employee Relations**

Provision of HR Business Partner approach in the following activities:

#### **Recruitment and Selection**

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

#### **Appointments**

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

#### **Payroll**

Managing a Payroll function which will include to:

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

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

Provision of a case management support to:

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

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

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



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

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

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

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

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

#### **Employee Relations**

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

#### **Equality and Diversity**

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

#### **Policy Development**

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

**Change Management**

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

**External Service Provision**

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

**Organisational Development**

Provision of HR Business Partner approach in the following activities:

**In-service training**

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

**Further Education**

- Administer enrolment of employees at Further Education establishments

**Employee Review and Development**

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

**DEMOCRATIC SERVICES**

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

**Administration Section Services**

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

**Corporate Communications Services**

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

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

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

## **CORPORATE INFRASTRUCTURE**

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

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

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

### **Estates Management**

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

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

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

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

### **Capital Programme**

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

### **Property Maintenance**

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

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

#### **Service Dependencies**

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

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

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

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

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## **FINANCE**

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

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

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

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

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

### **Budgeting and Financial Planning**

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

### **Financial Systems**

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

CHRIS21) where these are available / utilised

### **Financial Reporting**

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

### **Creditor Payments**

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

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

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

ledger codes within the general ledger.

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

### **Sundry Debtors**

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

### **Insurance and Risk Management**

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

### **VAT**

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

### **Treasury Management / Exchequer**

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

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### **LEGAL AND PROCUREMENT SERVICES**

#### **Conveyancing And Contracts**

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

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

#### **Litigation And Advice**

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

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

#### **Licensing**

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

#### **Procurement & Tendering**

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

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



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

**Sourcing & Purchasing Services**

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

**PECOS Support Service**

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

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

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## **DEMOCRATIC SERVICES**

### **Corporate Communications**

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

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

#### **Media releases**

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

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

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

#### **Photography framework**

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

#### **E-words**

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

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

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## **CORPORATE INFRASTRUCTURE**

### **Capital Programme**

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

### **Estates Management**

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

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

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

### **Property Maintenance**

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

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

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**SERVICE WIDE**

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

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**CORPORATE INFRASTRUCTURE**

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

## SCHEDULE D – PLACE OF DELIVERY

This schedule provides the location or locations where the Standard and Non-standard Services will be delivered to the Client under the terms of this Agreement.

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### **HUMAN RESOURCES**

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

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### **DEMOCRATIC SERVICES**

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

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### **CORPORATE INFRASTRUCTURE**

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

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### **FINANCE**

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

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### **LEGAL AND PROCUREMENT SERVICE**

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

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

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**SERVICE WIDE**

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

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

## SCHEDULE F – CONTACT ARRANGEMENTS

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

### HUMAN RESOURCES

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

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

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

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

### DEMOCRATIC SERVICES

#### Administration Division

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

#### Corporate Communications

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

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

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

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

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### **CORPORATE INFRASTRUCTURE**

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

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

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

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

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**FINANCE**

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

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

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

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

**LEGAL AND PROCUREMENT SERVICES**

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

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

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

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

**SCHEDULE G – PROBLEM ESCALATION**

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

**SERVICE WIDE**

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

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

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

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

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

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

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

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

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**HUMAN RESOURCES**

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

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**CORPORATE INFRASTRUCTURE**

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

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**FINANCE**

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

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**LEGAL AND PROCUREMENT SERVICES**

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

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**DEMOCRATIC SERVICES**

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

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

**Schedule A – Standard Services**

**Schedule B – Non Standard Services**

**Schedule C – Service Availability**

**Schedule D – Place of Delivery**

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

**Schedule F – Contact Arrangements**

**Schedule G – Problem Escalation**

**Schedule H – Fees and Expenses**

<b>SCHEDULE A – STANDARD SERVICES</b>
---------------------------------------

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

### HEALTH AND SAFETY

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

#### Health and Safety Service Level Agreement

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

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

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

#### INTERNAL AUDIT

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

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

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

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

It is understood that the Trust will appoint external auditors.

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

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

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

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

The services covered by this SLA are:

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

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

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

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

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

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

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### **INTERNAL AUDIT**

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

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

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

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



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

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**SERVICE WIDE**

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

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

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**HEALTH AND SAFETY**

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

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**INTERNAL AUDIT**

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

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

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**INTERNAL AUDIT**

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

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

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

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

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

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

**Reporting Protocols**

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

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

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

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

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

IA will not provide an annual opinion to the Trustees.

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

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**HEALTH AND SAFETY**

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

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**INTERNAL AUDIT**

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

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

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

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

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

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**CHIEF EXECUTIVE'S OFFICE**

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

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

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

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

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

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**HEALTH AND SAFETY**

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

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**INTERNAL AUDIT**

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

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

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

### **1 Principles**

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

### **2 Procedure**

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



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

**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 (" <b>the Act</b> ") 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;

<b>"the Effective Date"</b>	means 1st July 2013, notwithstanding the date of this Agreement;
<b>"the Effective Time"</b>	means 00.01 am on the Effective Date;
<b>"the Employee List"</b>	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;
<b>"Employees"</b>	means the Transferring Employees and all employees employed by the Trust on and from Completion engaged wholly or mainly in the Undertaking; <b>"Employee"</b> shall be construed accordingly;
<b>"Employment Losses"</b>	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);
<b>"the Equipment &amp; Furniture"</b>	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);
<b>"the Excluded Contracts"</b>	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;
<b>"the Expenses"</b>	has the meaning assigned to that expression in clause 12.11;
<b>"the Goodwill"</b>	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;
<b>"the Head Lease"</b>	Means the lease of which particulars are set out in Part 6 of the Schedule;
<b>"the Individual"</b>	Has the meaning assigned to that expression in clause 12.10;
<b>"Intellectual Property Rights"</b>	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;
<b>"the LT Databases"</b>	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;
<b>"LGPS Regulations"</b>	means the Strathclyde Pension Fund, being part of the LGPS (Local

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

<b>"the Leases"</b>	means the leases to be entered into between the Council and the Trust in respect of the Properties;
<b>"the Leasehold Property"</b>	means the property identified in Part 7 of the Schedule;
<b>"the Licence"</b>	means the licence to occupy conferred by clause 7.3.2 of the Agreement, as read with Part 3 of the Schedule;
<b>"the Non-Collections Assets List"</b>	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;
<b>"Pay"</b>	means remuneration, benefits or entitlements (including, without limitation, wages expenses and holiday pay);
<b>"Parties"</b>	means the Council and the Trust; <b>"Party"</b> shall be construed accordingly;
<b>"the Pensions Guarantee"</b>	means the guarantee to be granted by the Council in connection with the Admission Agreement;
<b>"the Petty Cash"</b>	means cash in hand held by the Council, exclusively in relation to the Undertaking, as at the Effective Time;
<b>"the Prepayments"</b>	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;
<b>"the Properties"</b>	means the properties identified in Part 8 of the Schedule
<b>"Replacement Scheme"</b>	has the meaning assigned to that expression in clause 13.3.1 of the Agreement;
<b>"the Retained Intellectual Property"</b>	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;
<b>"the Retained (Non-collections) Intellectual Property"</b>	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;
<b>"the Support Services Agreement"</b>	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;
<b>"the Shared Databases"</b>	means those databases in which the rights in and to such databases are owned by the Council but excluding the LT Databases;
<b>"Single Status Review"</b>	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);

<b>“the Services and Finance Agreement”</b>	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;
<b>“TUPE Regulations”</b>	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;
<b>“the Undertaking”</b>	means that part of the undertaking of the Council which consists of the operations of Leisure Services of the Council;
<b>“VATA”</b>	means the Value Added Tax Act 1994;
<b>“VAT Regulations”</b>	means the Value Added Tax Regulations 1995;
<b>“the Warranties”</b>	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 effected 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 1<sup>st</sup> 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**

<b>Property</b>	<b>Matter(s) outstanding</b>

**SCHEDULE PART 2 -MODEL LEASE**

LEASE

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**

**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 1<sup>st</sup> 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 1<sup>st</sup> October to 31<sup>st</sup> 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**

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**2. The Grant**

**3. Rent and Other Payments**

**4. Repair and Maintenance**

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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**



## 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 1<sup>st</sup> 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 1<sup>st</sup> October to 31<sup>st</sup> 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 assignment (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**

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

**SCHEDULE PART 6 -HEAD LEASE**

<b>Property</b>	<b>Head Lease</b>

**SCHEDULE PART 7 -LEASEHOLD PROPERTY**

Details of any leaseheld properties to be transferred to the Trust

**SCHEDULE PART 8 -PROPERTIES**

<b>Facility Name</b>	<b>Facility Address</b>
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**

<b>Contract Description</b>	<b>Contract Administrator</b>
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**

<b>Insurance Policy</b>	<b>Level of Cover</b>



**SCHEDULE PART 12 – LT DATABASE**

Staff List details to be inserted

COLLECTIONS AGREEMENT  
between  
EAST AYRSHIRE COUNCIL  
and  
EAST AYRSHIRE LEISURE TRUST

East Ayrshire Council  
London Road  
Kilmarnock  
KA3 7BU

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## SCHEDULE

PART 1 – RIGHTS GRANTED

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PART 6 – CHANGE CONTROL PROCEDURES

### **Agreement among**

- 1) 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 “Council”); and
- 2) EAST AYRSHIRE LEISURE TRUST, a Scottish Charitable Incorporated Organisation Registered Number SC043987 and having its principal office at The Dick Institute, 14 Elmbank Avenue, Kilmarnock, KA1 3BU (the “Trust”);

### **Whereas**

- A) The Council is leasing to the Trust various assets and undertakings as detailed in the Asset Transfer Agreement while retaining ownership of the Trust’s Premises, the Collections, the Libraries’ Collection and the Collections’ Intellectual Property;
- B) The Council wishes to grant to the Trust certain rights in relation to the Collections and the Libraries’ Collection, subject to the Trust carrying out activities and meeting its obligations in relation to the Collections and the Libraries’ Collection, in accordance with the terms of this Agreement;

### **Now it is hereby agreed:**

## **1 DEFINITIONS AND INTERPRETATION**

In the Agreement, unless the context requires otherwise the following terms shall have the following meaning:

“**Agreement**” means this agreement and the Schedule;

“**Archival Deposits**” mean Archives which remain in the legal ownership of a third party and which are accessioned and added to the Archives collections for a long-term, indefinite period. These include records which are inalienable such as records of the Church of Scotland, and records whose legal title is now indeterminate, such as records of deceased clients of firms of solicitors;

“**Archives**” means records of any age and any format, (including electronic records, manuscripts, sound recordings, maps, plans, photographs, moving images and printed records) which are identified by the archivist acting reasonably as having long-term historical, evidential or legal value. (In the event of dispute over the definition of Archives or the determination of the archivist, the determination of the Keeper of the Records of Scotland may be sought and shall be final and binding);

**“Asset Transfer Agreement”** means the agreement entered into on the date of the Agreement between the Council and the Trust relating to the transfer of the Business and certain assets of the Council;

**“Business”** means the business of operating the Properties (as defined in the Asset Transfer Agreement) and providing cultural, recreational, sports and library services in the East Ayrshire Council area;

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

**“Change and Control Procedures”** means the Council’s control procedure set out in Part 6 of the Schedule;

**“Charge & Superintendence Agreement”** refers to any Charge & Superintendence Agreement between the Council and the Keeper of the Records of Scotland;

**“Code of Ethics”** means the codes of ethics for museums, Archives and/or libraries listed in Part 6 of the Schedule, as the same may be amended or supplemented from time to time, and any other code of ethics relating to the Collections or the Libraries’ Collection (or part of them) (a) as may be notified by the Council, to the Trust from time to time, and/ or (b) which may become the *de facto* standard for the code of ethics in the UK relating to the Collections (or part of them);

**“Collections”** means the accessioned items, objects, artefacts, works of art, Archives and photos (for the avoidance of doubt all of these items being accessioned items):

- (a) on display or stored in the Trust’s Premises as at the Commencement Date,
- (b) on loan by the Council to a Third Party as at the Commencement Date,
- (c) in transit to or from the Trust’s Premises or otherwise in temporary location outside the Trust’s Premises as at the Commencement Date for any purpose including without prejudice to that generality for the purpose of maintenance and repair, observation or research,
- (d) acquired through the formal acquisition process (referred to in clause 2) after the Commencement Date,
- (e) subject of a loan agreement,
- (f) placed on deposit, or
- (g) subject of a Charge & Superintendence agreement,

for the avoidance of doubt, the term “Collections” does not include any book or item forming part of the Libraries’ Collection;

**“Collections’ Intellectual Property”** means Intellectual Property Rights (as defined below) relating to the Collections and the Libraries’ Collection:

- (a) owned by the Council; or
- (b) which the Council has the right to exploit,

as at the Commencement Date, but subject always to any restrictions and/ or prohibitions imposed upon the Council or to which the Council has agreed in relation to such intellectual property rights;

**“Collections Development Policy”** means the policy of the Council, relating to the acquisition, disposal and lending to third parties of items forming part of the Collections, as the same may be altered, supplemented or replaced by the Council from time to time until such time as the policy is altered, supplemented or replaced by the Council, the policy shall be deemed to be amended in so far

as necessary to reflect the transfer of the undertaking of the Council to the Trust in terms of the Asset Transfer Agreement;

**“Commencement Date”** means 1<sup>st</sup> July 2013 notwithstanding the date of this Agreement;

**“Contract Year”** means (a) the period from 1 July 2013 to 31 March 2014 and (b) thereafter each period from 1 April to 31 March during the term of the Agreement provided that the last Contract Year shall run from the immediately preceding April 1 until (a) the date of expiry of the Agreement in accordance with the terms of clause 9 and/or (b) the date of termination of the Agreement in accordance with the terms of clause 18;

**“Council Data”** means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which: (a) are supplied by the Council to the Trust under the Agreement or (b) are held by the Council but accessed by the Trust under the Agreement. For the avoidance of doubt, the foregoing items for these purposes do not include any accessioned Archives;

**“Council Collections Documentation”** means the documentation supplied and/or made available by the Council to the Trust pursuant to the Agreement (but excluding any item which forms part of the Collections or the Libraries' Collection) including, without prejudice to that generality, records relating to the donations, bequests, agreements, the Trust deeds and other documentation in so far as relating to the Collections or the Libraries' Collection;

**“Council Representative”** means the representative of the Council, appointed pursuant to clause 23.2;

**“Council's Responsibilities”** shall have the mean given to it in Clause 11.

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

**“Law”** means any applicable statute or any delegated or subordinate legislation, any community rights within the meaning of section 2 (1) of the European Communities Act 1972, any applicable guidance, direction or definition with which any party is bound to comply and any applicable judgement of a relevant court of law which is a binding precedent in Scotland, in each case in force in Scotland;

**“Libraries”** means the libraries from time to time which form part of the Trust's Premises;

**“Libraries' Collection”** means all local history books, local history newspapers, local history published and local history unpublished items such as maps and photographs and other local history items from time to time within the Libraries (excluding items comprising the Libraries' lending and reference stocks available for lending to and/or reference by members of the public);

**“Loan Agreement”** means the terms and conditions of any agreement entered into by the Council and a Third Party relating to the lending by the Council to the Third Party for a defined period of any item;

**“Loan In Agreement”** means the terms and conditions of any agreement entered into by the Council

with a Third Party relating to the lending by the Third Party to the Council, for a defined period of any item;

**“Policies”** means the policies of the Council, in relation to the Collections and the Libraries’ Collection, as at the Commencement Date (including, without prejudice to that generality, the policies listed in Part 3 of the Schedule), as the same may reasonably be amended, supplemented or replaced by the Council in consultation with the Trust from time to time, and notified by the Council to the Trust from time to time; and any other reasonable policies relating to the Collections and the Libraries’ collection (or part of them) as may be notified by the Council, to the Trust from time to time; until such times as each policy is altered, supplemented or replaced by the Council; that policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust;

**“Property Agreement”** means leases, licences to occupy and/or sub-leases of the Trust’s Premises entered into or about to be entered into between the Council and the Trust on the Commencement Date or subsequently in respect of any other premises intended to form part of the Trust’s Premises;

**“Retransmission”** means the temporary return of one or more items in an Archival Deposit to the owners of that Archival Deposit, for legal, administrative or evidential purposes or for display or other private purposes;

**“Schedule”** means the schedule annexed and executed as relative hereto;

**“Service Level Agreement”** means any service level agreement entered into or intended to be entered into in respect of the Trust’s Premises between the Council and the Trust on the Commencement Date of or subsequently in respect of other premises intended to form part of the Trust’s Premises;

**“Services and Finance Agreement”** means the agreement between the Council and Trust in terms of which the Trust is to provide specified services to the Council in return for payment of an agreed charge dated on or about the date of this Agreement.

**“Standards”** – means the standards listed in Part 5 of the Schedule as the same may be amended or supplemented from time to time, and any other standards relating to the Collections (or any part of them) (a) as may be notified by the Council following consultation with the Trust to the Trust from time to time and/ or (b) which are or may become *de facto* UK standards.

**“Term”** – has the definition ascribed in clause 9.

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

**“Treaties”** means bi-lateral, multi-lateral or pluri-lateral European and /or International Treaties, to which the UK is a signatory, relating to the Collections (or any part of them) as the same may be amended or supplemented from time to time;

**“Trust Audit Records”** has the meaning assigned to it in clause 28;

**“Trust’s Obligations”** has the meaning ascribed to it in clause 10;

**“Trust’s Premises”** means (a) the premises holding part of the Collections listed in Part 2 of the Schedule and (b) those premises holding part of the Libraries’ Collection;

**“Trust’s Representative”** means the representative of the Trust appointed pursuant to clause 23.2;



- 1.2 Any reference to a clause, paragraph or schedule shall be to, respectively, a clause, paragraph, or schedule to the Agreement.
- 1.3 Clause headings are for the ease of reference only and shall not affect the construction and interpretation of any clause.
- 1.4 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.5 References to any statute, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.
- 1.6 In the Agreement, except where the context otherwise requires, any reference to:
  - 1.6.1 another agreement or any deed or instrument or document shall be construed as a reference to that other agreement, deed, or other instrument or document as the same may have been, or may from time to time be amended, varied, supplemented or novated.
  - 1.6.2 a “day” means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight savings) ending at 12:00 midnight.
  - 1.6.3 the words “include” or “including” are to be construed as meaning without limitation.
  - 1.6.4 a “month” means a calendar month; and
  - 1.6.5 a “person” includes any individual, partnership, firm, Trust, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.

## **2 GRANT OF LICENCE/RIGHT TO USE THE COLLECTIONS**

- 2.1 Subject to clause 2.2 to 2.10 and to the Trust’s compliance with the provisions of this Agreement and in consideration of the sum of One Pound Sterling (£1) the Council hereby grants to the Trust a licence to use the Collections and the Libraries’ Collection in the manner set out in Part 1 of the Schedule. For the avoidance of any doubt, no right of ownership in the Collections and the Libraries’ Collection, or any part of them, shall transfer to the Trust under this Agreement.
- 2.2 The licence granted under clause 2.1 is subject to the terms and conditions of this Agreement and/or any licence, bequest, the company deed, gift, donation or other instrument pertaining to any particular item or forming part of the Collections and the Libraries’ Collection. The Trust shall comply with the requirements of any such terms and conditions in relation to the relevant item or items forming part of the Collections and the Libraries’ Collection, as if it were directly bound by such terms and conditions (excluding from this any requirements which may only be exercised by the Council as owner of the item or items).
- 2.3 If, in relation to any item forming part of the Collections and the Libraries’ Collection, the Council has insufficient rights to grant to the Trust the licence referred to in clause 2.1, that item shall be excluded from the licence, but shall remain part of the Collections or the Libraries’ Collection as appropriate and the Trust shall, to the extent permitted by the rights held by the Council, perform the Trust’s Obligations in relation to that item; the Council and the Trust shall enter into discussions as

regards the best means of the Trust performing the Trust 's Obligations in relation to any such item.

