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THE HIGHLAND COUNCIL
and
CULTURE AND SPORT HIGHLAND

SERVICE DELIVERY CONTRACT

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SERVICE DELIVERY CONTRACT

between

- (1) **THE HIGHLAND COUNCIL** established under the Local Government etc (Scotland) Act 1994 and having its principal offices at [] (“**the Authority**”); and
- (2) **CULTURE AND SPORT HIGHLAND** a company which is a charity (Scottish charity number SC●) incorporated under the Companies Act 2006 with registered number SC ● and having its registered office at ● (“**the Service Provider**”)

WHEREAS:-

- (A) The Authority has resolved to entrust the Service Provider with the provision of certain services of general economic interest.
- (B) The Service Provider has agreed to accept entrustment to it of the services referred to in preamble (A), and accepts that the provision of such services represent public service obligations incumbent upon the Service Provider throughout the Prescribed Period (as defined below) by virtue of such entrustment.
- (C) The parties wish to record in writing the arrangements which have been agreed between them in relation to the consideration which the Authority will pay to the Service Provider in respect of the provision of the services referred to in preamble (A) and other terms and conditions which are to apply with regard to the provision of the services.

IT IS AGREED as follows:

1 DEFINITIONS

- 1.1 In the Agreement, unless the context otherwise requires, the following expressions will have the following meanings assigned to them:-

“**the Agreement**” means this agreement and the schedule annexed to this agreement;

“**the Approved Operating Plan**” means, in respect of a given Financial Year, the operating plan (including financial projections) for that Financial Year as approved by the Authority in pursuance of paragraph 13.4.2;

“**the Assets**” has the meaning assigned to that expression in the Transfer Agreement;

“**Assigned Employee**” means any employee who is wholly or mainly assigned to the provision of the PSO Services to the Authority;

“Business Day” means a day (other than a Saturday or Sunday or a day which is a public holiday in ●) on which banks in ● are open for business;

[**“Capital Project”** has the meaning assigned to that expression in the Property Agreement;]

“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 of all or part of the PSO Services by the Service Provider;

“the Collections” has the meaning assigned to that expression in the Collections Agreement;

“the Collections Agreement” means the Collections Agreement between the Authority and the Service Provider dated on or around the date of this Agreement;

“the Collections Intellectual Property” has the meaning assigned to that expression in the Collections Agreement;

“the Commencement Date” means ●, notwithstanding the date of the Agreement;

“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;

“Contract Manager” means the representative of the Authority appointed pursuant to clause 8.1;

“Core Service IPR” has the meaning ascribed to it in clause 26.2;

“Costs” has the meaning assigned to that expression in Clause 16.

[**“the Cultural Strategy”** means the Authority’s key policy document that sets out its vision for delivering the Council’s social and economic aims and objectives through culture and sport, as developed and agreed from time to time between the Authority and the Service Provider in accordance with clause 9;]

“Defrayed” means, in relation to Eligible Expenditure, incurred and discharged by payment i.e. transferred from the account of the Service Provider to the creditor;

“Eligible Expenditure” means expenditure for which the Service Provider is eligible to use the Services Fees, as specified in clause 3.4;

“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);

“Equal Pay Legislation” means the Treaty of Rome, the Equal Pay Directive, the Equal Pay Act 1970 or the Sex Discrimination Act 1975 (or any statutory modification or re-enactment thereof).

“Events” means the events specified in Part 8 of the Schedule;

“Financial Year” means the period from ● to 31 March 201● and each period of a year ending on 31 March thereafter throughout the Prescribed Period;

“Individual” shall have the meaning ascribed to it in clause 15.7;

“Insured Risks” has the meaning assigned to that expression in each of the Leases;

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

“Law” means any applicable statute or any delegated or subordinate legislation, any enforceable community right within the meaning of section 2(1) European Communities Act 1972, any applicable guidance, direction or determination 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;

“the Leases” has the meaning assigned to that expression in the Property Agreement;

“the Licence” has the meaning assigned to that expression in the Property Agreement;

“New Supplier” means any entity which is awarded a contract to provide services equivalent or similar to the PSO Services, or any part of the PSO Services, in place of the Service Provider (including the Authority in the case of the provision of the PSO Services, or any part of the PSO Services, by the Authority);

“the Operating Area” means the area served by the Authority;

“the PSO Operations” means the operations associated with delivery of the PSO Services;

“the PSO Services” means the services of general economic interest (representing public service obligations) to be provided by the Service Provider, as specified in clause 3 (as read with Part 1 of the Schedule);

“Parties” means the Authority and the Service Provider: **“Party”** shall be construed accordingly;

[**“Planned Investment Works”**, **“Major Repair Works”** and **“Major Statutory Works”**] have the meanings respectively assigned to those expressions in the Property Agreement;

“the Prescribed Performance Standards” means (subject to clause 7):

- (a) during the first Financial Year, the performance standards set out in Part 2 of the Schedule
- (b) in respect of every subsequent Financial Year, the performance standards agreed between the Authority and the Service Provider in pursuance of paragraph 7.3 as being applicable to that Financial Year;

“the Prescribed Period” means the period commencing on the Commencement Date and expiring on 31 March 203● or (if earlier) the date of termination of the Agreement;

“Property” and **“Properties”** have the meanings respectively assigned to those expressions in the Property Agreement;

“the Property Agreement” means the Property Agreement between the Authority and the Service Provider, dated on or around the date of the Agreement, relating to various matters affecting the Property Portfolio;

“the Property Portfolio” means the portfolio of properties in respect of which the Service Provider has a leasehold interest (or, as the case may be, a right to occupy) from time to time under the Leases and the Licence;

“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 Prescribed Period;

“Retained (Non-collections) Intellectual Property” has the meaning assigned to that expression in the Transfer Agreement;

“Service Provider Representative” means the representative of the Service Provider appointed pursuant to clause 8.1;

“the Service Provider Review” has the meaning assigned to that expression in Clause 16.