- 2.4 If any item forming part of the Collections or the Libraries' Collection is unusable or unavailable for use in accordance with the terms of this Agreement (excluding items on loan to a Third Party), the Council and the Trust shall enter into discussions as regards the best means of the Trust performing the Trust's Obligations in relation to any such item.
- 2.5 The Trust shall ensure (in so far as possible) that any agreement relating to the acquisition of any item into the Collections and the Libraries' Collection shall be entered in the name of the Council and that item shall become the property of the Council and not the Trust with the exception of Archival Deposits which remain the property of a Third Party. Any such item by its execution hereof shall be acquired in accordance with the Acquisitions and Disposal Policies.
- 2.6 Where, in relation to the acquisition of an item into the Collections or the Libraries' Collection, the Trust is unable to ensure that the item becomes the property of the Council and where the only alternative would not be to acquire the item into the Collections or the Libraries' Collection, the Trust shall be entitled to take ownership of that item with the exception of Archival Deposits which shall remain the property of a Third Party. The Trust shall by its execution hereof transfer, in so far as it is competent to do so, to the Council all rights of ownership in any such items or any item required by the Trust in terms of Clause 2.5 or expiry or termination of the Agreement.
- 2.7 For the avoidance of doubt, nothing in clause 2.5 or 2.6 shall oblige the Trust to accession or otherwise acquire any item into the Collections or the Libraries' Collection. The Trust shall have delegated authority to accession or acquire items into the Collections provided such delegated authority is exercised in accordance with the Acquisitions and Disposal Policies in force from time to time.
- 2.8 Save as expressly set out in the Agreement, the Trust is not permitted to assign, transfer, sell, lease, sub-license, charge, lend or otherwise deal in or encumber the Collections or the Libraries' Collection (under explanation that items forming part of the Libraries' Collection can be acquired, sold, lent or disposed of provided any such dealing is carried out in accordance with the Libraries' Collection Policy), or any part of them.
- 2.9 The Trust shall not dispose of any item forming part of the Collections (otherwise than in accordance with the Acquisitions and Disposal Policies or any Charge & Superintendence Agreement or deposit agreement), without the prior written consent of the Council, except in circumstances of immediate and substantial health and safety risk, when the Trust shall notify the Council of the circumstances as promptly as possible. Items subject to a Charge & Superintendence Agreement or deposit agreement, where the Council is not entitled to withhold consent shall nevertheless be notified to the Council prior to any disposal under these agreements.

### **3 ARCHIVAL DEPOSITS**

- 3.1 In relation to any items forming part of the Collections which, as at the Commencement Date, are on deposit to the Council from a Third Party, the Council shall remain as the borrower in any deposit agreement or Charge & Superintendence Agreement with each such Third Party.
- 3.2 Any agreement relating to the deposit by a Third Party after the Commencement Date of any Archives shall be entered into between the Council and the Third Party, and shall acknowledge that the Council will delegate authority to the Trust to manage the Archival Deposit.
- 3.3 The Trust shall have delegated authority to accept small Archival Deposits on behalf of the Council

on the advice of the archivist acting reasonably (where an entry form is sufficient and a deposit agreement is not required).

- 3.4 Proposals to place significant collections of Archives on deposit shall be referred to the Council by the Trust for approval, such approval not to be unreasonably withheld or delayed, and be subject to a deposit agreement or a Charge and Superintendence Agreement.
- 3.5 The Trust shall have delegated authority to accept additions to the collections of Archives which are subject to a deposit agreement or a Charge and Superintendence Agreement.

#### **4 LENDING OF THE COLLECTIONS (OUTWARDS LENDING)**

- 4.1 The Trust shall have delegated authority to lend items from the Collections and the Libraries' Collection to a Third Party or internally within the Trust, in accordance with the Collections Management Policy, the Trust being satisfied and having due regard to insurance, environmental conditions, security and other considerations and being mindful of the appropriateness of the proposed loan. Wherever possible the borrower shall be responsible for insuring the loan items for full value on an all risks of loss or damage basis. The borrower shall provide evidence of such insurance cover being in force prior to the commencement of the loan period.
- 4.2 In relation to any items forming part of the Collections and the Libraries' Collection which, as at the Commencement Date, are on loan to a Third party from the Council; the Council shall remain as the lender to any Loan Agreement with each such Third Party. Nevertheless, the Trust shall, at the expiry of any such Loan Agreement, have delegated authority to and may, acting reasonably, enter into a new Loan Agreement, to ensure appropriate preservation of and access to items in the Collections and the Libraries' Collection.
- 4.3 Without prejudice to the provisions of clause 4.1, the Trust shall provide to the Council, on a half-yearly basis, details of all items forming part of the Collections and the Libraries' Collection which the Trust has loaned to a Third Party.
- 4.4 For the avoidance of doubt, the Trust shall not (without the prior written consent of the Council) be entitled to lend, or agree to lend, to a Third Party any item forming part of the Collections or the Libraries' Collection where to do so would be in breach of the terms and conditions of any agreement, licence, bequest, the company deed, gift, donation or other instrument pertaining to that particular item or items.
- 4.5 For the avoidance of doubt, the Council shall not be entitled to oblige the Trust to lend any item to a Third Party. The Trust shall nevertheless give full and reasonable consideration to any Council request to make a loan to a Third Party.

#### **5 ARCHIVAL RETRANSMISSIONS**

- 5.1 The Trust shall have delegated authority to return individual items on temporary retransmission to the owners of Archival Deposits on such terms as agreed in the relevant deposit agreement or the relevant Charge and Superintendence Agreement.
- 5.2 The Trust shall have delegated authority to return individual archive items on temporary retransmission to the Council or its staff where they are required for valid Council purposes. The Trust shall maintain a record of such temporary retransmissions.

- 5.3 In the event of retransmissions taking place in accordance with clause 5.1 or 5.2, the owner or the Council as appropriate shall be responsible for the item or items while in their possession and control.

## **6 INWARD LENDING**

- 6.1 In relation to any items which, as at the Commencement Date, are on loan to the Council from a Third Party, the Council shall remain as the borrower to any Loan In Agreement with each such Third Party. The Trust shall be the custodians of such items for the duration of such Loan in agreements
- 6.2 Any agreement relating to the lending by a Third Party after the Commencement Date of any item for the purpose of display, or any other purpose, in the Trust's Premises (or any of them) shall be entered into between the Trust and the Third Party.
- 6.3 Each of the items referred to in clause 6.1 and 6.2 shall (subject to clause 6.4) throughout that period be subject to the Trust's Obligations
- 6.4 The rights granted and obligations referred to in clause 6.3 are, in respect of each of the relevant items, subject to the terms and conditions of any Loan In Agreement pertaining to that item. The Trust shall comply with the requirements of any such terms and conditions in relation to the relevant item, as if it were directly bound by such terms and conditions (excluding from this any requirements which may only be exercised by the Council as the party to each such agreement).
- 6.5 For the avoidance of doubt, the Trust shall not be obliged to accept any loan in but shall give full and reasonable consideration to any such request from the Council.

## **7 LICENCE OF COLLECTIONS' INTELLECTUAL PROPERTY**

- 7.1 The Council hereby grants to the Trust (in so far as it has the right to do so in respect of each item forming part of the Collections and the Libraries' Collection) a royalty-free, worldwide, non-exclusive licence (or, where appropriate, sub-licences) to use, copy, reproduce and exploit (including the right to grant sub-licence) the Collections' Intellectual Property, being a defined term at Clause 1 hereof for educational purposes, for the purpose of promoting the Trust, the Trust's Premises and East Ayrshire.
- 7.2 The Council agrees that, with effect from the Commencement Date to the termination, howsoever determined, of the Agreement, it shall not use the Collections' Intellectual Property for commercial exploitation. For the avoidance of doubt, the granting of the licence in clause 7.1 and the restriction in the preceding part of this clause 7.2 will not preclude or restrict the Council (and/or anybody associated with and authorised by the Council) from utilising the Collections' Intellectual Property for the purpose of promoting East Ayrshire and/or events within East Ayrshire, the Council and its services, and any other body associated with the Council.
- 7.3 The Trust shall provide the Council with all such reasonable assistance and will follow all reasonable instructions and demands which the Council may require of the Trust from time to time in order to protect the Collections' Intellectual Property.
- 7.4 The Council and the Trust agree that all applications to protect the Collections' Intellectual Property and subsequent registrations will be in the name of the Council.
- 7.5 The Trust undertakes throughout the term of the Agreement that:

- 7.5.1 it will not dispute or challenge the validity of the Collections' Intellectual Property, or the Council's rights in it;
  - 7.5.2 it will not knowingly do or authorise to be done any act, which in any jurisdiction might jeopardise or invalidate the Council's right or title to the Collections' Intellectual Property or the Council's ability to register to protect the Collections' Intellectual Property in the future; and
  - 7.5.3 it will give the Council any information as to its use of the Collections' Intellectual Property which the Council may reasonably require.
- 7.6 For the purpose of clause 7.6.2 (but without prejudice to the ordinary meaning of "knowingly") the Trust shall be deemed to have knowledge of a particular matter to the extent that:
- 7.6.1 it is referred to in records held by the Trust or to which the Trust has access in terms of the Agreement; and
  - 7.6.2 it is referred to in records held by the Council to which the Trust does not have access in terms of the Agreement, and the Council provides such records (or the relevant parts of them) to the Trust.
- 7.7 Where the Trust issues to the Council a request for records (to which the Trust does not have access to in terms of the Agreement) relating to the Collections' Intellectual Property, the Council, shall use reasonable endeavours to provide the Trust with all such relevant records, or copies of them.
- 7.8 The Trust shall not be liable to the Council for any breach of the provisions of clause 7.6.2 to the extent that such breach arises as a result of the unreasonable delay or failure of the Council to meet its obligations under clause 7.7.
- 7.9 In the event that the Trust or the Council becomes aware of:
- 7.9.1 any infringement or possible infringement by a Third Party of the Collections' Intellectual Property: or
  - 7.9.2 any Third Party alleging that the Collections' Intellectual Property infringes any rights of the Third Party,
- it shall notify the other party by written notice within 20 Business Days of the same.
- 7.10 Following notification from the Trust in accordance with clause 7.9 or otherwise, the Council, as proprietor of the Collections' Intellectual Property, may (at its own expense) take any action in any jurisdiction (including but not limited to raising legal proceedings) as it deems appropriate to enforce and /or protect the Collections Intellectual Property against any Third Party. The Trust agrees to co-operate fully with the Council and to give the Council all reasonable information and assistance as the Council may require (at the Council's expense) to enforce and /or protect the Collections' Intellectual Property against a Third Party.
- 7.11 If the Council decides not to take any action of the nature referred to in clause 7.10 in relation to a particular infringement or alleged infringement, the Council, may, at its discretion allow the Trust (subject to clause 7.13 and at the Trust's expense) conduct of any claim and /or negotiations in respect of that infringement or alleged infringement. The Council shall make such decision promptly and in a manner which is mindful to any conduct or other procedural deadline.
- 7.12 Where the Council decides not to allow the Trust to conduct any claim and /or negotiations in respect

of an infringement or alleged infringement in terms of clause 7.11, the Council and the Trust shall enter into discussions as regards the best means of dealing with such infringement or alleged infringement. For the avoidance of doubt, failing agreement as to the best means of dealing with such infringement or alleged infringement the Trust shall comply with the directions of the Council.

7.13 Where the Trust takes a course of action of the nature referred to in clause 7.11 it shall:

7.13.1 indemnify the Council in respect of any liability (including reasonable legal expenses on a solicitor/ client basis and any award of expenses which the Council may thereby incur);

7.13.2 keep the Council closely apprised of all developments relating to the relevant claim; and

7.13.3 not without the prior written consent of the Council make any compromise in respect of any infringement or alleged infringement of the Collections' Intellectual Property.

## **8 POLICIES**

8.1 The Trust shall prepare a definitive list of all of the policies relating to the Collections and the Libraries' Collection and shall submit such list along with the policies to the Council on or before the date falling 6 months after the Commencement Date.

8.2 The Trust and the Council shall enter into discussions as regard the list of policies referred to in clause 8.1, such discussions to include the addition of any policies which the Council considers to be relevant to the Collections and the Libraries' Collection, and both the Trust and the Council, shall use reasonable endeavours to agree a definitive list of policies relating to the Collections and the Libraries' Collection on or before the second anniversary of the Commencement Date

8.3 Following the agreement between the Council and the Trust of the definitive list of policies referred to in clause 8.2 the definition of "Policies" in clause 1.1 shall be deemed to substituted with the following.

8.3.1 "Policies" means the policies relating to the Collections and the Libraries' Collection referred to in the list agreed between the Council and the Trust in terms of the clauses 8.1 and 8.2 as the same may reasonably be amended, supplemented or replaced by the Council in consultation with the Trust from time to time and notified by the Council to the Trust from time to time. Until such times as each policy is altered, supplemented or replaced by the Council that policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust in terms of the Asset Transfer Agreement.

8.4. Where any of the Policies are amended , supplemented or replaced the Council will notify the Trust of such amendment , supplement or replacement as soon as is reasonably practicable.

## **9 THE TERM**

The agreement shall commence on the Commencement Date and unless otherwise terminated shall continue until the thirtieth day of June Two Thousand and Thirty Eight.

## **10 OBLIGATIONS OF THE TRUST**

10.1 The Trust will perform the Trust's Obligations as set out in this clause 10 with effect from the Commencement Date in accordance with the terms and conditions of this agreement.

10.2 The Trust will perform the Trust's Obligations:

- 10.2.1 with all reasonable skill and care;
  - 10.2.2 in a proper, diligent, expeditious and professional manner;
  - 10.2.3 dutifully, timeously and in good faith;
  - 10.2.4 to no less standard than that achieved by the Council in the period of 12 months immediately prior to the Commencement Date; and
  - 10.2.6 in accordance with any policies and guidelines supplied by the Council to the Trust that are directly related to the Trust's Obligations or the Collection.
- 10.3 Subject to clauses 10.4 to 10.6 the Trust shall;
- 10.3.1 ensure that it complies with the law, policies, treaties and the Code of Ethics in relation to the Collections and the Libraries' Collection, including the Trust's Obligations;
  - 10.3.2 ensure that each of the museums which is accredited under the Arts Council of England as at the Commencement Date retains that accreditation, as the same may be amended or supplemented from time to time, including any accreditation scheme which may replace the Arts Council of England's Accreditation Scheme; and use all reasonable endeavours to ensure that any museum (including any new museums) not so accredited attains that accreditation;
  - 10.3.3 use all reasonable endeavours to meet the standards in so far as they relate to the Collections and the Libraries' Collection (or any part or parts of them) and /or to the Trust's Obligations;
  - 10.3.4 where funding and resources permit, seek to achieve standards of best practice in relations to the Trust's Obligations;
  - 10.3.5 during the Term ensure that only personnel who possess the appropriate experience, skills and qualifications necessary for the performance of the Trust's Obligations in accordance with the Agreement shall perform the Trust's Obligations in relations to the Collections;
  - 10.3.6 procure that its employees, sub-contractors and representatives;
    - 10.3.6.1 make themselves available at reasonable times and on reasonable notice to the Council, for the purpose of consultation and advice relating to the performance of the Trust's Obligations; and
    - 10.3.6.2 attend meetings with representatives of the Council and such other parties as may be necessary for the performance of the Trust's Obligations;
  - 10.3.7 provide to the Council, such information as the Council may reasonably request from time to time to enable the Council to monitor, verify and audit the performance of the Trust's Obligations;
  - 10.3.8 ensure that it is not in breach of any agreements or any law in connection with the performance of the Trust's Obligations;
  - 10.3.9 provide the Council with such information as the Council may reasonably require to enable the Council to ascertain that terms and conditions of the Agreement are being observed;
  - 10.3.10 ensure that the Trust's obligations are carried out to the reasonable satisfaction of the

Council; and

- 10.3.11 provide the Council and any person duly authorised by it with reasonable facilities to inspect and review all records, accounts, invoices and other material retained in connection with the performance of the Trust's Obligations upon the Council giving reasonable notice.
- 10.4 The Trust shall not be required to perform the Trust's Obligations in relation to any items forming part of the Collections and the Libraries' Collection which is in the custody of the Council.
- 10.5 The Trust shall not be liable for any failure to perform the Trust's obligations where any such failure arises as a direct result of:
- 10.5.1 the unreasonable delay of failure by the Council to perform or otherwise fulfil the Council's Responsibilities; or
- 10.5.2 the failure by the Council to meet its obligations under the Service Level Agreement, the Transfer Agreement and/or any Property Agreement.
- 10.6 The Trust shall not be in breach of clause 10.3.2 in relation to any museum losing its accreditation under The Accreditation Scheme referred to in this clause where;
- 10.6.1 the reason for the museum losing its accreditation related directly to the Trust's Premises in which that museum is located failing to meet the standards required by the accreditation scheme: and
- 10.6.2 the reason for the Trust's Premises failing to meet the standards referred to in clause 10.6.1 is beyond the reasonable control of the Trust.
- 10.7 The Trust and the Council shall, to the fullest extent permitted by law co-operate with each other and comply with the requirements of their own internal and external auditors with any criminal investigations.
- 10.8 The Trust and the Council will ensure that the Agreement and those related arrangements comply with the requirements of the law, in particular in relation to European Procurement Rules and Best Value ("Best Value" being the Council's policies, procedures and guidelines in obtaining value for the public purse).

## **11 THE COUNCIL'S RESPONSIBILITIES**

- 11.1 The Council shall:
- 11.1.1 co-operate with the Trust and provide it with such information and assistance as it shall reasonably require to enable it to perform the Trust's Obligations;
- 11.1.2 ensure that key personnel are available to assist the Trust when reasonable notice is given by the Trust of this requirement;
- 11.1.3 ensure that it has in place all necessary and appropriate internal Council consents and approvals, in order to enable the Trust to perform the Trust's Obligations (but such that, for the avoidance of doubt, nothing in the Agreement shall oblige the Council to obtain a Third Party approval in relation to the rights granted under the Agreement) subject to the Council requiring to secure the consent of the Keeper of the Records of Scotland under the Local Government etc (Scotland) Act 1994 section 53 which the Council is required to do and



exhibit to the Trust.

11.1.4 consult with the Trust and have due regard to its professional advice prior to altering, supplementing or replacing any of the Policies, Codes of Ethics or Standards which the Council has the right to alter in relation to the Agreement.

11.1.5 The Council shall not acquire items for inclusion in the Collections and the Libraries' Collection or dispose of items in the Collections and the Libraries' Collection without the agreement of the Trust, not to be unreasonably withheld; and

11.1.6 The Council acknowledges that the main source of advice on the Collections and the Libraries' Collection and on heritage matters will be the Trust and its professional staff, and will not act on these matters without prior consultation with the Trust.

(together the "Council's Responsibilities")

## **12 INSURANCE OF THE COLLECTIONS AND LIBRARIES' COLLECTION**

12.1 The Council shall effect, maintain and renew the insurance policy or policies relating to the Collections and the Libraries' Collection in force immediately prior to the Commencement Date (or policies reasonably equivalent to such policies, including without prejudice to that generality, the level and scope of cover) in so far as such policy or policies continue to be available to the Council at reasonable cost (the determination as to what constitutes "reasonable costs" being at the entire discretion of the Council).

12.2 The Trust acknowledges that the insurance policy or policies referred to in clause 12.1 is/are subject to an excess of £250 (Two Hundred and Fifty Pounds) Sterling in respect of each claim in relation to all items forming part of the Collections and the Libraries' Collection. The Council shall notify the Trust of any alterations to the amount of excess.

12.3 For the avoidance of doubt, the Council shall be responsible for payment of any excess under any of the insurance policies referred to in clause 12.1.

12.4 The Council shall use reasonable endeavours to procure that the insurance policy or policies referred to in clause 12.1 is/are effected in joint names of the Council and the Trust.

12.5 The Council undertakes:

12.5.1 to provide to the Trust on request a summary of the insurance cover applicable to the collection; and

12.5.2 to advise the Trust as soon as reasonably practicable, in writing if any of the insurances maintained by the Council in pursuance of clause 12.1 are no longer to be maintained or if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.

12.6 The Council and its agents and advisers shall, on giving reasonable prior notice to the Trust, be given reasonable access to the Collections and the Libraries' Collection for the purpose of inspecting the Collections and the Libraries' Collection and carrying out risk control surveys. Following any such inspection or survey the Council (or its agents or advisers) shall, if necessary, 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.

- 12.7 The Council and the Trust shall each consider the recommendations referred to in clause 12.6 and shall enter into discussions in respect of the implementation of such recommendations and the time frame for doing so. The Council and the Trust each recognise that implementations of the recommendations referred to above may have significant financial implications and these shall be taken into account in such discussions and in implementing any measures in relation to the Collections.
- 12.8 The Trust undertakes to implement such measures to control risk as the Council and/or its insurers may reasonably require. It will take all reasonable precautions to protect the collection against loss or damage. As part of the process both parties will ensure that where contractors are employed to undertake any repairs to the premises all reasonable precautions will be taken to protect the collection and the premises from loss or damage. Where Hot Works are required to be undertaken the parties shall ensure that a “Hot Works” permit system is in place and is rigidly enforced throughout the period of the works.