“Service Transfer” shall have the meaning ascribed to it in clause 15.1;

“Service Transfer Time” shall have the meaning ascribed to it in clause 15.1;

“Services Specification Change” means a change to the Services Specification in accordance with clause 6 (as read with Part 3 of the Schedule);

“the Services Fees” means the payments to be made by the Authority to the Service Provider under the Agreement in consideration for the PSO Services; **“Services Fee”** shall be construed accordingly;

“the Services Specification” means, at any given time, the specification defining the PSO Services to be provided under the Agreement, as applying at that time under clauses 2 and 6;

“Special Events” means one-off projects outwith the normal scope of the PSO Services; **“Special Event”** shall be construed accordingly;

“Statement” means a quarterly financial statement, in such form as the Authority may reasonably prescribe from time to time;

“the Subsidiary” means • incorporated under the Companies Acts (registered number SC•) and having its registered office at •;]

“the Subsidiary Transfer Agreement” means the Transfer Agreement between the Authority and the Subsidiary dated on or around the date of the Agreement;]

“Taxation” means corporation tax, capital gains tax, inheritance tax, value added tax, income tax (including without limitation income tax required to be deducted or withheld from or accounted for in respect of any payment), national insurance contributions, stamp duty, stamp duty land tax, stamp duty reserve tax, amounts corresponding to either income tax or corporation tax, rates (including without limitation water rates) and local charges, customs and other import duties, and any other taxes, levies, duties, withholdings or imposts of any nature whatsoever imposed on the Service Provider or for which it may be or become liable, and all fines or penalties, charges and interest relating to the above;

“the Trading Operations Assets” means “the Assets” as defined in the Subsidiary Transfer Agreement;]

“the Transfer Agreement” means the Transfer Agreement between the Authority and the Service Provider dated on or around the date of the Agreement;

“the Transfer Assistance Period” means the period (a) of six months prior to the expiry of the Prescribed Period or, (b) if shorter, the period beginning on the day on which the Service Provider becomes aware of the earlier termination of this Agreement, until the Service Transfer Time;

“Transferring Employees” has the meaning assigned to that expression in the Transfer Agreement [and the Subsidiary Transfer Agreement];

“the Transitional Services Agreement” means the Transitional Services Agreement between the Service Provider and the Authority entered into on the same date as the Agreement;

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

“WPBR” has the meaning assigned to that expression in Clause 16.

- 1.2 Any reference to the first Financial Year shall be construed as a reference to the first Financial Year to occur within the Prescribed Period; and any reference to the second, or a subsequent, Financial Year shall be construed accordingly.
- 1.3 Clause headings are included in the Agreement for ease of reference only and shall not affect the interpretation of the Agreement.
- 1.4 References to clauses and paragraphs and to the Schedule are (unless otherwise stated) references to the clauses and paragraphs of, and the schedule to, the Agreement.
- 1.5 Where the context so admits or requires, words denoting the singular include the plural and vice versa.
- 1.6 References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

2 ENTRUSTMENT

- 2.1 The Authority entrusts the Service Provider with the provision throughout the Prescribed Period of the PSO Services, all in accordance with the Services Specification.
- 2.2 The Service Provider accepts the entrustment to it of the PSO Services, and accepts that the provision of the PSO Services represent public service obligations incumbent upon the Service Provider throughout the Prescribed Period (subject to the payment and other obligations of the Authority under this Agreement being met) by virtue of such entrustment.
- 2.3 In order to secure that the PSO Services are delivered in a manner which facilitates access to the PSO Services by communities across the area served by the Authority (with an appropriate geographical balance), and also having regard to the responsibilities of the Authority in (a) seeking to sustain civic buildings within the respective communities as one means of helping to secure community cohesion and (b) conserving the Authority's portfolio of major cultural and sports venues (in recognition of the contribution which they make towards tourism and other strands of economic activity, appreciation of the built heritage, and other factors associated with the well-being of the citizens of ●), the Service Provider shall be under an obligation (subject to clauses 6.2, 6.4 and 6.12) to supply the PSO Services from the respective venues comprised in the Property Portfolio; and (subject to clauses 6.2, 6.4 and 6.12) the Service Provider shall not be entitled to terminate the supply of PSO Services from any of such venues without the prior written consent of the Authority (such consent not to be unreasonably withheld).
- 2.4 In order to secure that the PSO Services are delivered in a manner which facilitates public access to the Collections, and also having regard to the responsibilities of the Authority in relation to conservation and study of the Collections, the Service Provider shall be under an obligation (subject to clause 6.13) to utilise the Collections in the course of providing the PSO Services; and (subject to clause 6.13) the Service Provider shall not be entitled to restrict public access to the Collections (otherwise than as permitted under clause 6.13 or the provisions of the Collections Agreement) without the prior written consent of the Authority (such consent not to be unreasonably withheld).
- 2.5 With reference to clauses 2.3 and 2.4, the Authority, in order to secure an appropriate allocation of risks as between the Authority and the Service Provider in respect of the Property Portfolio and the Collections and to enable the respective rights and obligations of the parties in that regard to be appropriately defined, shall
 - 2.5.1 grant to the Service Provider a leasehold interest (subject to clause 2.6) in each of the Properties, through the Leases (which shall provide that the tenant shall not be liable for (a) insurance premiums due in respect of the Properties in relation to cover for the Insured Risks or (b) (to the extent that the relevant contribution would fall to be made to the Authority) contributions under the relevant title deeds towards

expenditure on common facilities and services due in respect of the Properties); and

2.5.2 grant to the Service Provider certain rights of use in relation to the Collections, through the Collections Agreement.