### **13 ARRANGEMENTS FOR INSURANCE CLAIMS**

- 13.1 In the event of loss, damage, theft or destruction of any item forming part of the Collections and the Libraries’ Collection, or otherwise subject to the Trust’s Obligations, the Trust shall:
- 13.1.1 give immediate verbal and written notice to the Council, giving details of the loss, damage, theft or destruction;
- 13.1.2 take immediate steps to secure the affected area, taking all appropriate temporary measures to limit further damage and address whatever issues may arise including, but not limited to health and safety; and
- 13.1.3 allow the Council (and any surveyor or other consultant engaged by the Council) all such assistance as the Council may reasonably request to facilitate investigations of the damage and /or the pursuit of any insurance claims.
- 13.2 In addition to notifying the Council under clause 13.1, the Trust shall also notify in writing the Council’s insurance section immediately upon becoming aware of such loss, damage, theft, or destruction of any items forming part of the Collections, or otherwise subject to the Trust’s Obligations, where:
- 13.2.1 that item is on loan to the Council from a Third Party.
- 13.2.2 that item/s has been lost, stolen or destroyed and has a value higher than the highest amount of the insurance policy excess referred to in clause 12.2; or
- 13.2.3 that item has been damaged and:
- 13.2.3.1 the cost of conservation and/or repair in accordance with good industry practice;
- 13.2.3.2 the reduction in value of the item as a result of the damage; and
- 13.2.3.3 the aggregate of the sum referred to in clauses 13.2.3.1 and 13.2.3.2.
- 13.3 Where the item has been lost, damaged, stolen or destroyed is on loan to the Council, the Council shall be responsible for the making and pursuing the claim with the insurers and will meet the cost of

pursuing such claim. The Trust shall ensure that its staff are available as required by the insurer and provide all information and documentation and any other assistance required by the insurer in relation to any such claim (the cost of the Trust in doing so to be borne by the Trust).

- 13.4 Where the item which has been lost, damaged, stolen or destroyed is the property of the Council the Council shall at its absolute discretion (but following consultation with the Trust) determine whether to make an insurance claim and, if it does so, shall be responsible for pursuing the claim with the insurers and will meet the cost of doing so. Where the Council makes a claim against the insurance policy, the Trust shall ensure that its staff are available as required by the insurer and provide all information and documentation and any other assistance required by the insurer in relation to such claim (the cost of the Trust in doing so to be borne by the Trust).
- 13.5 If the claim against the insurance policy referred to in the proceeding clauses is successful, the Council shall decide (following consultation with the Trust) whether to conserve an item, or where feasible to purchase a replacement item. If the Council decides to purchase a replacement item, it shall consult with the Trust as regards the item to be purchased. Notwithstanding the foregoing, for the avoidance of doubt, the decision as to whether a replacement item shall be purchased shall lie solely with the Council.
- 13.6 When an insurance claim is unsuccessful or is not pursued, the Council shall determine following consultation with the Trust whether a damaged item shall be conserved. If the Council decided that an item is to be conserved, it shall be conserved by recommended accredited conservators.

#### **14 INTELLECTUAL PROPERTY**

- 14.1 All right, title and interest in and to Intellectual Property Rights arising or created by or on behalf of the Trust as a result of the performance by the Trust's Obligations shall be the property of and vest in the Trust, subject to the terms of the licence granted pursuant to clause 2.1.
- 14.2 The Trust hereby grants to the Council a royalty free, non-exclusive licence in and to such Intellectual Property Rights including (with effect from it's creation) all future rights, for the purposes of promoting the Council and its services (and services funded by the Council) and for the purposes of promoting East Ayrshire and the Trust's Premises. The Council shall be entitled to grant royalty free sub licences to Third Parties of the Intellectual Property Rights solely for the purpose specified in this clause.
- 14.3 The Trust shall provide the Council with details of Intellectual Property Rights arising or created by or on behalf of the Trust and shall provide the Council with information and reports on the Trust's use of the Intellectual Property Rights at such intervals and in such form or the Council may reasonably require from time to time.
- 14.4 The Trust acknowledges that it shall acquire no rights to any Intellectual Property Rights owned by the Council, other than which it acquires as licences pursuant to the Agreement.

#### **15 WARRANTIES**

- 15.1 The Trust warrants, represents and undertakes to the Council that:
- 15.1.1 the Trust has full capacity and authority to enter into the Agreement;
- 15.1.2 the Trust's Obligations will be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;

15.1.3 the performance of the Trust Obligations shall not infringe any Intellectual Property Rights of any Third Party; and

15.1.4 as at the date of execution of the Agreement by the Trust, there is no material outstanding litigation, arbitration or other disputed matters to which the Trust is a party, which may have material adverse effects upon the fulfilment of the Trust's liabilities, responsibilities or obligations pursuant to the Agreement.

15.2 The Council warrants, represents and undertakes to the Trust that the Council has full capacity and authority to enter into the Agreement.

## **16 LIABILITY AND INDEMNITY**

16.1 The Trust shall indemnify the Council against any liabilities, losses, charges, costs and expenses and assist with contesting any claim by a Third Party against the Council and any cost ordered against the Council arising from or in connection with:

16.1.1 a breach of any of the warranties given by the Trust in the Agreement;

16.1.2 the negligence, recklessness or wilful misconduct of the Trust, or its employees, agents, contractors or otherwise in the course of performing the Trust's Obligations; and

16.1.3 any breach by the Trust of any obligations or undertaking contained in the Agreement, or otherwise in the case of the Trust arising in relation to the Trust's Obligations,

provided always that the Council shall use all reasonable endeavours to minimise any such liabilities, losses, charges, costs or expenses and that the Council shall not take any step which may increase any such liability (without having first obtained the written approval of the Trust to such steps).

16.2 The Council shall indemnify the Trust against any liability, losses, charges, costs and expenses (including but not limited to all reasonably incurred legal expenses) suffered or incurred by the Trust, arising from:

16.2.1 a breach of any of the warranties given by the Council in the Agreement; and

16.2.2 the negligence, recklessness or wilful misconduct of the Council, its employees, agents, contractors or otherwise in the course of performing the Council's Responsibilities,

provided always that the Trust shall use all reasonable endeavours to minimise any such liabilities, losses, changes, costs or expenses and that the Trust shall not take any steps which may increase any such liability (without having first obtained the written approval of the Council to such steps).

16.3 Each party which incurs a loss or liability or receives a claim of a nature which may fall within the indemnity contained in clauses 16.1 and 16.2:

16.3.1 shall intimate in writing the loss or liability or the relevant claim to the other relevant party as soon as reasonably practicable after the loss, liability or claim becomes identified providing to that party such information and evidence in respect of the loss, liability or claim as is reasonably available to it;

16.3.2 shall (in the case of a claim) take such steps to resist or defend the claim as the other party may reasonably request or (if the other party so elects) allow the other party to conduct of any defence and /or negotiations in respect of the claim (subject in either case to the other party it in respect of any liability (including reasonable legal expenses on a solicitor/ client

basis and award of expenses which it may thereby incur));

- 16.3.3 shall keep the other party closely apprised of any developments relating to the relevant loss, liability or claim (including any insurance claim that may be perused in connection with the relevant occurrence);
  - 16.3.4 shall not (in the case of the 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 other party (such consent not to be unreasonably withheld and/or delayed);
  - 16.3.5 take all reasonable steps available to it to mitigate such loss or liability; and
  - 16.3.6 shall not admit nor imply any acceptance of liability, but shall fully co-operate with the insurers in the investigation and defence of any such loss.
- 16.4 No party to the Agreement excludes or limits liability for the death or personal injury arising as a result of its negligence.
- 16.5 Subject always to clause 16.4 no party shall be liable to any other party in respect of any of the following losses or damages (whether such losses or damages were foreseen, foreseeable, known or otherwise):
- 16.5.1 any indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in clause 16.5.2 to 16.5.7 below);
  - 16.5.2 loss of actual or anticipated profits;
  - 16.5.3 loss of goodwill;
  - 16.5.4 loss of business;
  - 16.5.5 loss of revenue or of the use of money;
  - 16.5.6 loss of contracts; and
  - 16.5.7 loss of anticipated savings.

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

- 17.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.
- 17.2 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:-
  - 17.2.1 act only on instructions from the Trust; and
  - 17.2.2 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
  - 17.2.3 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.

- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 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.
- 17.7 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.
- 17.8 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.

## **18. TERMINATION**

- 18.1 The Council may at any time by notice in writing terminate the Agreement with immediate effect if:
- 18.1.1 the Trust fails to observe or perform any of its material obligations contained in the Agreement where such failure is not capable of being remedied;
- 18.1.2 the Trust fails to observe or perform any of its material obligations contained in the Agreement where such failure was capable of being remedied but was not remedied within 15 Business Days of being requested to do so by the Council;
- 18.1.3 the Trust ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, make any composition or arrangement with its creditors takes or suffers any similar action in consequence of debt an order or resolution is made for its dissolution (other than for the purpose of solvent amalgamation or reconstruction) or shall suffer any analogous events under any jurisdiction which it is subject to;
- 18.1.4 the Trust fails to comply with remedial plan of the nature referred to in clause 18.2 within the period reasonably prescribed within the remedial plan; or
- 18.1.5 the Council exercises any right to terminate the Services and Finance Agreement and/or the Support Services Agreement.
- 18.2 In the event the Trust commits any breach or breaches in respect of its obligations under the Agreement, the Council may (without prejudice to any right to terminate the Agreement under clause

18.1)

18.2.1 enter into discussions with the Trust with a view to determining how that the breach or series of breaches may be remedied or the incidence of any breaches of that nature might be reduced, or eliminated; or;

18.2.2 prescribe (acting reasonably and taking account of any discussions held in pursuance of clause 18.2.1) a remedial plan (including a reasonable period for implication) which it shall issue in writing to the Trust and the Trust shall be under an obligation to comply with the remedial plan within the period stated in such remedial plan.

18.3 Termination or expiry of the Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have occurred or shall there after occur to the Council including without prejudice to the generality of this clause, the right to recover any sum of money which is to be paid hereunder.

18.4 Notwithstanding the provisions of clause 18.1 the provisions of clauses 1, 16, 17, 20, 22, 26 and 35 shall survive termination or expiry of the Agreement of any case.

## **19 CONSEQUENCES OF TERMINATION**

19.1 In the event of termination or expiry of the Agreement for any reason:

19.1.1 the licences granted by the Council to the Trust under clauses 2.1 and 7.1 shall terminate with immediate effect;

19.1.2 the Trust hereby assigns to the Council its whole right, title and interest in and all Intellectual Property Rights owned by them or to which they have rights;

19.1.3 the Trust shall transfer to the Council all rights of ownership in any items forming part of the Collections and the Libraries' Collection which it has acquired under clause 2;

19.1.4 the Trust shall immediately pay the Council all sums due to the Council under the Agreement not already paid;

19.1.5 the Trust shall secure use of Council Data and Documentation shall return to the Council all Council Data and Documentation; and

19.1.6 the Trust agree fully to co-operate with the Council to ensure an orderly migration of the Trust's Obligations to the Council or, at the Councils request to a Third Party.

19.2 In the event of termination or expiry of the Agreement, where either the Trust has granted to a Third Party licence or sub-licence of Intellectual Property Right, the Council shall at its discretion, acting reasonably, have the right to terminate each such sub-licence, or to enter directly into a licence with such Third Party.

## **20 COUNCIL COLLECTIONS DOCUMENTATION**

20.1 The Council has supplied and/or made available for inspection at the Council's premises the Council Collections Documentation to the Trust before the Commencement Date.

20.2 The Trust shall be obliged to handle and (where it has custody of any part of the Documentation)

store the Council Collections Documentation in accordance with best practice and appropriate policies and guidelines having regard to the nature of the documentation its age and condition.

## **21 AMENDMENTS TO THE AGREEMENT**

- 21.1 Save as otherwise provided, the Agreement shall not be altered or supplemented unless such alterations or supplement is recorded in a written document 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 all in accordance with the Requirements of Writing (Scotland) Act 1995 or subsequent legislation.
- 21.2 The Schedule to the Agreement may be amended in accordance with the Change Control Procedures.

## **22 NOTICES**

- 22.1 All notices and notifications under the Agreement shall be given or issued by letter or by other written documentation, or by way of facsimile transmission or other visible electronic means.
- 22.2 A notice or notification under the Agreement shall (subject to clause 22.3 and 22.4) be deemed to be duly given.
- 22.2.1 in the case of a letter or other written document when delivered or deemed to have been delivered; or
- 22.2.2 in the case of a facsimile transmission or other visible electronic means when dispatched, to the party to which it is given, addressed to that party (mentioning the contact name last intimated in writing to the party giving notice) at the address last intimated in writing giving the notice or (as the case may be) at the facsimile number then current of the party to which it is given.
- 22.3 A notice or notification which is delivered, or (in the case of facsimile transmissions or other electronic means) despatched, out with business shall be deemed to be duly given during business hours on the business day which next follows.
- 22.4 A notice sent by 1<sup>st</sup> Class recorded delivery shall be deemed to have been delivered during business hours on the Business Day which next follows.
- 22.5 Unless and until some other address or fax number or contact number is supplied in pursuance of clause 22.2 all notices are to be served (1) in the case of the Council to its Chief Executive at London Road, Kilmarnock KA3 7BU and (b) in the case of the other party to their Principal or Registered Offices.

## **23 MONITORING AND REVIEW**

- 23.1 The Council, acting reasonably, shall be entitled to have access to the Collections and the Libraries' Collection at any time subject to reasonable notice (save in the case of an emergency when no notice shall be required).
- 23.2 The Council will appoint a Council representative and the Trust will appoint a representative to observe performance of the Agreement.
- 23.3 The Council representative and the Trust's representative shall meet once per quarter or as otherwise



agreed to review the performance by the Trust of the Trust's obligations in relation to the Collections' Intellectual Property Rights.

- 23.4 The review meeting referred to in clause 23.3 shall in addition to addressing any perceived shortening in the performance of the Trust's Obligations, afford an opportunity for the Council and the Trust to exchange views in relation to how performance may be improved.
- 23.5 The Trust's representative shall be responsible for minuting and providing copies of the minutes at all review meetings.
- 23.6 A copy of the minutes shall be forwarded to the Council representatives by the Trust's representative as referred to in clause 23.5 within 5 Business Days of the review meeting.
- 23.7 The Council's representative shall advise the Trust of any comments which he/she has in respect of the minutes prepared in pursuance of clause 23.5 and the Trust's representative will make such revisions to the minutes as are agreed between the Council's representative and the Trust's representative.

## **24 REPORTS**

- 24.1 The Trust shall keep the Council informed of progress on the performance of the Trust's Obligations and shall provide the Council with such reports at such intervals and in such form as the council may reasonably require from time to time.

## **25 DISPUTE RESOLUTION**

- 25.1. 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 25.
- 25.2. 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.
- 25.3. 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.
- 25.4. 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.
- 25.5. The fees of the mediator and the cost of mediation shall be borne equally by the Parties.

- 25.6. 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.

## **26 PUBLICITY**

- 26.1 No party (including respective agents, employees or representatives) will, without the prior written consent of each of the other parties, disclose or permit to be disclosed any part or parts of the Agreement except and to the extent that such disclosure may be necessary to:
- 26.1.1 comply with the law (including but not limited to Data Protection and Freedom of Information as provided for in clause 17) or the requirements of auditors;
- 26.1.2 provide information to HM Revenue and Customs and its professional advisors;
- 26.1.3 provide information to any of the parties' professional advisors; or
- 26.1.4 Provide information to a party to which the Trust's Obligations may be transferred.
- 26.2 No Party will unreasonably withhold or delay its consent to a request by any party to disclose the contents of the Agreement to a Third Party which has a bona fide interest therein.

## **27 FORCE MAJEURE**

- 27.1 If any party is prevented from or hindered or delayed in performing any obligations under the Agreement by reason of any circumstances beyond its reasonable control (including without prejudice to that generality, strikes or lockout):
- 27.1.1 it shall be excused performance to the extent affected by the circumstances concerned, so long as it shall both have given notice to each of the other parties of those circumstances promptly after they first affected performance and use all reasonable commercial endeavours to eliminate or mitigate their cause or effect;
- 27.1.2 performance by that party shall be excused for the period during which the inability of the party to perform by reason of the circumstances concerned subsists (or, if a shorter period, the period for which it would have been unable to perform for that reason had it complied with its obligation under clause 27.1.1 to seek to eliminate or mitigate their cause or effect) but for no longer period, and shall be remedied as soon as possible; and
- 27.1.3 any time period for performance by that party shall be extended by a period equal in duration to any period for which performance is excused under clause 27.1.2.
- 27.2 If the Trust is prevented or impeded from performing any or all of the Trust's obligations or any other obligation under the Agreement by reason of any of the circumstances falling within the provisions of clause 27.1, for a period of excess of three months, then the Council may terminate the Agreement, with immediate effect, by written notice to the Trust.

## **28 AUDIT**

- 28.1 The Trust shall keep or cause to be kept full and accurate records ("the Trust Audit Records") of all work and activities carried out and obligations performed in connection with the Agreement and that all in accordance with the Retention & Disposal Schedules of the Council.

- 28.2 On receiving no less than five Business Days' notice from the Council, the Trust shall grant to the Council, the Council's internal auditors and any statutory auditors of the Council and their respective authorised agents, reasonable access during the Trust's normal working hours to the Trust Audit Records and /or premises and /or materials used in performance of the Trust's Obligations or otherwise in connection with the Agreement.

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

- 29.1 The Trust shall not be entitled to assign or otherwise dispose of its rights or obligations under the Agreement or any part thereof.
- 29.2 The Council shall be entitled (without any requirement for the Trust's consent) to assign or otherwise dispose of its rights and obligations under the Agreement or any part of them to any successor body to the Council.

## **30 SEVERABILITY**

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

- 30.2 If:

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

30.2.2 any of the parties (having regard to the developments or anticipated developments in the law or, 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 invalid, illegal or unenforceable or is considered to be vulnerable to challenge.

## **31 WAIVER**

The failure of any party to insist upon strict performance of any provision of the Agreement, or failure of any 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 the party to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.

## **32 RIGHTS OF THIRD PARTIES**

Save to the extent expressly set out in the Agreement, the Agreement is not intended to create nor shall it create, any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

## **33 INDEPENDENT CONTRACTORS**

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

**34 COSTS**

Except as otherwise provided in the Agreement, each party shall pay its own costs in connection with negotiation, preparation, execution and performance of the Agreement and all ancillary documents to it.

**35 LAW AND JURISDICTION**

The Agreement is governed by and shall be construed in accordance with Scots law and, subject to clause 25, the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF this Agreement typewritten on this and the preceding 29 pages together with the Schedule in six parts has been executed by the Parties hereto as follows:

SEALED with the common seal of EAST AYRSHIRE COUNCIL and SUBSCRIBED

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

..... Authorised Signatory

SUBSCRIBED for and on behalf of  
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 Collections Agreement between  
East Ayrshire Council and East Ayrshire Leisure Trust**

**PART 1 RIGHT GRANTED**

The rights granted under clauses 2 and 7 of the Agreement in relation to the Collections and the Libraries' Collection are subject to the terms and conditions of clauses 2.2 to 2.10 and clauses 4.1 to 4.5 of the Agreement. Subject to the preceding sentence, the rights granted to the Collections and the Libraries' Collection are as follows:

The right to:

- select, appraise and acquire items for the Collections and the Libraries' Collection;
- create and manage appropriate documentation, including cataloguing within an electronic collections management system;
- preserve, conserve and store items in appropriate facilities;
- use items for the purposes of research, including third party research;
- make items available for public access;
- display and exhibit items in appropriate facilities and conditions;
- use items for public programmes;
- lend items to a Third Party;
- borrow items from a Third Party;
- photograph and /or digitise items;
- make reproductions, replicas and facsimiles of items;
  - use an image of items for the purpose of marketing the TRUST and /or the Collections and the Libraries' Collection; and
- dispose of items in consultation with and following approval of the Council.
  - subject, in each case, to compliance with the law and relevant standards, policies, treaties and codes of ethics and in accordance with the terms of the Agreement.