2.6 Pending the grant of a Lease in respect of any Property, a licence to occupy that Property shall be available to the Service Provider, by virtue of the provisions in that regard contained in the Transfer Agreement.

3 PAYMENTS ETC BY THE AUTHORITY

3.1 The Authority agrees, subject to the terms and conditions set out in the Agreement, to pay the Services Fees (together with all VAT payable on such fees) to the Service Provider in consideration for the provision by the Service Provider of the PSO Services.

3.2 The Services Fee due in respect of each four-weekly period, together with VAT, shall be payable by the Authority to the Service Provider on or before the first day of that four-weekly period, subject to receipt by the Authority of a valid VAT invoice issued by the Service Provider relating to that element of the Services Fee.

3.3 In order to facilitate the provision of the PSO Services, the Authority shall

3.3.1 transfer the Assets to the Service Provider on the Commencement Date and grant to the Service Provider on the Commencement Date a licence in respect of the Retained (Non-collections) Intellectual Property, in each case for nil consideration (save in respect of the stock, for which the consideration will reflect a valuation to be carried out following the transfer), all as provided for in the Transfer Agreement;

3.3.2 [transfer to the Subsidiary (being a wholly-owned subsidiary of the Service Provider) on the Commencement Date the Trading Operations Assets, for nil consideration (save in respect of the stock, for which the consideration will reflect a valuation to be carried out following the transfer), as provided for in the Subsidiary Transfer Agreement; and grant to the Subsidiary a licence in respect of the Collections Intellectual Property, for nil consideration, as provided for in the Collections Agreement.]

3.4 The Assets, [all net income derived from the Trading Operations Assets (whether by way of gift aid payments by the Subsidiary to the Service Provider or otherwise)], and the Services Fees shall be used by the Service Provider solely for the purposes of the provision of the PSO Services in accordance with the Agreement, and for no other purpose whatsoever.

3.5 Without prejudice to the provisions of clause 3.4, where any capital assets are purchased by the Service Provider using Services Fees (wholly, or in conjunction with other funds):

- 3.5.1 the Service Provider shall ensure that the use of such assets for operations falling outwith the provision of the PSO Services shall be of a minor or ancillary nature only;
- 3.5.2 the Service Provider shall not dispose of such assets (either during the Prescribed Period or at any time thereafter) without the prior written consent of the Authority (acting reasonably), and on the basis that the Authority's consent may be granted subject to such conditions (which may include a requirement to repay the whole or part of the Services Fees attributable to the relevant assets) as the Authority may reasonably consider appropriate.
- 3.6 The provisions of clause 3.5 shall apply (with any necessary modifications, and in any event subject to clause 3.7) to the Assets as if they were capital assets of the Service Provider purchased using Services Fees.
- 3.7 The Service Provider shall be entitled, without any requirement to obtain the prior written consent of the Authority, to dispose of library or other lending stock, sports equipment and/or other items comprised in the Assets which have reached the end of their useful lives in the context of delivery of the PSO Services, providing the net receipts from such disposals are used to support the provision of the PSO Services.

4 SERVICES FEES – AMOUNTS

- 4.1 The Services Fee payable by the Authority to the Service Provider in respect of the first Financial Year shall (subject to clauses 4.3, 4.5 and 5) be £● (plus VAT).
- 4.2 Payments of the Services Fee for [the first Financial Year] will be as set out in Part [12] of the Schedule.
- 4.3 At least six months prior to the start of each Financial Year, the Authority and the Service Provider shall negotiate in good faith with regard to the level of the Services Fees (excluding any element payable under the provisions of clause 4.5) to be payable in respect of that Financial Year (and taking account of any Services Specification Change which the parties may agree should be applicable in respect of that Financial Year [(including the extent, if any, to which such Services Specification Changes give rise to a requirement on the part of the Service Provider to dismiss any Assigned Employee by reason of redundancy (as defined in Section 139 of the Employment Rights Act 1996)] and the Prescribed Performance Standards which are anticipated to be applicable during that Financial Year); the process for agreeing the level of the Services Fees in pursuance of the preceding provisions of this clause shall be as set out in Part 3 of the Schedule.
- 4.4 [Where, in the context of the negotiations in terms of clause 4.2 it has been agreed by the Authority and the Service Provider that any Service Specification Charge will result in a requirement to dismiss any Assigned Employee by reason of redundancy (as defined in clause 4.3) the Services Fee

shall be adjusted to reflect the costs to the Service Provider associated with such dismissals.]

- 4.5 [In addition to those elements of the Services Fees which are provided for in clauses 4.1 and 4.3, an additional element of the Services Fee (plus VAT) shall be payable to the Service Provider in consideration for the provision by the Service Provider of that part of the PSO Services which relates to support provided by the Service Provider to the Authority in respect of Capital Projects or Special Events.]
- 4.6 The basis on which the amount of the Services Fee payable under paragraph 4.5 is to be calculated shall be as agreed between the Parties from time to time in accordance with the processes set out in Part 4 of the Schedule.

5 SERVICES FEE – ADJUSTMENTS

- 5.1 In the event that the Service Provider encounters, or expects to encounter, an increase in costs (whether as a result of Taxation or otherwise) and/or a decrease in income during the course of a Financial Year, the Service Provider may, if that increase in costs or decrease in income was not anticipated in the course of agreeing the Services Fee payable in respect of that Financial Year, propose a change to the Services Fee payable in respect of that Financial Year; the process for initiating, and thereafter negotiating and agreeing, any such change shall be as specified in Part 6 of the Schedule.
- 5.2 Without prejudice to the provisions of clause 5.1, the Services Fee shall be adjusted within the timescales and in accordance with the process set out in Part 6 of the Schedule.

6 CHANGE IN SERVICES SPECIFICATION

- 6.1 The Authority may, subject to the provisions of Part 6 of the Schedule, initiate any change to the Services Specification which it may deem appropriate from time to time; the process for initiating, and thereafter negotiating and agreeing, any such change shall be as specified in Part 6 of the Schedule.
- 6.2 Without prejudice to the provisions of clause 6.1, if any Property from which the PSO Services are supplied becomes wholly or partly unfit or unavailable for use for delivery of any one or more of the relevant PSO Services (whether by reason of damage or destruction, failure of major plant, the emergence of health and safety concerns whose remedy would require major expenditure, the introduction of new statutory requirements where the works involved in securing compliance would require major expenditure, or otherwise):
- 6.2.1 the parties shall negotiate in good faith with a view to determining whether and to what extent PSO Services provided from that Property could be delivered from other premises and/or staff might be redeployed or the scope of the PSO Services delivered from that Property might be restricted (whether in relation to opening hours or otherwise) or otherwise adapted to meet the circumstances;

- 6.2.2 the Parties shall, in the light of the arrangements agreed in pursuance of paragraph 6.2.1, determine what adjustments to the Services Specification and/or Prescribed Performance Standards are appropriate in respect of the period during which the Property remains wholly or partly unfit for use for delivery of the relevant PSO Services;
- 6.2.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 6.2.2, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 6.3 For the avoidance of doubt, the provisions of paragraph 6.2.1 shall not be taken to derogate from the ability of the Service Provider to suspend public access to a Property in the circumstances referred to in clause 6.2 on an interim basis if the Service Provider considers (acting reasonably) that there is an immediate and substantial threat to health and safety.
- 6.4 The provisions of clause 6.2 shall apply, with any necessary modifications, in any instance where the nature and/or extent of [Planned Investment Works, Major Repair Works or Major Statutory Works] to be carried out to a Property in pursuance of the Property Agreement is likely to have the effect that the Property will be wholly or partly unfit (or unavailable) for use for delivery of any one or more of the relevant PSO Services, subject to the qualification that the parties will endeavour to initiate the process referred to in paragraphs 6.2.1 to 6.2.3 at least 3 months prior to commencement of the relevant works and to complete that process at least 4 weeks prior to commencement of the relevant works.
- 6.5 The provisions of clause 6.2 shall (subject to clause 6.6) apply, with any necessary modifications, where the ability of the Service Provider to deliver the PSO Services from any Property is adversely affected by
- 6.5.1 any failure on the part of the Authority to keep roads, footpaths or landscaped areas in the vicinity of the Property properly lit, free of refuse and maintained to a reasonable standard;
- 6.5.2 any failure on the part of the Authority to keep common plant, equipment, service media and/or other facilities (serving a Property in common with other subjects) properly maintained and in working order;
- 6.5.3 any failure or shortcoming in relation to the delivery of services by the Authority to the Service Provider under the Transitional Services Agreement;
- 6.5.4 the termination of the Transitional Services Agreement in respect of all or some of the services referred to in the Transitional Services Agreement on the grounds of breach by the Authority, to the extent that the Service Provider, despite use of reasonable endeavours, is unable to secure delivery of the relevant services from some other provider;

- 6.5.5 any claim made (or other step taken) by a party to a Transferring Contract on the grounds that allowing the Service Provider the benefit of that Transferring Contract represented a breach of that Transferring Contract;
- 6.5.6 any defect or deficiency in the works associated with the implementation of a [Capital Project], where that defect or deficiency is referable to negligence on the part of an employee of the Council who was involved in the provision of services in respect of that [Capital Project] of a nature which might otherwise have been provided by a member of an external professional team.
- 6.6 The provisions of clause 6.5 shall be without prejudice to the ability of the Authority (if it so elects, at its discretion) to carry out remedial works at the Authority's expense so as to eliminate, reduce or modify the effect on delivery of PSO Services from the relevant Property.
- 6.7 The provisions of clause 6.2 shall apply, with any necessary modifications, in any instance where the use of the whole or part of a Property for the delivery of any one or more of the relevant PSO Services is affected by:
 - 6.7.1 any Title Defect (as defined in the Property Agreement), as provided for in clause [13] of the Property Agreement; or
 - 6.7.2 requirements associated with a civil emergency, as provided for in clause [16] of the Property Agreement.
- 6.8 In any case where the implementation of risk control measures for any Property (as identified in the context of any inspection or risk control survey) would involve significant expenditure on the part of the Service Provider, the Service Provider and the Authority shall enter into discussions with a view to achieving an appropriate resolution; and
 - 6.8.1 the Authority may increase the Services Fee by an amount which reflects the additional financial burden associated with the implementation of the relevant risk control measures;or (at the option of the Authority)
 - 6.8.2 the Authority may elect that the provisions of clause 6.2 should apply, with any necessary modifications.
- 6.9 In any case where the implementation of risk control measures for any item comprised in the Collections (as identified in the context of any inspection or risk control survey) would involve significant expenditure on the part of the Service Provider, the Service Provider and the Authority shall enter into discussions with a view to achieving an appropriate resolution; and
 - 6.9.1 the Authority may increase the Services Fee by an amount which reflects the additional financial burden associated with the implementation of the relevant risk control measures;

or (at the option of the Authority)

6.9.2 the Authority and the Service Provider shall negotiate in good faith with a view to determining whether and to what extent the provision of PSO Services in respect of that item might be restricted or otherwise adapted to meet the circumstances, and:

6.9.2.1 the parties shall, in the light of the arrangements agreed in pursuance of paragraph 6.9.2, determine what adjustments to the Services Specification and/or Prescribed Performance Standards are appropriate;

6.9.2.2 following upon agreement between the parties in relation to the adjustments referred to in paragraph 6.9.2.1, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.