## **PART 2 THE TRUST'S PREMISES**

Dick Institute  
 Dean Castle  
 Burns Monument Centre  
 Burns House Museum  
 Doon Valley Museum  
 Baird Institute  
 Darvel Library  
 Stewarton Library  
 Auchinleck Library  
 Crosshouse Area Centre  
 Galston Library  
 Dick Institute Library  
 New Cumnock Library  
 Mauchline Library  
 Rothesay House Library  
 AM Brown Institute Library Catrine  
 Muirkirk Library  
 Dalmellington Library  
 Patna Library  
 Drongan Library  
 Newmilns Library  
 Bellfield Library  
 Kilmaurs Library  
 Ochiltree Library  
 Dalrymple Library  
 Hurlford Library  
 Burns Monument Centre

all as the above premises are more particularly described in the Asset Transfer Agreement and any other premises of the Trust from time to time within which the Collections and the Libraries' Collection are held.

## **PART 3 POLICIES/ PROCEDURES**

Collections Development Policy  
 Documentation Policy Statement  
 Care and Conservation Policy Statement  
 Documentation Plan  
 Care and Conservation Plan  
 Documentation Procedural Manual  
 Emergency Plan.

## **PART 4 ACCREDITATIONS**

- Museums, Libraries and Archives Council's Accreditation Scheme
- Libraries Accreditation – The Public Quality Improvement Matrix

The Public Library Quality Improvement Matrix (PLQIM) is a specially developed quality assurance tool by the Scottish Library and Information Council (SLIC) for public libraries in Scotland and approved and adopted by the Scottish March 2007.

It follows two sets of Public Library Standards which were developed with COSLA and published in 1986 and 1995.

The main Standards are:-

1. Authorities must adopt and publish a vision and policy objectives for the public library service.
2. Public library services in a local authority area must be planned and provided in consultation with other services, consistent with the strategy priorities agreed as part of the Community Planning process.
3. Public library services must prepare, approve and publish a resource management and collection policy. This policy should be implemented and reviewed using evidence based stock management processes.
4. Public library services should ensure that stock is relevant and in good condition. This should be monitored and reported through the Public Library Quality Improvement Matrix.
5. Public library services should ensure their library management system is fully compliant with standards and the National Entitlement Card Scheme.
6. All library resources must be accessible via a web-enabled catalogue and local networks for use by individuals and communities. Catalogues should be standards compliant and be available for cross searching with those of other services.
7. Public library services must prepare and approve an Acceptable Use Policy for internet and PC use.
8. Libraries should purchase and promote Scottish Material in its widest sense.
9. Public library services should be encouraged to co-operate with other library and information services, working towards greater sharing of resources at local, regional and national level.
10. Libraries should undertake regular market research, review customer feedback and develop marketing strategies for their services using robust and quality mechanisms.
11. Local authorities should carry out a review of public library services, using the Public Library Quality Improvement Matrix to demonstrate Best Value and the delivery, in due course, of cultural entitlements.
12. Local authorities should make the report of the Public Library Quality Improvement Matrix process available to the public.

Entitlements for the public, standards are:-

1. Free access to books for lending and study and the internet through broadband networks.
2. Access to the local authority's policy objectives and vision for the public library service.
3. Access to the public library service's policies on resource and collections management.
4. Access to stock which is in good condition.
5. Public library services offered through the National Entitlement Card, which is issued locally.
6. Access to the local authority's library resources and online request and renewal service via a web-enabled catalogue.
7. Access to the public library service's policies on Acceptable Use for internet and computers.
8. Access to a range of material by Scottish authors or published by Scottish publishers.
9. Opportunity to express views about the public library service through consultations.
10. Access to the resources of other library and information services via inter-lending agreements, resource sharing co-operatives or using the services of the National Library of Scotland and the British Library.

## **PART 5 – LAWS, STANDARDS, GUIDELINES AND CODES OF ETHICS**

### **ARCHIVES**

#### **Standards for Archives**

- The British Standard BS5454:2000 specifies a set of recommended conditions and this is used as the benchmark when assessing the environment of archival documents.
- Data Protection Act, 1998
- Human Rights Act 1998
- International Standard on Records Management, ISO 15489
- Society of Archivists and Records Management Society Code of Practice for Archivists and Records Managers
- 1995 – COSLA Public Library Standards
- 2006 – SLIC (Scottish Library and Information Council) Public Library Improvement Matrix
- The National Archives – Standards for Record Repositories

#### *Primary legislation for public records*

- Public Records (Scotland) Act, 1937
- National Heritage (Scotland) Act 1985
- Public Registers and Records (Scotland) Act 1948
- Public Records Act 1958
- Public Records Act 1967

#### *Local government records legislation*

- Local Government (Scotland) Act 1973
- Local Government (Access to Information) Act 1985



- Local Government etc. (Scotland) Act 1994
- Freedom of Information (Scotland) Act (2002) (FOISA)

## **Standards and Guidelines for Museums, Libraries and Archives in the UK**

### *Statutory Regulations*

#### **World Regulations**

- UNESCO (1954) convention and protocol for the protection of cultural property in the event of armed conflict (Hague convention) and the second protocol (1999).
- UNESCO (1970) convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.
- UNESCO (1972) convention concerning the protection of the world cultural and natural heritage.
- UNESCO (1997) human rights commission principles and guidelines for the protection of the heritage of indigenous peoples.
- UNESCO (2003) Charter on the Preservation of the Digital Heritage.
- UNIDROIT (1995) convention on stolen and illegally exported cultural objects.
- United Nations (1993) declaration on the rights of indigenous peoples (Maatutua declaration).
- United Nation Convention on Biological Diversity – Rio de Janeiro, 1992 and the Cartagena protocol – Montreal, (2000).
- World Archaeological Congress, (1989) the Vermilion accord on human remains.
- Inter-Allied Declaration Against Acts of Dispossession Committed In Territories Under Enemy Occupation of Control (1943).
- Washington Conference on Holocaust-Era Assets (1998).

#### **EU Legislation**

- European convention (1973) on the protection of the archaeological heritage.
- EC council directive no. 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member state.
- EU regulations (EEC no 3911/92) on export of cultural goods out of the European community.
- Council regulation (EC) no. 338/97: protection of species of wild fauna and flora by regulating the trade in these species.
- European commission regulation 939/97 corrigendum to commission regulation (EC) no 939/97 26<sup>th</sup> May, 1997 laying down detailed rules concerning the implementation of council regulation (EC) no 338/97 on the protection of species of wild fauna and flora by regulating trade therein.
- EC directive 2003/4/EC on public access to environmental information.
- Commission regulation (EC) no 349/2003 of 25<sup>th</sup> February, 2003. Suspend the introduction into the community of specimens certain species of wild fauna and flora.
- Commission regulation (EC) no 1497/2003 of 18<sup>th</sup> August, 2003 on the protection of species of wild fauna and flora by regulating trade therein.

#### **UK Legislation**

- Endangered Species (Import and Export) Act (1976)
- Ancient Monuments and Archaeological Areas Act (1979)
- Wildlife and Countryside Act (1981) and subsequent amendments
- The Environmental Information Regulations 2004, Statutory Instrument 2004 No. 3391.
- Return of Cultural Objects regulations (1994)

- Law relating to treasure trove.
- Data Protection Act (1998)
- Freedom of Information (Scotland) Act (2002).
- Copyright and Related Rights regulations (2003).
- Dealing in Cultural Objects (Offences) Act (2003).
- Human Tissue Act (2004).
- The Return of Cultural Objects Regulations 1994.
- The Return of Cultural Objects (Amendment) Regulations 1997
- Copyright, Design and Patents Act 1988
- Disability Discrimination Act 2005.
- Control of Substances Hazardous to Health (COSH).
  
- **National Archives**
  - Planning a New Record Repository
  - Standards for Record Repositories
  - A Code of Practice on **Archives** for Museums and Galleries in the UK (2002)
- **National Occupational Standards In Publishing**  
<http://www.train4publishing.co.uk/ocstd/what>
- **RNIB: Good Design Standards and Clear Print Guidelines**  
<http://www.rnib.org.uk/xpedio/groups/public/documents/publicwebstie/public/printdesign/hcsp>
- **Scottish Government:How Good is our Culture and Sport?**
- **Guild of Taxidermy Accreditation Standards**  
[www.taxidermy.org.uk](http://www.taxidermy.org.uk)
- **Arts Council of England**
  - Accreditation Standards (2011)
  - Benchmarks in Collections Care (2011)
- **Arts Council of England Accreditation Scheme 2011**

This scheme sets nationally agreed standards for UK museums. To qualify, museums must meet clear basic requirements on how they care for and document their collections, how they are governed and managed, and on the information and services they offer to their users.
- **Responding To Cultural Diversity : Guidance For Museums And Galleries (2000)**

The paper focuses on ethnically based cultural diversity. The guidance 'deals with areas that contribute towards creating an 'accessible culture' for ethnic minority communities'.

- **Government Indemnity Scheme : National Heritage Act 1980 Indemnity Arrangements for Local Museums, Galleries and Other Non-Governmental Bodies (2000)**

This note gives guidance on the indemnity arrangements for loans to museums, galleries or libraries maintained by local authorities, university or library authorities, the National Trust, and private bodies or individuals approved by the Secretary of State for Culture, Media and Sport under the National Heritage Act, 1980. It contains information on

- the statutory requirements which must be satisfied (public access and security)
- the procedure for application
- factors to be considered before an indemnity is granted
- conditions of indemnity cover

- **Restitution and Repatriation : Guidelines For Good Practice (2000)**

These guidelines aim to encourage those museums holding material in their collections which might form the subject of a repatriation request to be proactive in considering how to respond. The guidelines cover:

- reasons for, sources and forms of requests
- context for responding to a request for return
- considering a request
- reaching a decision
- relevant case studies

- **Guidelines For Good Practice Series : Insurance For Museums (2000)**

The guidance offers practical advice on why museums should take out insurance over and describes the range of cover available. It offers background information on how the insurance industry is organized and operates, and how specialist brokers and underwriters can provide highly customized cover for museums and similar heritage bodies

The guidelines have chapters on the following issues:

- The insurance market
- Risk management
- Insurance and risk management
- Different ways of insuring
- Understanding the cover
- Areas of risk and risk solutions

- **Environmental Management : Guidelines For Museums And Galleries (1995)**

This guidance presents a strategic approach to environmental management, outlining the theory and practice of achieving an appropriate museum environment for both collections and people.

- **Museum Learning Online : Guidelines for Good Practice (2001)**

Museum Learning Online aims to provide guidance for projects that intend to use museum and gallery collections for educational projects via the web

- **Standards in the Museum Care of Archaeological Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Biological Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Geological Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Musical Instruments Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Textile Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Larger And Working Objects Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Photographic Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards and Guidelines for Museums, Libraries and Archives in the UK :**

- Archive Standards and Guidelines
- Cross-Domain Standards and Guidelines
- Library Standards and Guidelines

- **Spectrum : The UK Documentation Standard (1997)**

This standard represents a common understanding of good practice for museum documentation. It contains procedures for documenting objects and the processes they undergo, as well as identifying and describing the information which needs to be recorded to support the procedures.

- **MDA Guidelines On Disposing of Objects You May Not Own**

Guidelines developed to allow museums to undertake disposal of objects that they may not own to insure that legal, ethical and public relations management issues are fully recovered; it defines the types of objects that are covered under this method of disposal and highlights how this type of disposals is different from disposal in general. It then lays down a series of basic principles to apply in each case and a set of procedures to deal with difficult situations.

- **MDA Procedures for Collections Management**

- **American Institute For The Conservation Of Historic And Artistic Works (AIC)**

Code of Ethics and Guidelines for Practice  
<http://aic.stanford.edu/pubs/ethics.html>

- **Australian Natural Heritage**

Charter for the conservation of places of natural heritage significance (2002)

- **Angus Council Conservation Charter**

Development Control

- ***Corpus Vitrearum Medii Aevi (CVMA)***

Guidelines for the Conservation and Restoration of Stained Glass, Second Edition, Nuremburg 2004

- **ECCO (European Confederation Of Conservator-Restorers' Organisations AISBL/Confederation Europeenne Des Organisations De Conservateurs-Restaurateurs AISBL)**

ECCO Professional Guidelines I, II and III Statutes  
[http://www.ecco-eu.info/index.php?container\\_id=163&doc\\_id=170](http://www.ecco-eu.info/index.php?container_id=163&doc_id=170)  
[http://www.ecco-eu.info/index.php?container\\_id=163](http://www.ecco-eu.info/index.php?container_id=163)

- **International Scientific Committee For Analysis And Restoration Of Architectural Heritage (ISCARSAH)**

Recommendations for the Analysis, Conservation and Structural Restoration of Architectural Heritage

- **Institute of Conservation**

Professional Accreditation of Conservator Restorers  
[http://www.pacr.org.uk/docs/pacr\\_ac\\_guide\\_2006.doc](http://www.pacr.org.uk/docs/pacr_ac_guide_2006.doc)  
<http://www.pacr.org.uk/>

- **The Institute of Paper Conservation**

Statutes

- **London Metropolitan Archives**

Preservation and Conservation Policy April 2001

- **Royal Armouries Museum, Conservation Department Policies And Procedures**  
Intervention Conservation  
<http://www.royalarmouries.org/extsite/view.jsp?sectionId=1652>
- **Society For The Preservation of Natural History Collections (SPNHC)**  
Guidelines for the Care of Natural History Collections  
<http://palimpsest.stanford.edu/byorg/spnhc/spnhc1.html>
- **United Kingdom Institute For Conservation of Historic and Artistic Works (UKIC)**  
Code of Ethics and Rules of Practice  
<http://www.icon.org.uk/>
- **United Nations Educational, Scientific And Cultural Organisation**  
Charter on the Preservation of the Digital Heritage  
[http://portal.unesco.org/ci/en/files/13367/10700115911Charter\\_en.pdf/Charter\\_en.pdf](http://portal.unesco.org/ci/en/files/13367/10700115911Charter_en.pdf/Charter_en.pdf)
- **Museum Galleries Scotland**
  - A National Collections Development Strategy for Scotland's Museums (2006)  
Offers guidance on how to better manage museum collections and use them to greater effect
  - A National Workforce Development Strategy for Scotland's Museums (2006)  
This strategy lays out clear priorities for the development of staff and volunteers in museums and galleries in Scotland
  - A National Learning and Access Strategy for Museums and Galleries in Scotland (2005)  
Offers guidance on how to make learning and access integral to service delivery. Its recommendations help museums and galleries contribute to the development of democratic, confident and creative Scotland by playing an invaluable role in advancing equality of access and cultural engagement opportunities for all.
  - A National ICT Strategy for Scotland's Museums (2004)  
Provides guidelines on the use of ICT in museums
  - Collections Care and Conservation Fact Sheets - various  
[http://194.200.63.26/information\\_services/factsheets.asp](http://194.200.63.26/information_services/factsheets.asp)
- **Museum Ethnographers Group**
  - Guidance Notes On Ethical Approaches In Museum Ethnography (2003)  
These guidance notes are intended to inform workers in museums who have responsibility for ethnographic collections and to create an awareness of areas of concern particular to ethnographic material. They will also be helpful to others with general or particular responsibility for such collections.
  - Guidelines On The Management Of Human Remains (1994)  
Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in the UK.

- **The Standing Conference on Archives and Museums (SCAM) (2002)**

Code of Practice on Archives for Museums and Galleries in the UK. The code is offered to museums to give them guidance in administering their archives in accordance with professional standards and to suggest sources of advice and help. The main body of the code is a Working Practice for Archives and archival material, covering:

- Acquisition (including joint acquisition with a museum and a record office)
- Conservation, storage and archive management
- Public access to the archives under supervision
- Archives controlled by legislation
- Relationship with the Historic Monuments Commission (HMC) or the Scottish Record Office (SRO)

- **Museums Copyright Group**

- A Guide to Copyright For Museums And Galleries (2000)  
A guide to copyright for museums and galleries, covering:

- Definition of copyright
- Ownership of copyright
- Exploitation of copyright
- Merchandising and publishing
- Internet and electronic licensing

- **CILIP (Formerly The Library Association)**

- Guidelines For References and Information Services In Public Libraries (2004)  
The Guidelines are structured as a toolkit for managers responsible for providing reference and information services in public libraries.

- **National Preservation Office**

- Good Handling Principles and Practice for Library and Archive Materials (2000)

The purpose of this leaflet is to emphasise the importance of good handling practices in libraries and archives; to encourage the application of these methods; and to offer guidance to all users on the handling and care of manuscripts, printed documents and books.

- Guidance for Exhibiting Archive and Library Materials (2000)

The exhibition of archive and library materials has the potential to damage documents and can even lead to loss if security measures are inadequate. This publication is intended to give guidance in providing for the safe exhibition of library and archive materials. It is accompanied by a full bibliography.

- Photocopying of library and archive materials (2000)

Offers advice on best practice for photocopying in terms of conservation and public services.

- **Historical Manuscripts Commission**

- Historical Manuscripts Commission Standard for Record Repositories (2001)

The Standard's recommendations are addressed to archivists and governing bodies of record offices, libraries, museums and other institutions holding records which are available to the public for research. Its primary concern is with the well being of records. The Standard makes recommendations for the creation or maintenance of record repositories within five key areas:

- Constitution and finance
- Staff
- Acquisition
- Access
- Storage and preservation

- **BSI British Standards**

- BS 5454:2000 Recommendations on the Storage and Exhibition of Archival Documents (2000)

This standard provides recommendations for the storage and exhibition of archival documents.

- BS ISO 15489-1:2001 Information and documentation. Records management. Provides guidance on managing records of originating organisations, public or private for internal and external clients.

- **Archaeological Archives Forum**

- Archaeological Archives: creation, preparation, transfer and curation (2006)

This document sets out recommended standards for the creation, preparation, transfer and curation of archaeological archives. It summarises existing best practice for archaeological archives, including written documents, drawings, photographs, digital material and objects.

- **Arts Humanities Data Service AND –ADS/HDS/VADS**

- Digital Archives from Excavation and Fieldwork: Guide to Good Practice (2002)

This is a guide to digital archiving of records produced in the course of assessment, exaction, and post-excavation phases of archaeological projects. It aims to provide information o the best way to create and document digital material produced in the course of excavation and fieldwork, and to deposit it safely in a digital archive facility for future use.

- Digesting history; a guide to creating electronic resources from historical documents.

This guide is intended as a reference work for individuals and organisations involved with, or planning, the computerisation of historical source documents.

- Creating digital resources for the Visual Arts: standards and good practice



This Guide both highlights examples of current practice in the creation of digital information in the visual arts domains, and makes recommendations for best practice in data creation, collection, description, delivery and preservation. It covers the use of domain specific resource description standards and the issues involved in the creation and use of resource discovery metadata for this domain. It also covers explicitly technical issues such as choice of data format and hardware and software platforms for a given resource. This has been written by the Visual Arts Data Service & Technical Advisory Service for Images.

- **Visit Scotland Visitor Attraction Quality Assurance Scheme**  
[http://www.scotexchange.net/businessdevelopment/qa\\_home/business\\_growth-va-va.htm](http://www.scotexchange.net/businessdevelopment/qa_home/business_growth-va-va.htm)
- **Website Accessibility Guidelines**
  - RNIB  
<http://www.rnib.org.uk/xpedio/groups/public/documents/code/public.rnib008789.hcsp>
  - World Wide Web Consortium  
[www.w3.org](http://www.w3.org)  
 e-government  
[www.e-envoy.gov.uk](http://www.e-envoy.gov.uk) and [www.govtalk.gov.uk](http://www.govtalk.gov.uk)
- **Website Accessibility Guidelines**  
 Standards based on general good practice and experience – standards to be based on what is produced by high-end 39 mega pixel cameras.
- **Picture Library**  
 Adhere to best practice and keep updated through membership of BAPLA (British Association of Picture Libraries and Agencies)
- **Marketing**  
 No external standards as such, other than ensuring all materials adhere to the industry standard of ‘honest, decent, legal and truthful’.

## World Standards & Guidelines and Codes of Ethics

- International Council of Museums (ICOM)
  - **ICOM Code of Ethics for Museums, 2006**  
 The *Code of Ethics for Museums* sets minimum standards of conduct and performance of which museum professional staff throughout the worlds may reasonably aspire as well as a providing a statement of reasonable public expectation from the museum profession.  
[http://icom.museum/code2006\\_eng.pdf](http://icom.museum/code2006_eng.pdf)  
<http://icom-cc.icom.museum/> and <http://icom-cc.icom.museum/Links/>

- **Ethnics of Acquisition (revised 2004)**

Whatever the subject matter or discipline of the museum and wherever it may be situated in the world, certain principles of ethics and professional integrity in relation to acquisition can be presumed to be applicable. Briefly, this means there must be a full, clear and satisfactory documentation in relation to the origin of any object to be acquired. This is quite as important for an object generally classified in the category of art as for an object of archaeology, of ethnology, or of national and natural history.