6.10 In the event that the ability of the Service Provider to deliver the PSO Services is adversely affected by a service provider or holder of IPR (a) declining to issue consent to the assignation or novation of the relevant contract, or (as the case may be) the sub-licensing of the relevant IPR, to the Service Provider as contemplated in the Transfer Agreement or the Collections Agreement, or (b) agreeing to issue consent but only on the basis of financial and/or other conditions which the Service Provider (acting reasonably) considers to be unduly onerous, the Service Provider and the Authority shall enter into discussions with a view to achieving an appropriate resolution and

6.10.1 the Authority may increase the Services Fee by an amount which reflects (a) the additional payment to be made to the relevant service provider or holder of IPR and/or (b) the additional financial burden associated with the relevant conditions;

or (at the option of the Authority):

6.10.2 the Parties shall determine what adjustments to the Services Specification and/or Prescribed Performance Standards are appropriate in the circumstances which then prevail (and taking account of the financial and other implications associated with procuring an alternative service provider or an alternative source of the same or similar IPR, where that possibility exists);

6.10.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 6.10.2, the Parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.

6.11 If there is to be any addition to the Property Portfolio in pursuance of the Property Agreement, the parties will negotiate in good faith, with a view to

6.11.1 agreeing the PSO Services which are to be delivered from the Property which is being added to the Property Portfolio (“**the New Property**”);

- 6.11.2 agreeing whether and to what extent PSO Services provided from other Properties could be delivered from the New Property and/or staff might be redeployed to the New Property or the scope of the PSO Services delivered from other Properties might be restricted (whether in relation to opening hours or otherwise) or otherwise adapted to meet the circumstances;
 - 6.11.3 determining what adjustments to the Services Specification and/or the Prescribed Performance Standards are appropriate to reflect the matters referred to in paragraphs 6.11.1 and 6.11.2; and
 - 6.11.4 following upon agreement between the parties in relation to the matters referred to in paragraphs 6.11.1 to 6.11.3, negotiating in good faith an appropriate alteration to the Services Fee to reflect the PSO Services to be delivered from that Property and the adjustments referred to in those paragraphs.
- 6.12 If there is to be any withdrawal of a Property from the Property Portfolio in pursuance of the Property Agreement, the parties shall apply the provisions of paragraphs 6.2.1 to 6.2.3 (with any necessary modifications) so as to negotiate and agree the adjustments to the Services Specification and/or the Prescribed Performance Standards, and the alteration to the Services Fee, which should apply in the light of the withdrawal of that Property.
- 6.13 If a significant part of the Collections is rendered unusable or unavailable (whether by reason of damage or destruction, the withdrawal of any right of use conferred by the terms of a bequest or trust, or otherwise), the parties shall apply the provisions of paragraphs 6.2.1 to 6.2.3 (with any necessary modifications) so as to negotiate and agree the adjustments to the Services Specification and/or the Prescribed Performance Standards, and the alteration to the Services Fee, which should apply in the light of the non-availability of that part of the Collections.
- 6.14 For the avoidance of doubt, a part of the Collections will be regarded as unusable for the purposes of clause 6.13 if the Property in which that part of the Collections is housed ceases to be fit for use for delivery of the relevant PSO Services, except to the extent that that part of the Collections can reasonably be re-housed within some other Property or Properties.
- 6.15 If there is any change in Law (otherwise than as referred to in clause 6.2) which has a significant impact on delivery of the PSO Services:
- 6.15.1 the parties shall negotiate in good faith with a view to determining whether and to what extent PSO Services could be delivered in some other manner and/or staff might be redeployed or the scope of the PSO Services be restricted (whether in relation to opening hours or otherwise) or otherwise adapted to meet the circumstances;
 - 6.15.2 the parties shall, in the light of the arrangements agreed in pursuance of paragraph 6.15.1, determine what adjustments to the Services

Specification and/or the Prescribed Performance Standards are appropriate;

6.15.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 6.15.2, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.

6.16 Without prejudice to the provisions of clauses 6.1 to 6.15, in the event that the Service Provider encounters or expects to encounter an increase in costs (whether as a consequence of the need to dismiss by reason of redundancy any of the Assigned Employees or as a consequence of any Costs arising in terms of Clause 16) or a decrease in income during the course of a Financial Year, the Service Provider may, if that increase in costs or decrease in income was not anticipated in the course of agreeing the Services Fee payable in respect of that Financial Year, propose a change to the Services Specification (either alone, or in conjunction with a change to the Services Fee proposed in pursuance of clause 5.1); the process for initiating, and thereafter negotiating and agreeing, any such change shall be as specified in Part 6 of the Schedule.

7 PERFORMANCE STANDARDS AND PERFORMANCE REPORTING

7.1 Subject to clause 7.6, the Service Provider shall, in providing the PSO Services, meet the Prescribed Performance Standards applicable from time to time and comply with the performance reporting requirements as set out at Part 7 of the Schedule.

7.2 The performance standards applicable in respect of the first Financial Year shall (subject to clauses 7.4 and 7.5) correspond with those set out in Part 2 of the Schedule.

7.3 At least six months prior to the start of the second, and each subsequent, Financial Year, the Authority and the Service Provider shall negotiate in good faith with regard to the prescribed performance standards and performance reporting requirements to be applicable in respect of that Financial Year (and taking account of any Services Specification Change which the parties may agree should be applicable in respect of that Financial Year); the process for agreeing the performance standards in pursuance of the preceding provisions of this clause shall (subject to clause 7.5) be as set out in Part 3 of the Schedule.

7.4 The Prescribed Performance Standards shall be subject to variation from time to time

7.4.1 in accordance with the provisions of clause 6; and

7.4.2 in accordance with the provisions of Part 6 of the Schedule;

and such that on each occasion when there is a variation to the Prescribed Performance Standards, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect that variation, in accordance with the

provisions of Part 6 of the Schedule. For the avoidance of doubt, the provisions of Part 6 of the Schedule shall not derogate from the entitlement of the Authority to impose a change in relation to the Prescribed Performance Standards (but acknowledging that any such change may in turn give rise to the need to adjust the Services Fee and/or the Service Specification, in accordance with the provisions of Part 6 of the Schedule).

- 7.5 Without prejudice to the provisions of clause 7.4, in the event of any change in the Statutory Performance Indicators, the Authority shall be entitled (acting reasonably) to alter the Prescribed Performance Standards as from the date on which that change to the Statutory Performance Indicators takes effect (or from such later date as the Authority may determine) with a view to securing satisfactory performance on the part of the Authority against the revised Service Performance Indicators and will agree such alteration to the Services Fee (if any) as may be appropriate to reflect such an alteration to the Statutory Performance Indicators.
- 7.6 The Service Provider shall not be liable for any failure to meet the Prescribed Performance Standards if and to the extent that such failure is directly attributable to any breach by the Authority of its obligations under the Agreement, the Property Agreement or the Transitional Services Agreement.

8 MONITORING & REVIEW

- 8.1 Without prejudice to the provisions of the Property Agreement, the Leases, the Licence and the Collections Agreement, the Authority shall be entitled to have access to the Properties at any time (subject to (a) giving reasonable prior notice to the Service Provider (except in case of emergency) and (b) complying with any reasonable requirements of the Service Provider as regards security and/or health and safety) for the purpose of satisfying itself that the Service Provider is complying with its obligations under the Agreement and/or for the purpose of monitoring the performance of the Service Provider in delivering the PSO Services.
- 8.2 The Authority will appoint a Contract Manager and the Service Provider will appoint a Service Provider Representative to oversee the overall performance of this Agreement. Neither Party shall change such appointee without prior consultation with the other Party.
- 8.3 The Contract Manager and the Service Provider Representative shall meet at least once every Quarter, or as otherwise agreed, to review the performance of the Service Provider in providing the PSO Services
- 8.4 The review meetings referred to in clause 8.3 shall, in addition to addressing any perceived shortcomings in the provision of the PSO Services, afford an opportunity for the Authority and the Service Provider to exchange views in relation to how the delivery of the PSO Services might be improved or rendered more efficient (whether in the light of new technology or otherwise); any such proposals may, if the Authority sees fit, be reflected in the subsequent initiation by the Authority of a change to the Services Specification in pursuance of clause 6.1.

- 8.5 The Service Provider will have the option of initiating a proposal under clause 5 or 6 to address the discussions held at the review meetings referred to in clause 8.3 and issues arising from such discussions.
- 8.6 The review meetings referred to in clause 8.3 shall be convened on not less than 3 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.
- 8.7 The Contract Manager shall be responsible for preparing minutes of all meetings.
- 8.8 A copy of the minutes prepared by the Contract Manager in pursuance of clause 8.7 shall be forwarded to the Service Provider Representative by the Contract Manager within 5 Business Days of the date of the meeting.
- 8.9 The Service Provider Representative shall advise the Contract Manager of any comments which he/she has in respect of the minutes prepared in pursuance of clause 8.7 within 5 Business Days of receipt of a copy of the minutes in accordance with clause 8.8; and the Contract Manager will make such revisions to the minutes as are agreed between the Service Provider Representative and the Contract Manager.

9 CULTURAL STRATEGY

- 9.1 The Service Provider shall seek, in delivering the PSO Services, to advance the objectives set out in the Cultural Strategy, so far as relevant to delivery of the PSO Services.
- 9.2 The strategy for delivery of culture and sport across ● applicable to the period to 31 March 20● shall be as contained in the Cultural Strategy Action Plan, but on the basis that the strategy as set out in that document shall be subject to annual review by the Authority and may be adjusted by the Authority from time to time to reflect the outcome of any such annual review, and any legislation that informs the responsibilities of local authorities as regards delivery of cultural and sports services.
- 9.3 The strategy for delivery of cultural and leisure services across ● shall be periodically refreshed by the Authority, and upon formal adoption by the Authority, shall be taken to form the Cultural Strategy (in place of the previous strategy) for the purposes of clause 9.1.
- 9.4 The Service Provider shall provide support to inform the annual reviews and periodic refresh of the strategy for delivery of cultural and leisure services across ● , as referred to in clauses 9.2 and 9.3, and shall also assist the Authority in relation to monitoring progress in furtherance of the Cultural Strategy, all as described in Part 2 of the Schedule.