- **Ename Charter for the Interpretation of Cultural Heritage Sites** (for consideration Jan. 2007)

The aim of this Charter is to define the basic objectives and principles of site interpretation in relation to authenticity, intellectual integrity, social responsibility, and respect for cultural significance and context. It recognises that the interpretation of cultural heritage sites can be contentious and should acknowledge conflicting perspectives. The Charter is now in a final review stages and is likely to be adopted by the ICOMOS committee for interpretation and presentation (ICIP) in January, 2007.

Statutes

<http://icom.museum/statutes.html>

- **International Council of Museums Committee for Conservation (ICOM-CC)**

The Conservator-Restorer: a Definition of the Profession

<http://icom-cc.icom.museum/About/DefinitionOfProfession/>

International Council of Museums (ICOM) Statutes

- **International Council on Monuments and Sites (ICOMOS)**

- **The Venice Charter**

[http://www.icomos.org/docs/venice\\_charter.html](http://www.icomos.org/docs/venice_charter.html)

- **The Athens Charter for the Restoration of Historic Monuments**, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, Athens 1931.

<http://www.icomos.org/docs/athens-charter.html>

- **Burra Charter**, The Australia ICOMOS charter for the conservation of places of cultural significance

<http://www.icomos.org/australia/burra.html>

- **Principles for the Preservation of Historic Timber Structures (1999)**

- **Ename Charter for the Interpretation of Cultural Heritage Sites (5<sup>th</sup> July, 2005)**

- **International Charter For The Conservation And Restoration Of Monuments And Sites (ICOMOS)**

- **Principles for the Analysis, Conservation and Structural Restoration of Architectural Heritage (2003)**  
<http://www.international.icomos.org/charters/structures-e.htm>
- **Principles for the Preservation of Historic Timber Structures (1999)**  
<http://www.international.icomos.org/charters/wood-e-htm>
- **International Council on Archives**
  - **ICA Code of Ethics (1996)**  
The ICA Code of Ethics for archivists aims to establish high standards of conduct for the archival profession by providing an ethical framework for the guidance of the profession. Employing institutions and archive services are encouraged to adopt policies and practices that facilitate the implementation of the code.
- **Europeans Confederation of Conservator-Restorers' Organisation (ECCO)**
  - **Ecco Professional Guidelines: Code Of Ethics (2002 – 2003)**  
The Code of Ethics embodies the principles, obligations and behaviour which every Conservator-Restorer belonging to a member Organisation of ECCO should strive for in the practice of the profession. The code is divided into four sections:
    - General Principles for the Application of the Code
    - Obligations towards Cultural Property
    - Obligations to the Owner or Legal Custodian
    - Obligations to Colleagues and the Profession
    - Statutes.

<http://www.ecco-eu.info/index.php?container-id=163&doc-id=170>  
<http://www.ecco-eu.info/index.php?container-id=163>
- **Society for the Preservation of Natural History Collections**
  - **Guidelines for the Care on Natural History Collections (2004)**  
Outlines guidance and ethical approaches to the care of natural history collections, including, preservation, documentation, research and sampling.
- **International Federation of Library Associations and Institutions**
  - **Guidelines For Digitisation Projects For Collections And Holdings In The Public Domain (2002)**  
These Guidelines were produced by a working group representing IFLA and the ICA and commissioned by UNESCO to establish guidelines for digitisation programmes for collections and holdings in the public domain. The contract specified that the guidelines should so far as possible be particularly applicable to the institutions in the countries of the developing world.

The aim was to produce a synthesis of available information, drawing upon both published sources and on the operations of specific projects, illuminated by the personal experience. It is a summary of the best existing knowledge and practice drawn from around the world. These guidelines therefore identify and discuss the key issues involved in the conceptualisation, planning and implementation of a digitalisation project, with recommendations for 'best practice' to be followed at each stage of the process. Coverage is concerned only with the paper-based documentary heritage, that is with manuscripts, printed books and photographs.

- **World Wide Web Consortium**

- **Web Content Accessibility Guidelines (1999)**

These guidelines explain how to make Web content accessible to people with disabilities.

The guidelines are intended for all Web content developers (page authors and site designers) and for developers of authoring tools. While their primary goal is to promote accessibility, following them will also make Web content more available to *all* users, whatever user agent they are using (e.g. desktop browser, voice browser, mobile phone, automobile-based personal computer, etc) or constraints they may be operating under (e.g. noisy surroundings, under or over illuminated rooms, in a hands-free environment, etc.)

- **World Federation of Friends and Museums**

- **Code of Ethics for Museum Friends and Volunteers (1996)**

This code outlines the principles and obligations in the working partnerships between museum institutions and friends and volunteers.

## **Non-Statutory Ethical Standards & Guidelines**

### *UK Standards and Guidelines*

#### MUSEUMS OF ASSOCIATION

- Code of Ethics for Museums : Ethical Principles For All Who Work or Govern Museums In The UK 2002

The code defines ten core museum values. Society can expect museums to:-

- Hold collections in trust on behalf of society
  - Focus on public service
  - *Encourage people to explore collections*
  - Consult and involve communities, users and supporters
  - Acquire items honestly and responsibly
  - Safeguard the long-term public interest in the collections
  - Recognise the interest of people who made, used, owned collected and gave items in the collections
  - Support the protection of natural and human environments
  - Research, share and interpret information related to collections
  - Review performance to innovate and improve
- Ethical Guidelines 1 : Acquisition (revised edition 2004)

The guidelines 'aim to help museums and their staff apply ethical principles when acquiring items for the permanent collection':

The guidelines set out 'Basic Principles':

- The need for a clear acquisition policy
- The necessity of considering the cost of collections
- The necessity of ensuring transfer of title
- Ethical Guidelines 2 : Disposal (1996)

The guidelines were drawn up by the Museums Association's Ethics Committee to help museums make decisions about disposals and recommend procedures to follow. The basic principles are:

- There is a strong presumption against disposal
  - Every disposal must demonstrate long-term public benefit
  - Attempts must be made to keep public collections in the public domain
  - Disposal should never be undertaken principally for financial reasons
  - Decisions to dispose should be taken by the governing body
- Ethical Guidelines 3 : Trading And Commercial Activities (revised 2004)

Guidelines prepared by the Museums Association's Ethics Committee to help museums to take account of ethical principles in their commercial and training activities. The guidelines cover the following activities:

- Pricing policy
  - Retail
  - Catering
  - Location hire
  - Copyright
  - Sponsorship
  - Auctions
- Ethical Guidelines 4 : Access (1999)

The guidelines offer four key questions for museums to consider when hoping to widen their access, with suggested areas of investigation:

- Enhancing the visitor experience
- Increasing the visitor numbers
- Extending the use and appreciation of museum collections
- Ensuring that the range of diversity of users is as wide as possible

- Buying In The Market: A Checklist For Museums (2000)

The checklist is intended for any museums that are considering the purchase of any types of item for their collections from a dealer at auction. The checklist highlights the most important points to consider, including:

- Inspection
- Legal title

- Provenance
  - Condition
  - Price
- MA Statement : Museums, sales and valuations events (2004)
 

This offers guidelines for the relationship between museums and auction houses, particularly in relation to events held in museums, but also more generally in terms of museum staff not offering valuations.
  - Guidelines On Pollution Control In Museum Buildings (2000)
 

The guidelines are intended to help museums, archives and libraries make rational assessments of the risks of pollution damage to their collections, and adopt appropriate strategies.
  - Collections for the Future (2005)
 

Provides guidelines and recommendations on the management of collections and how to engage the public with them in more meaningful ways.

## **PART 6 CHANGE CONTROL PROCEDURES**

### **1 Principles**

- 1.1 Neither the Trust nor the Council shall unreasonably withhold or delay its agreement to any change proposed in pursuance of the provisions of this Part 7 of the Schedule.
- 1.2 Until such time as a change control note (“CCN”) has been signed by both the Trust and the Council, the Trust shall, unless otherwise expressly agreed in writing in accordance with provisions of clause 21 continue to perform the Trust Obligations in accordance with the Agreement.
- 1.3 Any discussions, negotiations or other communications which may take place between the Trust and the Council in accordance with any proposed change to the Agreement, including but not limited to the submission of the written communications, prior to the signing by the Trust and the Council of relevant CCN, shall be without prejudice to the rights of either party.

### **2 Procedure**

- 2.1 If the Council wishes to amend the Agreement pursuant to the provisions of this Part 7 of the Schedule then the Council representative shall submit a brief written paper (the “proposed change paper”) to the Trust representative addressing, as a minimum, the following points:
  - 2.1.1 the title of the proposed change
  - 2.1.2 the reason for the proposed change; and
  - 2.2.3 detail of the proposed change

- 2.2 Within [10] Business Days after submission of a proposed change paper (or such other period as may be agreed between the Trust and the Council) the Trust's representative shall prepare and deliver to the Council representative two copies of a written and signed response to the proposed change paper setting out in as much detail as possible:
  - 2.2.1 the title of the proposed change;
  - 2.2.2 technical details of how to implement the change;
  - 2.2.3 a list of deliverables in relation to the change (together with any acceptance criteria);
  - 2.2.4 a timetable for delivery of change;
  - 2.2.5 any tasks required to be completed by the Council in order to allow the TRUST to deliver change; and
  - 2.2.6 associated revisions to be made to the Agreement.
- 2.3 If the Trust wishes to amend the Agreement pursuant to the provisions of this Part 7 of the Schedule the Trust's representative shall prepare and deliver the Council representative two copies of a CCN setting out in as much detail as possible:
  - 2.3.1 title of the proposed change;
  - 2.3.2 technical details of how to implement change;
  - 2.3.3 a list of deliverables in relation to the change (together with any related acceptance criteria);
  - 2.3.4 a timetable for delivery of the change;
  - 2.3.5 any tasks required to be completed by the Trust in order to allow the Council to deliver the change;
  - 2.3.6 Associated revisions to be made to the Agreement;
- 2.4 Each CCN shall be uniquely identified by a sequential number.
- 2.5 Following receipt of a CCN, the Trust or the Council (as appropriate) may enter into discussions with the other party in relation to the contents of the CCN with the view to the Trust and the council reaching an agreed position; the Trust or the Council (as appropriate) must either receipt or reject a CCN. To accept a CCN, the Trust or the Council (as appropriate) must sign and return the CCN to the other party no later than [10] business days following its receipt of the CCN (or such other period as may be agreed between the Council and the Trust).
- 2.6 Following acceptance of a CCN, the agreement shall be deemed to be revised as set out in the CCN.
- 2.7 A CCN may only be used to vary the terms of the Schedule to the Agreement, all other amendments being subject to the provisions of clause 21.



**DRAFT BUSINESS PLAN**  
**2013-16**



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## EXECUTIVE SUMMARY

This Business Plan has been developed by East Ayrshire Leisure. It provides a strategic framework for the delivery of high quality cultural, countryside and sport services across East Ayrshire for the next three years. It forms a detailed response through its Action Plan and supporting documents on how East Ayrshire Leisure will respond to and fulfil the objectives set out in our Service Level Agreements (**Appendix 5**) with East Ayrshire Council and our other partners.

This is East Ayrshire Leisure's first Business Plan and will be reviewed annually and will form a critically important method of measuring our success against the targets set by East Ayrshire Council and our other funders and partners.

### Background

The Business Plan has been developed by East Ayrshire Leisure as a response to East Ayrshire Council's decision to act on the findings of the Cabinet report of 24 October 2012 which outlined the benefits to the Council's Leisure Services of transferring to Trust.

The Business Case detailed a range of options that would provide financial savings and other efficiencies that would be beneficial to the people of East Ayrshire and help to protect a high quality range of Leisure Services within the context of the challenging financial climate facing the Council. To quote from the Business Case, **'the real prize would appear to be the opportunity to create a newly focussed organisation that can protect, and in time, enhance community facing services.'**

The Business Plan is a critical document that points the way forward for the next three years and outlines in detail how East Ayrshire Leisure will deliver and enhance a wide range of community facing services whilst meeting the savings target of £802,897 in 2013/14, £523,500 in 2014/15 and £523,500 in 2015/16 . The creation of the plan has been subject to a considerable amount of work from officers at East Ayrshire Council and sets the tone for the emergence of a new organisation that will deliver the 'real prize' and drive forward a wide range of high quality cultural, countryside and sport provision for the people of East Ayrshire.

***Douglas Reid, Chair of East Ayrshire Leisure***



# Introduction

East Ayrshire Leisure will work with partners to deliver inspiring leisure experiences across our area.

## INTRODUCTION

### ***East Ayrshire Leisure***

East Ayrshire Council (the Council) approved the implementation of East Ayrshire Leisure Trust on 13<sup>th</sup> December 2012.

In addition, it is acknowledged that appropriate registrations with the Office of the Scottish Charities Regulator (OSCR) and Her Majesty's Revenue and Customs (HMRC) are pre-requisites to implementation. An application to register East Ayrshire Leisure as a Scottish Charitable Independent Organisation (SCIO) was submitted to OSCR and was approved 5<sup>th</sup> May 2013. Subsequent applications for VAT, Charities and Employer Registrations have been submitted to HMRC following receipt of OSCR charities registration.

Legal Agreements that identify the various contractual arrangements between the Council and East Ayrshire Leisure will be agreed in due course.

East Ayrshire Leisure will be a SCIO. On 1<sup>st</sup> July 2013 East Ayrshire Leisure will assume responsibility for the operation and management of a range of cultural, countryside and sports facilities and locations and provide sports, heritage, arts and countryside development, health and fitness and outdoor learning programmes.

As a charitable organisation our main purpose is to deliver inspiring cultural, countryside, community and sport services and experiences to support East Ayrshire's communities' aspirations in a way that has a focus on ensuring equality of opportunity and access for all.

### ***The Business Plan 2013 -2016***

This document is the first Business Plan for East Ayrshire Leisure and forms our response to the Services and Finance Agreement, Asset Transfer Agreement, Collections Agreement, Finance and Corporate support Agreement with East Ayrshire Council, and with all of our key stakeholders. The Business Plan sets out:

- Easy Ayrshire Leisure's vision and objectives
- The structure and constitution of Board
- The organisation, our people, customers and services provided
- The framework in which East Ayrshire Leisure will operate
- Relationships with key stakeholders
- The strategic intent of East Ayrshire Leisure
- Key delivery targets and programme of activities
- Projected income and expenditure

- Risk management
- Performance monitoring

### ***Business Planning Cycle and Reporting***

This Business Plan is for the period 1<sup>st</sup> July 2013 – end of March 2016 and it sets out the performance targets over this period.

The EAL Management Team will report on progress to the Board at quarterly meetings and will prepare an Annual report and Audited Accounts each year.

We will review our performance against this Plan regularly and update our Action Plan and targets annually. A review of our objectives by March 2014 will inform development of the Business Plan going forward.

The Business Plan is set within the context of reductions in budget from the Council during its three-year life cycle and shows how this will impact on facilities that will be directly managed by East Ayrshire Leisure.



# **Background (Service + Context)**

East Ayrshire Leisure will make a full contribution to the life of the area and develop creative responses to the issues that face the area.

## BACKGROUND (Context + Service)

### **Financial Challenges**

Financial challenges facing the Council are set out in the Council's Transformation Strategy with the Council's estimated budget gap over the period 2013/14 – 2016/17 anticipated to be £34.1 million (**Appendix 1**). The Strategy identifies a range of key initiatives that will see reviews of most aspects of service delivery being undertaken across the Council. Each service will be required to operate with reduced budgets while also delivering services that seek to meet customer and community aspirations and needs.

While financial savings are achievable and a key driver in establishing East Ayrshire Leisure, achieving savings is not the only benefit. With a clear focus on specific services the new organisation will strive to deliver improvements in both service quality and performance. External, Independent Board Trustees will bring new skills and experience to the organisation and access to funding, not available to Council, will be a significant advantage.

Recent large scale investment by the Council in new Leisure and Community services including the new Ayrshire Athletics Arena, Stewarton Sports Centre, and Libraries in Cumnock, Patna and Auchinleck and the refurbishment of the Palace Theatre/Grand Hall, Dick Institute, Dean Castle and local Museums has created a real opportunity for service growth and development.

### **Operating Environment**

East Ayrshire's Community Partners work together to provide excellent services, including health, education, social, cultural and leisure services and there is a strong community spirit in the towns and villages across the area.

The Partnership's vision is set out below:-

***“East Ayrshire will be a place with strong, vibrant communities where everyone has a good quality of life and access to opportunities, choices and high quality services which are sustainable, accessible and meet people's needs.”***

The provision and use of a wide range of flagship leisure facilities, visitor attractions and services across East Ayrshire has the potential to impact positively on quality of life indicators and will support the vibrancy of the communities.

In the latest Community Plan review, which sets out the strategic priorities and outcomes for East Ayrshire over the period 2011-2015, a number of key challenges were identified:

- *Sustainable Economic Growth - Developing the economy and achieving sustainable economic growth are key priorities for Partners in East Ayrshire, who recognise that they provide opportunities for high quality employment, higher incomes and better futures for residents.*



- *Employment – The challenging economic climate has had a significant impact on unemployment levels in East Ayrshire where the claimant count for unemployment has steadily increased from 3.3% at January 2008 to 5.9% at May 2012. This is compared to a rise in the Scottish average from 2.2%, to 4.3% in the same period.*
- *Changing Demographics - East Ayrshire's population is ageing significantly, with the local working age population projected to fall by 6.6% between 2008 and 2033. This statistic is compounded by the fact that the direction of population change varies across age bands; there is expected to be a more significant decline in the 16-29 and 30-49 age groups continuing the increase in the ageing population in East Ayrshire. In addition, it is estimated that the proportion of those of pensionable age will increase to around 27% by 2033, compared to 17% in 2008.*
- *Improving opportunities for and harnessing the skills and expertise of older people by empowering them to participate and to be involved in their communities as mentors; volunteers; through paid work; in learning, leisure, culture and sport;*
- *Improving the health and quality of life of older people. These demographic changes offer the potential to encourage older people to become involved in cultural, countryside and sport activities either in a voluntary, or participatory capacity.*
- *Health and Health Inequalities - As in Scotland, the pattern of ill health is changing in East Ayrshire. People are living longer and there has been a decrease in many of the illnesses that in the past resulted in death. However, although life expectancy as a whole is improving, there are emerging health issues that are giving cause for concern. For example, alcohol has a significant adverse impact on health and, in East Ayrshire, the proportion of the population hospitalised with alcohol conditions is significantly higher than the Scottish average.*
- *Poverty and Deprivation - There are sharp contrasts in the prosperity of communities across East Ayrshire, with some experiencing significant deprivation while others are relatively affluent. High levels of deprivation co-exist with the relatively wealthy commuting population, which continues to increase. The challenge, therefore, is to provide high quality services for all, while specifically targeting additional resources in the most disadvantaged communities as defined by the Scottish Index of Multiple Deprivation with a view to closing the opportunity gap between them and the least disadvantaged communities. The Scottish Index of Multiple Deprivation (SIMD) 2012 highlights that 32 out of 154 datazones that make up East Ayrshire fall within the 0-15% most deprived areas of Scotland. Cultural, countryside and sport play a crucial role in building confidence, providing new skills and developing opportunities for young people, in particular those that are unemployed.*

### **Context**

This Business Plan outlines the activities to be undertaken by East Ayrshire Leisure as agreed between the Board and the Council. The plan outlines the range of services and the priority actions required to achieve specific goals and objectives of the Council and the Community Planning Partnership expressed in the Community Plan.

The services delivered by East Ayrshire Leisure will be set within the context of the core legislative framework which drives the business. Most notably, this legislation includes the following: The Public Libraries Consolidation (Scotland) Act 1887, The Local Government (Scotland) Act 1973, The Local Government (Scotland) Act 1994, and the Land Reform (Scotland) Act 2003.

All East Ayrshire Leisure services also have a duty to comply with relevant equalities legislation, including the Human Rights Act 1998 and the Equality Act 2010.