10 SPECIAL PROVISIONS: PROCESSING OF GRANT APPLICATIONS ETC.

10.1 [The processes to be followed by the Service Provider in relation to that part of the PSO Services which relates to

10.1.1 the processing of grant applications;

10.1.2 the recommendation of applications to the Authority as being appropriate for funding support and as to the level of such support;

10.1.3 the issue of letters of award and relative conditions of grant;

10.1.4 the monitoring of grant recipients;

10.1.5 the provision of advice and support to grant recipients; and

10.1.6 the taking of remedial steps in the event of breach of grant conditions

shall be as set out in Part 8A of the Schedule, subject to any modification to such processes as may be notified in writing by the Authority (acting reasonably) to the Service Provider from time to time.]

10.2 [The Authority hereby confers on the Service Provider all necessary authority to act as agent for the Authority in respect of the matters referred to in paragraphs 10.1.1 to 10.1.6, subject in each case to the Service Provider complying with:

10.2.1 the processes set out in set out in Part 8A of the Schedule (subject to any modification to such processes as may be notified in writing by the Authority (acting reasonably) to the Service Provider from time to time); and

10.2.2 any specific direction which the Authority may issue to the Service Provider from time to time (whether in respect of any individual grant applicant or recipient, in respect of any category of grant applicant/recipient, or otherwise).]

11 SPECIAL PROVISIONS – EVENTS ETC

11.1 [The arrangements in relation to Events shall be regulated by the provisions set out in Part 8B of the Schedule.]

12 COMMUNITY USE OF SCHOOLS FACILITIES/EDUCATION

12.1 [The Service Provider shall act as the Authority's agent in relation to the administrative arrangements regarding the letting of all or part of the schools within its portfolio to members of the community, in accordance with the provisions of Part 9 of the Schedule.

12.2 Each of the Parties undertakes to comply with the Museums Education Service Protocol set out in Part 13 of the Schedule.]

13 LEVEL OF COMPENSATION: ONGOING MONITORING/ADJUSTMENT & PROVISION FOR REPAYMENT

- 13.1 In accordance with principles of EU law, the Authority is obliged to set, and thereafter monitor and control, the amount of the Services Fees paid and/or payable by the Authority to the Service Provider (and taking account of all other forms of assistance provided by the Authority to the Service Provider), in order that the Authority may satisfy itself that the funding and other assistance provided by the Authority to the Service Provider under the Agreement or otherwise according to the Collections Agreement, the Property Agreement, [the Subsidiary Transfer Agreement], the Transfer Agreement and the Transitional Services Agreement does not have the effect of granting illegal State Aid, namely that the aggregate amount of public service compensation paid to the Service Provider (from the Authority and other sources, taken in aggregate), when added to all other receipts, does not exceed that which is necessary to cover all of the costs incurred in providing the PSO Services together with a reasonable profit; and in particular to ensure that there is no over-compensation in respect of the PSO Services.
- 13.2 In determining whether there is over-compensation in respect of the PSO Services by reference to the principles set out in clause 13.1,
- 13.2.1 the costs to be taken into consideration shall be restricted to those which are associated with the provision of the PSO Services; and on the basis that in the case of costs which are attributable partly to the provision of the PSO Services and partly to other operations, a reasonable apportionment of costs shall be made;
- 13.2.2 the receipts to be taken into account shall include all revenue generated by the provision of the PSO Services and all receipts (including, without prejudice to that generality, any receipts of the nature referred to in clause 3.7) derived directly or indirectly from the Assets and/or the Trading Operations Assets (and in any case where Assets are used for a purpose falling outwith the PSO Services, on the basis that a notional charge (reflecting market rates) for use for that purpose shall be taken into account as if it were a receipt generated by the provision of the PSO Services);
- 13.2.3 the assistance provided by the Authority through the matters referred to in clause 3.3 shall be taken into account as representing part of the compensation in respect of the provision of the PSO Services;
- 13.2.4 the question of what represents a reasonable profit shall be determined by reference to an appropriate return on own capital, taking account of the level of risk incurred by the Service Provider, but such that the rate of return shall not exceed the average rate for the relevant sectors of business for the preceding three year period.
- 13.3 For the avoidance of doubt, the Authority shall, in determining whether or not to issue consent under paragraph 3.5.2, and in setting any conditions attaching

to consent (if granted), take due account of the principles associated with avoiding over-compensation (as referred to in this clause 13).

13.4 In order to facilitate the monitoring and control of the level of compensation for the PSO Services in accordance with the principles set out in clauses 13.1 and 13.2, the Service Provider undertakes:

13.4.1 to ensure that its internal accounts show the costs and receipts (including any notional charge of the nature referred to in paragraph 13.2.1) associated with the provision of the PSO Services separately from those associated with any other operations carried on by the Service Provider, as well as the accounting policies used for the purpose of allocating costs and revenues;

13.4.2 to submit to the Authority for approval, no later than 6 months prior to the commencement of each Financial Year, a draft operating plan for that Financial Year, adjust that draft operating plan in accordance with such reasonable directions as the Authority may issue to the Service Provider, and (without prejudice to the provisions of paragraphs 13.4.4 and 13.4.5) to use all reasonable endeavours to adhere to the operating plan, as finally approved by the Authority, in respect of that Financial Year;

13.4.3 to provide the Authority, within three weeks after the end of each Quarter, with a Statement in respect of that Quarter, showing the Eligible Expenditure Defrayed during that Quarter, all other funding from state resources received by the Service Provider during that Quarter in respect of the provision of the PSO Services, all other receipts in respect of the PSO Operations received by the Service Provider during that Quarter and the profit/loss referable to the PSO Operations for the period from the commencement of the relevant Financial Year to the end of that Quarter;

13.4.4 to provide the Authority, within three weeks after the end of each Quarter, with a detailed analysis of all variances in respect of that Quarter from the Approved Operating Plan in respect of that Quarter;

13.4.5 to provide the Authority, within four months after the end of each Financial Year, with the audited accounts for that Financial Year, together with a detailed analysis of all variances in respect of that Financial Year from the Approved Operating Plan;

13.4.6 to provide the Authority with such further information and/or access to records and staff of the Service Provider (which, for the avoidance of doubt, may extend to any operations outwith the provision of the PSO Services as may be carried on from time to time by the Service Provider) as the Authority may request from time to time to enable the Authority to determine whether there is any over-compensation in respect of the provision of the PSO Services.