The Council has a Leisure and Cultural Strategy, produced and developed by Leisure Services officers and approved by Council in 2009. This strategy, along with the various other strategies and plans listed in **Appendix 2**, underpin Leisure and Community Service provision and each strategy needs regular updating. East Ayrshire Leisure will provide an appropriate policy advisory role to maintain continuity to ensure that both parties work together to produce and update strategic plans. The list of core strategies that require input and delivery are listed in **Appendix 2**. This document provides a summary of each area of responsibility.

### **Services**

East Ayrshire Leisure provides a wide range of services which encompass developmental and learning activity from people with special needs to those with universal provision. Services are summarised in the following table and have been divided across the main operational themes of East Ayrshire Leisure.

EAST AYRSHIRE LEISURE – SERVICE DELIVERY DEFINITIONS	
<b>CULTURE</b>	
AREA FUNCTION	MAIN VENUES + FACILTIES
<ul style="list-style-type: none"> <li>• COLLECTION CARE + MANAGEMENT</li> <li>• CULTURAL DEVELOPMENT</li> <li>• ART GALLERY AND MUSEUM MANAGEMENT</li> <li>• EXHIBITIONS + EVENTS + ENTERTAINMENT PROGRAMME</li> <li>• EDUCATION AND LEARNING</li> <li>• CONFERCING AND CATERING</li> <li>• MANAGEMENT OF PALACE AND GRAND HALL COMPLEX</li> <li>• PUBLIC LENDING LIBRARY SERVICES</li> <li>• IMPRINT BOOK FESTIVAL AND OTHER LIBRARY EVENTS</li> <li>• READER DEVELOPMENT - SUPPORT FOR LITERACY IN THE COMMUNITY</li> <li>• YOUNG PEOPLE'S SERVICES – BOOKBUG, STORYTELLING, EVENTS.</li> <li>• REFERENCE AND COMMUNITY INFORMATION SERVICES</li> <li>• LIFE-LONG LEARNING – FREE INTERNET ACCESS, TUTOR LED ICT TRAINING</li> <li>• SPECIALIST SERVICES E.G. FOR VISUALLY IMPAIRED</li> <li>• LOCAL HISTORY SERVICES AND COLLECTIONS</li> <li>• GENEAOLOGY / FAMILY HISTORY RESEARCH AND SUPPORT SERVICES</li> <li>• CURRICULAR SUPPORT FOR SCHOOLS</li> <li>• ARCHIVE SERVICES</li> </ul>	<ul style="list-style-type: none"> <li>• DEAN CASTLE MUSEUM</li> <li>• DICK INSTITUTE MUSEUM AND ART GALLERY</li> <li>• BAIRD MUSEUM AND ART GALLERY</li> <li>• DOON VALLEY MUSEUM</li> <li>• BURNS HOUSE MUSEUM</li> <li>• PALACE AND GRAND HALL COMPLEX</li> <li>• DICK INSTITUTE LIBRARY AND LEARNING CENTRE</li> <li>• BURNS MONUMENT CENTRE</li> <li>• 19 COMMUNITY LIBRARIES</li> <li>• 2 MOBILE LIBRARIES</li> </ul>
<b>SPORT</b>	
AREA FUNCTION	MAIN VENUES + FACILTIES
<ul style="list-style-type: none"> <li>• MANAGEMENT , PROMOTION AND DEVELOPMENT OF SPORTS/GAMES HALLS</li> <li>• MANAGEMENT, PROMOTION AND DEVELOPMENT OF COMMUNITY HALLS</li> <li>• MANAGEMENT OF SPORT PITCHES AND PAVILIONS</li> <li>• MANAGEMENT, PROMOTION AND DEVELOPMENT OF 2 PPP SPORTS FACILITIES</li> <li>• MANAGEMENT, PROMOTION AND DEVELOPMENT OF DUAL USE FACILITY</li> <li>• MANAGEMENT, PROMOTION AND DEVELOPMENT 2 DUAL USE FACILITIES</li> <li>• MANAGEMENT, PROMOTION AND DEVELOPMENT OF AYRSHIRE ATHLETICS ARENA</li> <li>• EVENT PROMOTION</li> </ul>	<ul style="list-style-type: none"> <li>• 8 SPORTS/GAMES HALLS</li> <li>• STEWARTON SPORTS CENTRE</li> <li>• AYRSHIRE ATHLETICS ARENA</li> <li>• COMMUNITY HALLS</li> <li>• 2 PPP SPORTS FACILITIES</li> <li>• AUCHINLECK SPORTS CENTRE (DUAL USE)</li> <li>• LOUDOUN SPORTS CENTRE (DUAL USE)</li> <li>• DOON VALLEY LEISURE CENTRE SPORTS CENTRE (DUAL USE)</li> </ul>
<b>COUNTRYSIDE</b>	
AREA FUNCTION	MAIN VENUES + FACILTIES
<ul style="list-style-type: none"> <li>• COUNTRYSIDE RANGER SERVICE</li> <li>• COUNTRYSIDE DEVELOPMENT + ACCESS</li> <li>• MANAGEMENT OF PATH NETWORK</li> <li>• DEAN CASTLE COUNTRY PARK MANAGEMENT</li> </ul>	<ul style="list-style-type: none"> <li>• DEAN CASTLE COUNTRY PARK</li> <li>• CORE PATH NETWORK</li> <li>• RIVER AYR WAY</li> </ul>

<b>BUSINESS MANAGEMENT SERVICES</b>	
<b>AREA FUNCTION</b>	<b>MAIN VENUES + FACILTIES</b>
<ul style="list-style-type: none"> <li>• EAL BOARD AND ADMINISTRATION +OSCR LIAISON</li> <li>• POLICY AND STRATEGY DIRECTION AND DEVELOPMENT</li> <li>• BUISNESS PLANNING</li> <li>• FINANCIAL MANAGEMENT AND BUDGET MONITORING</li> <li>• MARKETING AND COMMUNICATIONS</li> <li>• FUND RAISING</li> <li>• EMPLOYEE DEVELOPMENT/RECRUITMENT</li> <li>• PERFORMANCE MONITORING AND REVIEW</li> <li>• INFORMATION MANAGEMENT</li> <li>• RISK MANAGEMENT</li> <li>• HEALTH AND SAFETY POLICY</li> <li>• BUSINESS SYSTEMS AND ADMINISTRATION</li> </ul>	<ul style="list-style-type: none"> <li>• DICK INSTITUTE (Temporary)</li> <li>• PALACE AND GRAND HALL COMPLEX (Temporary)</li> <li>• WESTERN ROAD (Temporary)</li> </ul>

Many of our services are delivered directly through our facilities such as museums, parks, sports centres and libraries. We also focus on taking our services directly into the community through sport development, cultural development and countryside development activities.

**Performance Context**

A summary of our performance in the year 2012/13 is set out under our Community Planning vision statements:

<b>COMMUNITY PLANNING THEMES – PERFORMANCE REVIEW</b>	
<b>CULTURE</b>	
<b>THEME</b>	<b>PERFORMANCE</b>

<b>PROMOTING LIFELONG LEARNING</b>	<ul style="list-style-type: none"> <li>• Attendance Dick Institute Museums and Art Gallery – 131,371</li> <li>• Attendance Palace Theatre /Grand Hall – 196,086</li> <li>• Attendance Baird – 1,601</li> <li>• Attendance Doon Valley Museum – 1,656</li> <li>• Total staff cost as % total cost - 85%</li> <li>• Cost per visit across arts and museum facilities - £3.79</li> <li>• Attendance Burns House Museum – 3,987</li> <li>• Attendance Dean Castle – 33,500</li> <li>• Attendance all venues – 368,201</li> <li>• No. of tickets sales per 1000 population sold at Palace and Grand Hall - 535</li> <li>• No. of visits to council funded or part funded museums that were in person per 1000 population – 1,432</li> <li>• Visits to/usage of council funded or part funded museums per 1000 population – 2,635</li> <li>• Number of visits to <a href="http://www.eastayrshireleisure.com">www.eastayrshireleisure.com</a> – not available</li> <li>• Number of visits to <a href="http://www.futuremuseum.com">www.futuremuseum.com</a> – 144,584</li> <li>• Number of visitors to Libraries – 443,804</li> <li>• Number of Visits to Council Libraries per 1000 population - 3692</li> <li>• % of the resident population who are Library borrowers – 15.5%</li> <li>• Number of times learning centre terminals are used per 1000 population -574.64</li> <li>• Percentage of resident population who use learning centres -4.63%</li> <li>• EALRIS – time taken to satisfy requests (days) -11.4</li> <li>• Library additions per 1000 population – Adult -103</li> <li>• Library additions per 1000 population – Children -49</li> <li>• Library stock per 1000 population – Adult -1,732</li> <li>• Library stock per 1000 population – Children -839</li> </ul>
<b>DELIVERING COMMUNITY REGENERATION</b>	<ul style="list-style-type: none"> <li>• Significant capital investment has been made to our cultural infrastructure during the past 6 years</li> <li>• Tourism spend during 2011/12 was £62.9M (Steam)</li> <li>• Visits to East Ayrshire – 884,070</li> </ul>
<b>SPORT</b>	
<b>THEME</b>	<b>PERFORMANCE</b>
<b>IMPROVING HEALTH AND WELL BEING</b>	<ul style="list-style-type: none"> <li>• Games Hall attendance – 670679 (2012/13)</li> <li>• Games Hall Revenue -£554,787</li> <li>• Attendance at Indoor sport &amp; leisure facilities (excluding pools) per 1000 population 7970 (2011/12)</li> <li>• Swimming Pool attendance Doon Valley Leisure Centre -28769 (2012/13)</li> <li>• Swimming pool attendance per 1000 population 2722 (2011/12)</li> <li>• Number of rounds of golf played. – 44799 (2012/13)</li> </ul>
<b>DELIVERING COMMUNITY REGENERATION</b>	<ul style="list-style-type: none"> <li>• Invested £7.4M in developing the Ayrshire Athletics Arena</li> <li>• Invested £4.3M in developing Stewarton Sport centre</li> </ul>
<b>COUNTRYSIDE</b>	
<b>THEME</b>	<b>PERFORMANCE</b>
<b>PROMOTING LIFELONG LEARNING</b>	<ul style="list-style-type: none"> <li>• Environmental education numbers – 3,185</li> <li>• Ranger Event Numbers - 886</li> </ul>
<b>DELIVERING COMMUNITY REGENERATION</b>	<ul style="list-style-type: none"> <li>• Users of River Ayr Way – 170,412</li> <li>• Visitor Centre Numbers – 317,886</li> <li>• DCCP visitor numbers – 1,059,600 EST</li> </ul>

### Challenges

The main challenges facing East Ayrshire Leisure are summarised below and have influenced the preparation of this Business Plan and include:

- Setting up and managing a new organisation whilst continuing to deliver our core services;
- Improving performance information especially around customer and non user engagement;
- Developing new ways of engaging young people through interactive technologies;

- Getting smarter at how we sell our services and meet customer demand for online booking and box office interaction;
- Developing and expanding partnership working to engage target groups and those from disadvantaged areas;
- Maintaining visitor numbers/attendances/participation levels across our facilities within the context of reduced public sector funding support;
- Extending the opportunity for concessionary access to our facilities and programmes to meet the demands of an ageing population;
- Increasing fully paid participation levels across our services within the context of the current economic climate;
- Meeting environmental targets for our energy consumption across all areas of our organisation;
- Maintaining good employee communications through this period of continuous of change;
- Providing staff development opportunities as part of our succession planning strategies.



# Leading through change

Strong Leadership is critical to the success of East Ayrshire Leisure. The Board and Management Team will drive the changes needed to achieve our aims and objectives.

### ***East Ayrshire Leisure - Purpose***

At its meeting on 13th December 2012 the Council agreed to proceed to set up a new SCIO to which it will transfer its Leisure Services and range of community facilities.

East Ayrshire Leisure will be a Scottish Charitable Incorporated Organisation (SCIO) and will meet the requirements of the OSCR to ensure that it achieves and retains charitable status. The Board of Trustees will manage the East Ayrshire Leisure. Details of the Board's governance and operating arrangements and structure are contained in the Constitution attached as **Appendix 3**.

The purposes of the new organisation include:

- To advance the arts, heritage, culture and science;
- To advance public participation in sport;
- To provide recreational facilities and organise recreational activities with such facilities/activities being made available to members of the public at large with the object of improving their conditions of life activities for the whole community with the aim of improving quality of life;
- To advance education;
- To advance health;
- To advance citizenship and/or community development (which may include the promotion of civic responsibility, volunteering, the voluntary sector and/or and the efficiency and effectiveness of charities);
- To relieve those in need by reason of age, ill health, disability, financial hardship or other disadvantage;
- To promote, establish, operate and/or support other similar schemes and projects which further charitable purposes;

### ***East Ayrshire Leisure – Vision***

East Ayrshire Leisure reflects the vision of the Community Planning Partnership. Our own vision therefore responds to the area's Community Plan and the goals of East Ayrshire Council.

The vision for East Ayrshire Leisure is to help East Ayrshire become:

***“An area full of life, with a strong cultural, sporting and natural identity which reflects the unique character of the place and its people; an area where cultural, sport and countryside activities play a central role in social, economic***



***and urban/rural development; an area where new and creative initiatives across the cultural, sporting and countryside fields flourish, for the benefit of both residents and visitors.”***

### ***East Ayrshire Leisure – Mission***

The vision outlined above provides the focus for East Ayrshire Leisure’s operations going forward; how we go about delivering the vision is articulated in our Mission:

**“To provide and support high quality, innovative, cultural, sports, countryside and community services for the benefit of East Ayrshire residents and visitors to the area, which meet the council’s social, cultural, environmental and economic objectives.”**

### ***East Ayrshire Leisure - Values***

East Ayrshire Leisure’s core values will be based on being:

- Collaborative and Creative
- Innovative and Inspirational
- Proactive and Professional
- Open and Honest
- Passionate and Proud

The principles by which we operate and carry out our business will be driven by a desire to do what is best for the community and in so doing:

- We will be driven by a commitment to deliver high quality services for the people of East Ayrshire
- Creativity and innovation will be at the heart of our thinking
- We will build partnerships and thrive on collaboration
- We will invest in the formation of a highly motivated, customer focused and skilled employees
- We will promote equality, access and diversity across our programmes

### ***East Ayrshire Leisure – The Board***

As at May 2013 there are seven Council trustees and six Independent trustees in place. These 13 Trustees will lead the organisation through the Board and have ultimate responsibility for ensuring compliance with OSCR and the terms of the Agreement with East Ayrshire Council. The 13 Trustees will consist of five nominees from East Ayrshire Council and six Independent Trustees, one of whom is a Trade Union representative and two senior officers who will act as Trustees without voting rights.

### ***East Ayrshire Leisure – The Management Team***

The Management Team is outlined in **Appendix 4**. Developing and improving leadership and management capacity throughout the organisation will be a key

objective of our Employee Development Plan, which will be developed during the first year of the Business Plan. The staff team that transferred to East Ayrshire Leisure will undergo a restructure on transfer to East Ayrshire Leisure and this will be subject further review in the coming years as facilities and operational requirements are refined to best meet the needs of the communities in line with financial pressures and operational imperatives.

#### LEADING THROUGH CHANGE PRIORITIES 2013/14

- Establish management team by 1<sup>ST</sup> July 2013
- Establish 13 person Board of directors by 30<sup>TH</sup> JUNE 2013
- Board and management team working closely together
- Management team are working closely with all parts of organisation
- Regular employee communication channels developed further
- Targets are set and reviewed by the Board to achieve:
  - *Increased visits and admissions*
  - *Increased participation across our venues*
- Baseline customer satisfaction and ongoing improvement targets set
- Baseline employee satisfaction and ongoing improvement targets set
- Income targets met
- Budget targets achieved



# OUR PEOPLE AND PARTNERS

East Ayrshire Leisure will create a structure where our people can contribute to their own and the organisation's success. Partnerships will be central to our programmes and these will be driven by customer needs and requirements.

## *Our Employees*

Our employees are our most significant and valued resource. There are over 200 posts that will transfer under the TUPE process from East Ayrshire Council to East Ayrshire Leisure.

The backdrop of public sector budget constraints has meant a very rigorous approach to managing employee turnover and absence which East Ayrshire Leisure will continue. We have successfully reduced our percentage of days lost due to absence from 5.08% during 2011/12 to 3.79% during 2012/13.

As budgets become more challenging we need to ensure we remain competitive and that we retain our staff when the employment market improves. Putting in place an Employee Development Plan that allows people to develop the talent and skills necessary to deliver our business objectives will be a priority for East Ayrshire Leisure.

We will establish mechanisms for employee engagement in addition to formal consultation. This will include conducting a regular employee survey to provide a measure of how staff are feeling with the aim of consistently monitoring satisfaction during a period of change and preparing an action plan for improvement.

Underpinning this Business Plan are Team Plans. Teams Plans cover detailed operational outputs, targets to be achieved and identify resources and responsibilities within the teams. This will be supported by the continued use of East Ayrshire General Employee Review (EAGER) to support professional development and improve operational effectiveness.

### **Our Partners**

#### *East Ayrshire Council*

East Ayrshire Council has established East Ayrshire Leisure and is the sole member of the SCIO. The success of East Ayrshire Leisure is therefore of primary importance to the Council. A Services and Finance Agreement provides core funding to the East Ayrshire Leisure as set out in **Appendix 5**. For a period of three years the Council will provide support services such as Finance, Legal and HR through Service Level Agreements (SLA).

For East Ayrshire Leisure to deliver maximum benefit to the people of the East Ayrshire area it must continue to work closely with the Council and collaborative working will enable this across all Council areas.

#### *Other Key Partners*

The list below is not exhaustive but serves to give an indication of our key partners. Partnership working is largely undertaken on a collaborative basis; however some formal Agreements are in place.

PARTNER	SERVICE+ RELATIONSHIP
GENERAL	

OTHER LOCAL AUTHORITIES/TRUSTS	Working together on cross boundary programmes
AYRSHIRE COLLEGES	Educational opportunities
AYRSHIRE TOURISM	Advice and collaboration around tourism marketing
EVENTSCOTLAND	Funder for programmes and events
VISIT SCOTLAND	Funder of programmes and events
HERITAGE LOTTERY FUND	Funder of programmes, buildings and marketing
CULTURE	
CREATIVE SCOTLAND	Funder of programmes, buildings and marketing
HISTORIC SCOTLAND	Providing statutory advice around historic properties
MUSEUMS GALLERIES SCOTLAND	Funder of programmes and collection development
NATIONAL MUSEUMS OF SCOTLAND	Support for programmes and collection development
NATIONAL GALLERIES OF SCOTLAND	Support for programmes and collection development
CENTRESTAGE	Programme partner
EVENTSCOTLAND	Funder for programmes and events
VISIT SCOTLAND	Funder of programmes and events
TOWN CENTRE MANAGEMENT	Programme partner around regeneration initiatives
NATIONAL LIBRARIES OF SCOTLAND	Support for programmes and events
NATIONAL ARCHIVES	Support and advice around archives
AYRSHIRE ARCHIVES	Manage the Council's relationship around archive retention and storage
AMATEUR THEATRE COMPANIES	Support performances through using Palace
SLIC	Local Authority Library network
SCOTTISH BOOK TRUST	Support for literature development
COUNTRYSIDE	
SCOTTISH NATURAL HERITAGE	Advice and funding
SEPA	Advice
FORESTRY COMMISSION SCOTLAND	Advice and funding
FROGLIFE SCOTLAND	Funding and programme development
SCOTTISH WILDLIFE TRUST	Funding and programme development
EAST AYRSHIRE WOODLANDS	Advice and support
PRIVATE LANDOWNERS	Support for programmes
SPORT	
SPORTS CLUBS	Programme collaboration
SCOTTISH ATHLETICS	Funding and programme development
SCOTTISH CYCLING	Funding and programme development
SPORT SCOTLAND	Funding and programme development
GALLEON CENTRE	Support and collaboration
VISIONS	Support and collaboration

### *Strengthening Partnerships*

East Ayrshire Leisure intends to explore opportunities to strengthen partnership work with other agencies, to explore options for strategic linkages and to prioritise specific themes identified in the action plan. This will help us to develop new funding streams and engage target audiences through joined up approaches to service delivery and marketing and promotion.

### **Our Customers**

Gaining a better understanding of our customers is a priority for this plan. We work with a wide range of customer groups across all areas of our operation and aim to strengthen this through more frequent surveys and analysis of needs.

East Ayrshire Council undertakes a customer survey every 3 years and has established a Residents Panel. Feedback informs how the Council and its partners plan service delivery. East Ayrshire Leisure will use this important feedback to inform future programme creation and delivery.

#### OUR PEOPLE + PARTNERS PRIORITIES 2014/15

- Survey all our employees in 2014/15 and biannually thereafter
- Understand employees perceptions and respond through improvement
- An Employee Development Plan is in place by 2014
- A baseline survey of customer perceptions will be carried out by 2013/14
- A better understanding of customer segments and needs
- A framework for collaboration and dialogue with council is established 2013/14
- Strong external partnerships developed around areas of service delivery.



# Service Delivery

Through strategic planning and creative programming we will deliver cost - effective and inspirational leisure opportunities for the communities of East Ayrshire.

### **Strategic Linkages**

East Ayrshire Leisure in developing and maintaining this Business Plan and the Team Plans that flows from it, will continually seek to meet the priorities of the Community Plan and the Single Outcome Agreement. East Ayrshire Leisure will deliver services that reflect the underlying themes, as set out below.

East Ayrshire Leisure will also provide, on an annual basis, the information necessary for the Council to achieve its commitments as defined by East Ayrshire’s Community Plan, including relevant Thematic Action Plans, and reported annually through the East Ayrshire Community Planning Partnership Single Outcome Agreement:

### **Delivering Community Regeneration**

East Ayrshire Leisure will contribute to the Delivering Community Regeneration theme of the Community Plan under Local Outcome “*Increasing visitor numbers to each of our key attractions and area*”.

<b>National Outcome (s)</b>	<p>We live in a Scotland that is the most attractive place for doing business in Europe.</p> <p>We realise our full economic potential with more and better employment opportunities for our people.</p> <p>We take pride in a strong, fair and inclusive national identity.</p>
<b>Local Outcome (s)</b>	Increasing visitor numbers to each of our key attractions and area.
<b>Action</b>	Develop exhibition and event packages that support programme development and enhance visitor experience across all our venues
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• 6 exhibitions developed and delivered per year across our museum and gallery venues</li> <li>• 90 events developed and delivered per year at the Palace and Grand Hall Complex</li> <li>• £10,000 raised per year to support the exhibition/event programme</li> <li>• Seasonal countryside event programme developed and delivered – one per year</li> <li>• Burns Monument event programme developed and delivered – one per year</li> </ul>
<b>Action</b>	Sustain existing and develop new web based information solutions that drive audiences to visitor attractions
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Unique visits to <a href="http://www.futuremuseum.co.uk">www.futuremuseum.co.uk</a> increased by 2% every two years from 2011</li> <li>• <a href="http://www.eastayrshireleisure.com">www.eastayrshireleisure.com</a> launched and maintained achieving 50,000 unique visits in first year (2013) and 10% increase every two years</li> </ul>



### **Improving Community Safety**

East Ayrshire Leisure will help to support the Improving Community Safety theme of the Community Plan under Local Outcome “*Preventative and diversionary activity delivered*”.

<b>National Outcome (s)</b>	We live our lives safe from crime, disorder and danger.
<b>Local Outcome (s)</b>	Preventative and diversionary activity delivered
<b>Action</b>	Provide opportunities for children, young people, families and communities to participate in a diverse range of positive activities
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Support community based outdoor play activities for children, young people and whole families delivered             <ul style="list-style-type: none"> <li>– 6,500 children and young people participating in outdoor play opportunities during term time and seasonal periods per year</li> </ul> </li> <li>• Support community based free night time sport and physical activities for young people aged 10–25 years delivered             <ul style="list-style-type: none"> <li>– 25,000 attendances per year by young people</li> </ul> </li> </ul>

### **Improving Health and Wellbeing**

East Ayrshire Leisure will help to support the Improving Health and Wellbeing theme of the Community Plan under Local Outcomes “*Active, healthy lifestyles and positive behaviour change promoted*” and “*Children and young people, including those in early years and their carers, assisted to be active, healthy, nurtured and included*”

<b>National Outcome (s)</b>	Our children have the best start in life and are ready to succeed.  We live longer, healthier lives.
<b>Local Outcome (s)</b>	Active, healthy lifestyles and positive behaviour change promoted  Children and young people, including those in early years and their carers, assisted to be active, healthy, nurtured and included
<b>Action</b>	Provide a range of activities and interventions to support and encourage active, healthy lifestyles and positive behaviour change
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Support programme of physical activity programmes including exercise classes and health walks with an annual attendance of 10,000 delivered</li> <li>• Enable and support 4 community based groups/organisations to establish physical activity or walking programmes</li> </ul>
<b>Action</b>	Provide opportunities to improve the health and wellbeing of children and young people through encouraging them to adopt an active and healthy lifestyle
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Support the delivery of Jumpstart and Jumpstart Choices (whole class approach) programmes</li> </ul>
<b>Action</b>	Implement Health Promoting in Children’s Houses based on the National Health Promoting Framework
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Support the uptake of sports and physical activity promoted via weekly Sports Motivation visits to 3 East Ayrshire residential children’s houses</li> </ul>

### **Promoting Lifelong Learning**

East Ayrshire Leisure will contribute to the Promoting Lifelong Learning theme of the Community Plan under Local Outcome “*Literacy and numeracy skills for children, young people and adults improved*”.

<b>National Outcome (s)</b>	We are better educated, more skilled and more successful, renowned for our research and innovation.  Our young people are successful learners, confident individuals, effective contributors and responsible citizens.
<b>Local Outcome (s)</b>	Literacy and numeracy skills for children, young people and adults improved
<b>Action</b>	Contribute to the delivery of a range of ICT literacy skills programmes for children, young people and adults with a particular focus on digital skills for life and employment
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• 100% of children and young people participated in a range of ICT literacy sessions each academic session</li> <li>• 500 adults participated in ICT literacy sessions per year</li> </ul>
<b>Action</b>	Develop the number and range of arts and cultural opportunities for children and young people
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Number of children, young people, adults participating in cultural and leisure activity increased by 2% per year from the following baselines at 2009/10:             <ul style="list-style-type: none"> <li>– Sports halls: 308,580</li> <li>– Arts + Museums venues: 4,000</li> <li>– Libraries:14,000</li> <li>– Support sport, play and health development: 50,000</li> </ul> </li> </ul>

### **Public Performance Reporting**

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

East Ayrshire Leisure will provide to the Council all necessary information (on a 4 weekly period basis) which allows it to measure performance against all previously identified statutory and non-statutory performance indicators. This will be done by East Ayrshire Leisure populating EPMS (the Council’s Electronic Performance Management System) or providing the Council with the necessary information to allow it do so.

East Ayrshire Leisure will also display public performance reports on its website at [www.eastayrshireleisure.com](http://www.eastayrshireleisure.com) annually. In addition, the Council will require other business performance information in support of its corporate reporting requirements including, budgetary control, absence management, customer complaints, and other actions associated with service plans.

East Ayrshire Leisure will also provide performance indicators in respect of the Audit Scotland suite of Statutory Performance Indicators, namely:

- Number of attendances per 1,000 population for all pools

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	2,507	2,433	2,393	2,517	2,722
Scotland	3,502	3,515	3,446	3,320	3,466

Calculation = (Total attendances for all pools/Mid-Year Population Estimate)\*1,000

- Number of attendances per 1,000 population for indoor sports and leisure facilities excluding pools in a combined complex

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	5,254	6,035	7,070	7,391	7,970
Scotland	4,372	4,761	4,890	5,431	5,655

Calculation = (Total attendance for other indoor sports and leisure facilities, excluding pools in a combined complex /Mid-Year Population Estimate)\*1,000

- Number of visits to/usages of council funded or part funded museums expressed per 1,000 population

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	2,376	2,785	2,184	2,231	2,235
Scotland	1,907	1,836	1,917	1,837	2,314

Calculation = (Number of visits to/usages of council funded or part funded museums/Mid-Year Population Estimate)\*1,000

- Number of visits that were in person expressed per 1,000 population

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	1,658	1,729	1,589	1,580	1,525
Scotland	1,566	1,340	1,386	1,268	1,547

Calculation = (Number of visits that were in person/Mid-Year Population Estimate)\*1,000

- Number of visits to libraries expressed per 1,000 population

	2007/08	2008/09	2009/10	2010/11	2011/12
East Ayrshire	4,444	4,579	4,748	4,624	4,274
Scotland	5,623	5,819	5,983	6,114	6,127

Calculation = (Number of visits to libraries/Mid-Year Population Estimate)\*1,000

## Non Statutory Performance Reporting

East Ayrshire Leisure will report on, or develop systems for reporting on, the following non statutory performance indicators on a 4 weekly basis (unless otherwise stated):

- Average number of days lost due to staff absence during 2012/13:

	Number of Employees	Total Days Lost	Average per employee
<b>Sport</b>	<b>59</b>	<b>664</b>	<b>11.25</b>
<b>Cultural Dev/Collection Care/Palace</b>	<b>37</b>	<b>303.5</b>	<b>8.20</b>
<b>Countryside</b>	<b>14</b>	<b>33</b>	<b>2.36</b>
<b>Libraries</b>	<b>82</b>	<b>288</b>	<b>3.51</b>

- Percentage of customers satisfied with:

	2005	2008	2011
<b>Libraries</b>	<b>74%</b>	<b>81%</b>	<b>90%</b>
<b>Arts + museums</b>	<b>33%</b>	<b>57%</b>	<b>71%</b>
<b>Parks, Playparks, Open Spaces</b>	<b>34%</b>	<b>55%</b>	<b>62%</b>
<b>Recreation and sports facilities</b>	<b>39%</b>	<b>44%</b>	<b>60%</b>
<b>Swimming Pools/Leisure Facilities</b>	<b>37%</b>	<b>43%</b>	<b>54%</b>

Source: East Ayrshire Council Residents Survey 2011

### **Service Description and Performance**

*CULTURE – including Cultural Development/Collection Care/Palace and Grand Hall Complex/Libraries*

The Culture Teams deliver a range of innovative arts, museums and library services for the benefit of East Ayrshire residents and visitors to the area which meet the Council's social, cultural and economic objectives.

The teams work in partnership with a wide range of community and funding organisations to ensure programmes are delivered and opportunity and participation is realised. The team manages a wide range of buildings from which it delivers its development programmes.

The aims and performance indicators utilised to measure the success of Cultural Development, Collection Care and Palace and Grand Hall Complex and Libraries are as follows:

Section	Culture
<b>Aims</b>	<ul style="list-style-type: none"> <li>To increase participation by young people in the arts and museums activities</li> <li>To develop creative learning zones (education workshops spaces in venues) that are inspirational and feed aspirations</li> <li>To develop creative communities in East Ayrshire in partnership with the arts and museums team</li> <li>To improve awareness of East Ayrshire's cultural offer</li> <li>To upgrade arts and museums facilities to enhance the quality of visitor experience</li> <li>To encourage greater interaction from all sections of the community with the arts and museums programmes</li> <li>To provide maximum physical and intellectual access to all our arts and museums services/collections</li> </ul>

	<ul style="list-style-type: none"> <li>• To provide free &amp; subsidised access to all arts and museums venues and performances</li> <li>• To provide new skills for the community through the arts and museums services</li> <li>• To implement the Percentage for Arts Policy for all new building works in East Ayrshire</li> <li>• Ensure that Libraries play a key role in communities</li> <li>• Increase participation in activities in libraries.</li> <li>• Provide a wide and balanced range of library materials for all groups.</li> <li>• Develop and enhance library buildings</li> <li>• Promote access to information to enable users to make informed choices.</li> <li>• Ensure that all residents and potential visitors are aware of what East Ayrshire Library Services has to offer</li> </ul>
<b>Indicators</b>	<ul style="list-style-type: none"> <li>➤ Total staff cost as % total cost</li> <li>➤ Cost per visit across arts and museum facilities</li> <li>➤ Attendance all arts and museum venues</li> <li>➤ No. of tickets sales per 1000 population sold at Palace and Grand Hall</li> <li>➤ No. of visits to council funded or part funded museums that were in person per 1000 population</li> <li>➤ Visits to/usage of council funded or part funded museums per 1000 population</li> <li>➤ Number of visits to <a href="http://www.eastayrshireleisure.com">www.eastayrshireleisure.com</a></li> <li>➤ Number of visits to <a href="http://www.futuremuseum.com">www.futuremuseum.com</a></li> <li>➤ Number of visitors to Libraries</li> <li>➤ Number of Visits to Council Libraries per 1000 population</li> <li>➤ % of the resident population who are Library borrowers</li> <li>➤ Number of times learning centre terminals are used per 1000 population</li> <li>➤ Percentage of resident population who use learning centres</li> <li>➤ EALRIS – time taken to satisfy requests (days)</li> <li>➤ Library additions per 1000 population - Adult</li> <li>➤ Library additions per 1000 population - Children</li> <li>➤ Library stock per 1000 population - Adult</li> <li>➤ Library stock per 1000 population - Children</li> </ul>

*Sport – including sport and facility management/Ayrshire Athletics Arena/ Sport Development*

The Sport team is responsible for the management of Games Halls, Sports Centres, Community Halls, Golf Clubs, Football Pavilions and event programmes.

The teams works in partnership with a variety of agencies such as schools, the Police Scotland and East Ayrshire Sport Council Clubs to ensure services are widely available and enhanced wherever possible. The team manages many of the buildings under the East Ayrshire Leisure remit. The aims and performance indicators utilised to measures the success of Sport are as follows:

Section	Sport
<b>Aims</b>	<ul style="list-style-type: none"> <li>• To manage and maintain a range of community facilities including sports, educational and community facilities</li> <li>• To provide a range of activities within facilities that meet local demand</li> <li>• To provide a range of activities that meet the sporting, play, social and educational aspirations of individuals, organisations and communities</li> <li>• To provide access to sports pitches for the people of East Ayrshire</li> <li>• To maintain the Council's golf facilities to a high standard</li> </ul>
<b>Indicators</b>	<ul style="list-style-type: none"> <li>➤ Games Hall attendance</li> <li>➤ Games Hall Revenue</li> <li>➤ Attendance at Indoor sport &amp; leisure facilities (excluding pools) per 1000 population</li> <li>➤ Swimming Pool attendance Doon Valley Leisure Centre</li> <li>➤ Swimming pool attendance per 1000 population (in conjunction with Galleon)</li> <li>➤ Number of rounds of golf played.</li> </ul>

### *Countryside – including Countryside Development*

Countryside Development team provides high quality, innovative, countryside development services for the benefit of East Ayrshire residents and visitors to the area which meet the Council's social, cultural and economic objectives.

Countryside Development manages the Dean Castle Country Park and the access to the countryside across East Ayrshire through the path network to the River Ayr. The Ranger service provides a range of dynamic education and outreach opportunities for people of all ages. The team reaches out to all areas of East Ayrshire.

The aims and performance indicators utilised to measure the success of the Culture and Countryside Service are as follows:

Section	Countryside
<b>Aims</b>	<ul style="list-style-type: none"> <li>• To increase participation by young people in the Countryside activities</li> <li>• To develop learning zones that are inspirational and feed aspirations</li> <li>• To improve awareness of East Ayrshire's countryside offer</li> <li>• To upgrade Countryside facilities to enhance the quality of visitor experience</li> <li>• To encourage greater interaction from all sections of the community with Countryside programmes</li> <li>• To provide new skills for the community through the Countryside development activities</li> <li>• To promote and protect the natural environment for residents and visitors to East Ayrshire</li> </ul>
<b>Indicators</b>	<ul style="list-style-type: none"> <li>➤ Environmental education numbers</li> <li>➤ Ranger Event Numbers</li> <li>➤ Users of River Ayr walk</li> <li>➤ Visitor Centre Numbers</li> <li>➤ DCCP visitor numbers</li> </ul>

## Marketing

Supporting our service delivery is our various marketing strategies. A critical factor in our success will be our ability to develop robust customer analysis information that can test the success of our programmes and indicate new ways in which we should be developing our service as we move forward.

The Marketing Plan (**Appendix 6**), is a critical document that will be reviewed annually and will be linked directly to the Business Plan. It shows how we will target our marketing resources to meet the action plan outcomes.

## Strategic Intent

Reflecting East Ayrshire Leisure’s vision and objectives set out above we have identified annual activity priorities which go beyond the life of this Business Plan. We feel it is important from the outset to be looking forwards and to articulate how we intend the organisation to develop within its governance framework, operating environment and partnerships. Priority outcomes for the first four years are outlined in the following table.

<p>YEAR 1 2013/14</p>	<p><i>In the first 9 months:</i></p> <ul style="list-style-type: none"> <li>• The Trust Board agrees new Management structure</li> <li>• A performance monitoring and review framework will operate that meets both the Board and the Council’s requirements</li> <li>• Our Board will be trained and have gained a good understanding of the Trust’s operating environment and will be supporting organisational development</li> <li>• A framework for collaboration and ongoing dialogue with Council colleagues at both strategic and operational levels will generate a shared approach</li> <li>• Our objectives will be fully communicated with our employees, stakeholders and customers</li> <li>• Surveys will establish a baseline for monitoring employee and customer satisfaction going forwards</li> <li>• We will have gained a better understanding of our customer segmentation</li> <li>• We will have identified and prioritised external funding opportunities</li> <li>• A dedicated website for the Trust will be operational</li> <li>• Our Marketing Plan will be implemented</li> <li>• Our senior management team will be regularly meeting employees in their workplace</li> <li>• Our employees will be contributing to an Employee Development Plan will be in place throughout the organisation</li> <li>• A review of the Culture &amp; Leisure Strategy will have focused on equalities impact and assets and will plan strategic delivery for the next 10 years</li> <li>• Our Board will be active in reviewing and managing our risk plan and will take a risk based approach to decision making that will not constrain forward plans</li> <li>• A review of external funding priorities will have produced a Funding Strategy and applications will have commenced</li> <li>• This Business Plan will be reviewed at end of year.</li> <li>• Continue to support national Initiatives.</li> </ul>
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<p>YEAR 2 2014/15</p>	<ul style="list-style-type: none"> <li>• Our community planning partners will be willing to give feedback on our first two years performance.</li> <li>• Work with Council colleagues will have reviewed and tested SLA performance and we will be clear how we intend to secure support services</li> <li>• A Sustainability Plan will give coherence and focus to our work to reduce carbon emissions, help tackle climate change and contribute to area plans</li> <li>• Our employee survey will be demonstrating positive outcomes and increased satisfaction levels</li> <li>• This Business Plan will have been reviewed, utilising a self assessment framework and updated.</li> <li>• Detailed facilities review with the Council will be completed and outcomes agreed.</li> <li>• Continue to support national Initiatives like Homecoming and Commonwealth games.</li> </ul>
<p>YEAR 3 2015/16</p>	<ul style="list-style-type: none"> <li>• A review of our framework for strategic and operational dialogue with the Council will have demonstrated a 'grown up' relationship with good examples of collaboration on problem solving and decision making</li> <li>• Our customer survey will be giving consistent positive feedback and we can demonstrate that we are meeting customer needs</li> <li>• Our Business Plan and Marketing Plan will be reviewed and submitted to Council for approval</li> <li>• Annual report will be published.</li> <li>• Continue to support national initiatives.</li> </ul>
<p>YEAR 4 2016/17</p>	<ul style="list-style-type: none"> <li>• A review of our Sustainability Plan performance will demonstrate measurable efficiencies</li> <li>• Our Funding Strategy will have secured new external funds and will be reviewed and updated</li> <li>• Feedback from partners will be consistently positive and we will be recognised as exemplars of best practice through national awards.</li> <li>• Continue to support national initiatives.</li> </ul>

### ***Future Opportunities***

Our priorities above, although forward focused, have been drafted for the core business functions of East Ayrshire Leisure at inception and as tasked to it in the Services and Funding Agreement by the Council.

Future opportunities may exist for the Council and/or the Board to consider extending the remit of East Ayrshire Leisure to encompass new areas of service delivery. As culture, countryside and sport policy lead for the Council, East Ayrshire Leisure will work in partnership with the Council to identify new opportunities for future development and review.

### ***Meeting our Objectives 2013 - 2016***

The critical objectives for East Ayrshire Leisure are set out in this Business Plan Priority and headline actions and outputs to meet these objectives are set out in an **Action Plan 2013 /14 in Appendix 7**. This Action Plan will be updated on an annual basis, and is underpinned by Team operational plans.





# Assets and Resources

Managing and caring for our buildings, collections, natural resources and equipment in a well planned and sustainable way is critical to our service delivery.

## ASSETS and RESOURCES

### **Properties**

East Ayrshire Leisure has 25 year leases of its premises from East Ayrshire Council. All main facilities are listed on Pages 9/10.

Day-to-day repairs and planned maintenance are the responsibility of the East Ayrshire Council and is undertaken through a 3 year Service Level Agreement with East Ayrshire Council.

Responsibility for capital investment rests with East Ayrshire Council as owners of the assets and East Ayrshire Leisure. East Ayrshire Leisure works closely with the Council to input into its review of Assets, and the main issues for East Ayrshire Leisure's portfolio continue to be the need to have a sustainable maintenance programme that can support service delivery.

### **Capital Programme**

The rolling Capital Programme as currently approved by the Council (March 2013) is outlined below. This includes a sum against strategy support which enables the East Ayrshire Leisure to make investment in a wider range of smaller projects to improve the customer experience in facilities.

INVESTMENT	2013/14	2014/15	2015/16	2016/17	2017/18
Loudoun Academy Leisure Centre	0	1.2M	0	0	0
Cumnock Town Hall	700K	0	0	0	0
Synthetic Sport Pitches	100K	850K	0	0	0
Core Paths	30K	0	0	0	0
Dean Castle match fund	200K	0	0	0	0

### **Equipment**

East Ayrshire Leisure has a wide range of specialised equipment and resources to enable it to deliver its business which is either leased or owned or provided on contract. These include:

- Golf Course tractors and equipment
- Country Park tractors and equipment
- Sport equipment
- Vans
- Mobile Libraries x 2
- Computer Equipment requiring continual upgrading

### **Collections**

East Ayrshire Council owns significant collection assets which are held within its museums, libraries and archives and is responsible for the management and maintenance of any assets given on loan. East Ayrshire Leisure has been granted through the Collections Agreement a licence to use these assets and will maintain and preserve them on behalf of the Council.

## ASSET AND RESOURCE PRIORITIES 2014/15

- All property leases completed by October 2013
- All essential H+S work completed by 1<sup>st</sup> July 2013
- Current Capital Investment Plans are completed by March 2015



# Legislative Background

Developing, consulting on and delivering policy relating to leisure activities is one of our main responsibilities.

## LEGISLATIVE CONTEXT

East Ayrshire Leisure is responsible for developing and delivering strategies on behalf of East Ayrshire Council and for advising the Council on development of policy in relation to all aspects of cultural, countryside and sports provision in its broadest sense.

The strategies are accompanied by action plans which have informed the setting of priorities for East Ayrshire Leisure and underpin this Business Plan. **Appendix 2** outlines these in detail. The following key areas of legislation have allowed East Ayrshire Council to develop policies and strategies that in turn drive high quality service provision:

**The Local Government Scotland Act 2003** gives Councils renewed powers and responsibilities, including, the power to advance well-being (considering economic, social and environmental influences on a community). Much of the work of Leisure Services is aimed at promoting community wellbeing and improving the quality of life in East Ayrshire.

There is scope within this legislation to use innovative means to address local challenges. For example, the use of sport, play and activity to combat poor health; walking and well maintained parks and open space to improve perceived quality of life and appreciation of the environment; sport as diversion from anti-social behaviour; Libraries to help gain qualifications; arts and museums to learn about culture and history.

**The Local Government and Planning (Scotland) Act 1982; sections 14 to 17. Section 14(1), as amended by Section 128 of the *Local Government etc (Scotland) Act 1994*** gave Councils powers to “ensure that there is an adequate provision of facilities for the inhabitants of the area for recreational, sporting, cultural and social activities”.

**The Public Libraries Consolidation (Scotland) Act 1887**, section 10, gives local authorities power to purchase, rent or construct libraries, museums and galleries, and to maintain and furnish those buildings. Section 21 gives authorities power, amongst other things, to purchase books, works of art, maps and other articles, to lend out books and other items and to preserve and sell books and other items. The Act also requires local authorities to *"manage, regulate and control all libraries or museums or galleries"* and creates restrictions as to how they may charge for these facilities.

**The Local Government (Scotland) Act 1973, in section 163(2)**, places local authorities under a duty to *"secure the provision of adequate library facilities for all persons resident in their area"*.

**The Local Government etc. (Scotland) Act 1994**, section 53, requires local authorities to make "proper arrangements" for the preservation and management of their records, in consultation with the Keeper of the Records of Scotland. Section 54 addresses the use, acquisition and disposal of records (which will include culturally significant archives). Section 54(1)(d) in particular gives authorities power to hold exhibitions of records and conduct lectures about them.

**Land Reform (Scotland) Act 2003** provides for a right of access to land for recreational and educational activity among other things. The act also puts an onus on responsible access. Thus access rights are responsible, "if they are exercised so as not to cause unreasonable interference with any of the rights (whether access rights, rights associated with the ownership of land or any others) of any other person". There is also a reciprocal onus on land owners:

It is the duty of every owner of land in respect of which access rights are exercisable:

*to use and manage the land; and otherwise to conduct the ownership of it, in a way which, as respects those rights, is responsible.*

Additionally, "it is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised".

Lastly, "It is the duty of the local authority, not later than 3 years after the coming into force of this section, to draw up a plan for a system of paths ("core paths") sufficient for the purpose of giving the public reasonable access throughout their area."

## **Equality**

All East Ayrshire Leisure services also have a duty to comply with relevant equalities legislation, including the Human Rights Act 1998 and the Equality Act 2010.

## **Health and Safety Legislation/Policy**

All services have a duty to comply with, where appropriate:

- Health and Safety at Work Act (1974)
- and Use of Work Equipment Regulations (1998)
- EAC Corporate Policy on Health, Safety and Welfare (2008)
- The Environmental Noise Regulations (2006)
- the Management of Health and Safety Regulations (1999)
- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) (1995)
- Noise at Work Regulation



# Financial Analysis

Robust financial management is critical to our success and we will forward plan to optimise budgets and seek new funds to support our strategies.

## FINANCIAL ANALYSIS

East Ayrshire Leisure will be established on 1<sup>st</sup> July 2013 resulting in the first financial period consisting of only 9 months. All financial information is provided on a full year basis but all proposed budget transfers will be calculated and subsequently allocated to take account of the shorter financial period. Estimated shortfall due to 1st July 2013 start date has been calculated as 3 months of NNDR + Vat savings(see Table B). The summary budget of East Ayrshire Leisure is provided in Table A.

**TABLE A**

EAST AYRSHIRE LEISURE	2013/14 Budget £m	Employee Budget FTE
<b>Total</b>	<b>7.044</b>	<b>223.5</b>

**TABLE B**

<i>(Savings) / Additional Costs</i>	2013/14 £	2014/15 £	2015/16 £
Non-Domestic Rates – Reliefs	(887,414)		
VAT - Net Savings	(39,000)		
NNDR – Joint use facilities	(50,000)		
Additional Income by year 3			(20,000)
Additional Recurring Costs	100,000		
Voluntary Severance within Library Service	(60,000)		
Additional Managed Savings	(110,586)		
Review of Community Facilities/Assets		(523,500)	(503,500)
<b>Projected Annual Savings / Efficiencies</b>	<b>(1,047,000)</b>	<b>(523,500)</b>	<b>(523,500)</b>
<b>Estimated Shortfall due to 1 July start</b>	<b>244,104</b>		
<b>Projected Annual Savings / Efficiencies</b>	<b>(802,897)</b>	<b>(523,500)</b>	<b>(523,500)</b>

## VAT

It was concluded that in many cases the current VAT treatment will be unaffected following transfer. For certain services there is a potentially advantageous position following transfer to East Ayrshire Leisure as a registered charity, in particular:

- Sports, Cultural admissions and educational Services – these are liable to VAT at the standard rate of VAT when provided by the Council. However, if these were provided through East Ayrshire Leisure they would qualify for VAT



exemption. This change would result in the East Ayrshire Leisure being able to retain an additional 20% of the fees and charges levied, albeit it would not be able to recover the VAT incurred on any purchases required to deliver these.

- Coaching and Educational Services – there is no expected impact following transfer. These qualify for VAT exemption irrespective of whether the Council or East Ayrshire Leisure delivers them.
- Community Services (libraries etc) – These are currently provided free by the Council and are considered as being a non-business activity. If these were undertaken under a VAT management agreement with the Council any transfer would be VAT neutral. There will be a change to standard rating for audio subscriptions when these services are supplied by East Ayrshire Leisure.
- Cultural Services and admissions – If certain conditions are met, the fee for admission to a museum gallery or live event of a cultural nature is exempt from VAT for certain public bodies as well as charitable SCIOs.

As a consequence, with the exception of sporting, educational and cultural services, it was concluded that there will be no significant impact on income arising from the transfer and the total financial VAT benefit would amount to approximately £39,000 per annum, based on the projected services transferring at the time of the review.

The Service Charge savings identified is based upon the VAT liability of the charge that will be made by East Ayrshire Leisure to the Council for the operation of services on its behalf.

### **Corporation Tax**

East Ayrshire Leisure, as a SCIO will, as a separate legal entity, not benefit from the normal exemptions from corporation tax and income tax applying to local authorities.

### **Trading Subsidiary**

A wholly owned trading subsidiary may be established by East Ayrshire Leisure to allow non-primary purpose trading to be undertaken without affecting the charitable status of East Ayrshire Leisure. This company would donate its profits to East Ayrshire Leisure through gift aid arrangements. All donations of profit must be used for charitable purposes by East Ayrshire Leisure in order to maintain their tax-exempt status. The Trading Subsidiary would be VAT grouped with East Ayrshire Leisure. A detailed Business Plan will be produced in the next two months to determine the most cost effective method of delivering trading activities. This plan will form an appendix to subsequent East Ayrshire Leisure Business Plan updates.

### **Stamp Duty Land tax (SDLT)**

In principle SDLT should be charged on the market value of the leases granted to the East Ayrshire Leisure. However, a potential liability to SDLT should only arise if

the aggregate market value of the leases exceeds £150,000. In any event, as East Ayrshire Leisure will be a charitable body then provided it intends to hold the leases for use in the furtherance of its charitable purposes, then the grant of the leases should be exempt from SDLT. It should be noted that SDLT charities relief has to be claimed by submitting a land transaction return which will be done at the appropriate time, and that it can be withdrawn in certain circumstances.

**Central Council Support Costs**

For the first 3 years of operation, support services, such as Finance, Human Resources and Legal services will continue to be provided to East Ayrshire Leisure by the Council. This approach will allow consideration to be given to the optimum level of support required, with due regard to best value whilst also providing an opportunity for the Council to adjust its own level of support service as East Ayrshire Leisure moves towards the possible alternative delivery of these functions.

The budget for Central Support services which the Council will provide to East Ayrshire Leisure is as follows:

EAST AYRSHIRE COUNCIL CENTRAL SUPPORT SERVICE	2013/14 Budget £m
Service Name	cost
<b>TOTAL CENTRAL SERVICE COSTS FROM EAC</b>	<b>TOTAL</b>

**Governance**

East Ayrshire Leisure will adopt financial regulations and guidance for financial management in terms approved by the Council and will adopt the Council’s principles and policies in terms of governance.

**Other Financial Implications**

Other key areas that have been or will be incorporated into the final business plan and financial operating model include:

- The transfer of staff, together with the development of a fully costed payroll model for the new organisation
- Review and agreement of operating budgets, including income forecasts (Date to be determined)
- Cost of Council Central Support (Date to be determined).
- Indexation and contract inflation factors
- Cash flow and treasury management considerations
- Management accounting
- Financial performance Management

### **Operating Cash Flows**

A detailed operating cash flow forecast will be produced by 1<sup>st</sup> July 2013 and will be implemented on formal transfer to East Ayrshire Leisure. This will be based on the three-year life of this Business Plan and will form an appendix item in subsequent reviews.



# Risk Analysis

Demonstrating that we actively manage our organisation based a full understanding of the risks involved.

## **RISK ANALYSIS**

### ***Risk Management***

The establishment and operation of East Ayrshire Leisure involves managing a wide range of risks which requires a consistent approach to identifying, reviewing and monitoring risk. It is the role of the East Ayrshire Leisure's Management Team to ensure that risk is managed effectively in each service area. Specific responsibilities of every Manager are:

- To feed into the development of the East Ayrshire Leisure's risk management strategy and risk register from their service's perspective;
- To identify any service specific issues relating to risk management which have not been explicitly addressed in the strategy;
- To ensure the strategy is implemented and monitored effectively across their services;
- To negotiate service budget requirements for risk control projects;
- To liaise as appropriate with external agencies in identifying and managing risk;
- To liaise as appropriate with staff and/or staff representatives in identifying and managing risk;
- To disseminate the detail of the risk strategy and allocate responsibilities for implementation to managers and appropriate staff;
- To establish the training requirements of managers and staff with regard to strategy implementation;
- To work with the Council or other nominated persons in assessing insurance requirements.
  
- **East Ayrshire Leisure's Staff Responsibilities:**

It is the responsibility of each member of staff to promote health and safety and to assist in managing the risks occurring in the workplace.

### ***Key Risks***

At the time of this Business Plan (May 2013) there are two categories of risk:

- Risks associated with implementing the new organisation;
- Risks associated with operating the organisation and delivering services.

Presently there is a specific project risk register and risk management actions which are monitored and reviewed by a Project Team responsible for implementing the East Ayrshire Leisure. The main risks associated with implementing the new organisation are summarised below:

Risks	Mitigation
Insufficient time and resource to prepare all necessary governance documentation	East Ayrshire Leisure will adopt current Council policies and processes as default position.
Limited time for company set up and difficulty in recruiting Trustees	Early recruitment of an Interim Board has progressed to allow sufficient time for handover. The recruitment process for Independent Trustees will be completed in May 2013
Due diligence uncovers significant property issues	Tests were carried out at the Business Case stage on property 'hot spots' and no issues were identified.
Inability to secure collaborative partnerships with services remaining in the Council constrain the Trust's operation	In addition to SLAs for support services, Agreements are being prepared to maintain collaborative and partnership working with Council services.
Inability to secure employee buy in to the East Ayrshire Leisure	An information and communication strategy has been implemented to ensure employees are kept fully informed of developments. A formal process of consultation with Trade Unions is progressing.
Casual workers are unable to transfer	East Ayrshire Leisure will continue to require casual workers and the identified workforce who form a casual pool will be kept informed of developments.

A summary of operational management risks and mitigation actions are outlined below:

Risks	Mitigation
Failures in Human Resource Management	<ul style="list-style-type: none"> <li>▪ East Ayrshire Leisure's management and accountability structures in place including HR sub committee</li> <li>▪ Adequate and appropriate staffing establishment maintained</li> <li>▪ Job descriptions are reviewed and updated as required</li> <li>▪ Service Level Agreements defined and in place for Payroll, HR advice and support from East Ayrshire Council</li> <li>▪ Achievement and Personal Development Scheme</li> <li>▪ Employee communications and consultation processes</li> </ul>
Failures in Proper Information Management	<ul style="list-style-type: none"> <li>▪ East Ayrshire Leisure's Management Team commitment to good information governance</li> <li>▪ Clear records management policy, procedures and arrangements in place</li> <li>▪ Complaints procedure in place</li> <li>▪ Service Level Agreements defined with East Ayrshire Council to provide robust ICT support, security arrangements and data protection</li> <li>▪ Regular review meetings with IT Services</li> </ul>

<p>Failures in Proper Financial Management</p>	<ul style="list-style-type: none"> <li>▪ Board commitment to good financial governance and commitment to Best Value</li> <li>▪ Service Level Agreement defined with EAC to provide financial advice, management and budgetary information</li> <li>▪ East Ayrshire Leisure Management Team meet monthly with financial advisor to plan and review financial performance</li> <li>▪ Regular meetings of Managers with Council finance staff to monitor budgets                         <ul style="list-style-type: none"> <li>▪ Procedures are in place to ensure the East Ayrshire Leisure complies with all HMRC requirements</li> </ul> </li> <li>▪ Annual external audit of accounts</li> </ul>
<p>Failure to properly manage Assets</p>	<ul style="list-style-type: none"> <li>▪ Property leases in place</li> <li>▪ Service Level Agreements with East Ayrshire Council for Facilities Maintenance, Building Design and Asset Management services</li> <li>▪ Planned maintenance programme</li> <li>▪ East Ayrshire Council's Property Asset Management Plan</li> <li>▪ Contractual repairs and maintenance schedules</li> <li>▪ Premises Managers handbook responsibilities assigned and monitored</li> <li>▪ Museum Collections and Archives Management Plans</li> <li>▪ Vehicle management responsibilities assigned and monitored</li> </ul>
<p>Failure to properly manage Operational Activities</p>	<ul style="list-style-type: none"> <li>▪ East Ayrshire Leisure Management Team commitment to reviewing operational performance</li> <li>▪ Health and Safety Policy in place</li> <li>▪ Health &amp; Safety monitoring and review group operational</li> <li>▪ Risk assessments undertaken and logged for all operational activities</li> <li>▪ Premises Managers Handbook responsibilities assigned and monitored</li> <li>▪ Emergency Response Plan in place</li> <li>▪ Staff training undertaken i.e. child protection and pool lifeguard training</li> <li>▪ Lone worker policy in place</li> <li>▪ Defined standards for staffing levels in key activities i.e. swimming pools</li> <li>▪ Procurement and recruitment procedures – assurance, accreditation, PVG and qualification checks of suppliers and staff</li> <li>▪ Customer feedback and complaints procedure</li> <li>▪ Business planning, programming and marketing</li> <li>▪ Joint working and partnership agreements</li> <li>▪ External inspections, accreditations and audit programme</li> </ul>
<p>Failure to properly Recognise, Plan For and Manage Significant Change, both Internal and External</p>	<ul style="list-style-type: none"> <li>▪ Review of Strategies and Business Plan</li> <li>▪ Business Continuity Plan</li> <li>▪ Liaison with East Ayrshire Council and Community Planning Partners</li> <li>▪ Liaison with Governmental bodies</li> </ul>

<p>Failures in Governance, Leadership, Accountability or Decision Making</p>	<ul style="list-style-type: none"> <li>▪ Board Trustees with appropriate skills and interests</li> <li>▪ Board scrutiny of East Ayrshire Leisure's performance</li> <li>▪ Monitoring arrangements with East Ayrshire Council</li> <li>▪ Procedure in place to ensure compliance with charitable obligations</li> <li>▪ Procedure in place to ensure compliance with OSCR</li> <li>▪ Annual report prepared and published</li> </ul>
<p>Failures in Partnerships or Contracts with External Bodies</p>	<ul style="list-style-type: none"> <li>▪ Service &amp; Funding Agreement in place with East Ayrshire Council</li> <li>▪ Monitoring arrangements and regular communication with East Ayrshire Council</li> <li>▪ Contract terms with all suppliers</li> <li>▪ Tender scrutiny processes</li> <li>▪ Service Level Agreement with East Ayrshire Council for procurement strategy and advice</li> </ul>
<p>Failure to properly manage Major Projects</p>	<ul style="list-style-type: none"> <li>▪ Project governance structures defined and in place</li> <li>▪ Project management information including ToR; Risk Register; Programme; Cost Plan</li> <li>▪ Appropriate stakeholder consultation in design process</li> <li>▪ East Ayrshire Leisure's Management Team scrutiny of project progress</li> <li>▪ Service Level Agreement with East Ayrshire Council for Architecture and Building Design Services</li> </ul>



# APPENDIX 1

## EAST AYRSHIRE COUNCIL TRANSFORMATION STRATEGY (Section B2 attached – Establishment of Leisure Trust)

## APPENDIX 2

# CULTURAL, COUNTRYSIDE AND SPORT POLICIES

## APPENDIX 3

### BOARD CONSTITUTION

## APPENDIX 4

# EAST AYRSHIRE LEISURE STAFF STRUCTURE (Subject to Board Approval)

## APPENDIX 5

### FUNDING AGREEMENTS

- Service and Finance Agreement
- Support Services Agreement
- Asset Transfer Agreement
- Collections Agreement

## APPENDIX 6

# EAST AYRSHIRE LEISURE MARKETING PLAN (Subject to Board Approval)

## APPENDIX 7

# EAST AYRSHIRE LEISURE ACTION PLAN

## APPENDIX 8

# EAST AYRSHIRE LEISURE OPERATING BUDGET AND CASH FLOW FORECAST (To Follow)



## APPENDIX 9

### EAST AYRSHIRE LEISURE VENUE BY VENUE COST ANALYSIS (To Follow)