- 13.5 The Authority shall regularly review the Statements, analyses, records and other information provided by the Service Provider under clause 13.4; and (subject to clause 13.6)
- 13.5.1 in the event that the Authority considers (acting reasonably) that the payment of an instalment of the Services Fee on the date for payment of that instalment would have the effect that there was over-compensation (having regard to the principles set out in clauses 13.1 and 13.2, and having regard to all other advantages granted to the Service Provider to facilitate the delivery of the PSO Services) in respect of the provision of the PSO Services, the Authority (acting reasonably) may reduce the amount of that instalment or (if the Authority considers this necessary to prevent over-compensation) decline to make payment of that instalment, and shall notify the Service Provider in writing accordingly prior to the date on which the relevant instalment falls due (or would otherwise have fallen due);
- 13.5.2 in the event that the Authority considers (acting reasonably) that over-compensation (having regard to the principles set out in clauses 13.1 and 13.2 and having regard to all other advantages granted to the Service Provider to facilitate the delivery of the PSO Services) in respect of the provision of the PSO Services has already occurred, the Authority (acting reasonably) may by written notice to the Service Provider to that effect, require repayment by the Service Provider of such amount of Services Fees already advanced as the Authority may reasonably consider appropriate to ensure that there is no over-compensation in respect of the period up to that date (and such that the Service Provider shall then be under an obligation to make such repayment in full within 15 Business Days of the date on which the notice is given to the Service Provider);
- 13.5.3 in the event that the Authority considers (acting reasonably) that over-compensation (having regard to the principles set out in clauses 13.1 and 13.2 and having regard to all other advantages granted to the Service Provider to facilitate the delivery of the PSO Services) in respect of the provision of the PSO Services has already occurred, the Authority shall review, and (if appropriate) adjust, the parameters for calculating compensation in respect of the provision of the PSO Services;
- 13.5.4 in the event that the Authority considers (acting reasonably) that over-compensation (having regard to the principles set out in clauses 13.1 and 13.2 and having regard to all other advantages granted to the Service Provider to facilitate the delivery of the PSO Services) in respect of the provision of the PSO Services is likely to occur in respect of a number of forthcoming Quarters, the Authority may, by written notice to the Service Provider to that effect, require the Service Provider to prepare revised financial projections in respect of the PSO Operations for such future period or periods as the Authority may reasonably determine (and such that the Service Provider shall then be under an obligation to submit such revised financial projections to the

Authority within 15 Business Days of the date on which the notice is given to the Service Provider).

- 13.6 If there has been over-compensation (having regard to the principles set out in clauses 13.1 and 13.2) in respect of the provision of the PSO Services in respect of any Financial Year (an “**Overspend Financial Year**”), the Authority may allow the over-compensation referable to funding and other assistance provided under the Agreement to be carried forward to the succeeding Financial Year if it amounts to 10% or less of the total funding and other assistance provided under the Agreement in respect of the Overspend Financial Year, but any amount in excess of 10% must be the subject of a request for repayment under paragraph 13.5.2.
- 13.7 Without prejudice to the provisions of paragraph 13.5.4, the Service Provider may at any time, if it anticipates that significant variances from the Approved Operating Plan are likely to occur, prepare revised financial projections in respect of the PSO Operations for such future period or periods as the Service Provider may determine.
- 13.8 Any revised financial projections prepared pursuant to paragraph 13.5.4 or clause 13.7 shall be considered by the Authority by reference to the principles in relation to avoiding over-compensation set out in clauses 13 and 13.2, and in the event that the Authority is satisfied (acting reasonably) that the revised financial projections respect those principles, it shall notify the Service Provider in writing that the revised financial projections are approved, whereupon the revised financial projections shall be deemed to constitute the Approved Operating Plan, in respect of the period(s) to which they relate.
- 13.9 In the event of any change in the Law, the issue of any communication, guidance note, consultation document or other relevant material by the European Commission or any other EU or national government authority or agency or any other development arising which might alter or otherwise affect the interpretation or effect of the principles of EU law in their application to arrangements of the nature referred to in this Agreement, the parties shall negotiate in good faith with a view to agreeing such adjustments to the provisions of this Agreement as may be appropriate; any such adjustments shall be recorded in a formal Minute of Variation, executed by both parties.

14 FURTHER CONDITIONS/OBLIGATIONS

- 14.1 The Service Provider shall (subject to clause 14.2) indemnify the Authority against any loss or liability which the Authority may sustain or incur, or any claim by a third party against the Authority (including the expenses associated with contesting any such claim, and any costs awarded against the Authority in respect of any such claim), where such loss, liability or claim arises out of, or in connection with, any breach by the Service Provider of any warranty, obligation or undertaking contained in the Agreement, or otherwise arising in relation to the PSO Operations.

- 14.2 The indemnity contained in clause 14.1 shall not extend to any loss, liability or claim which arises directly out of any breach by the Authority of its obligations under this Agreement.
- 14.3 The provisions of clause 14.1 shall not displace the obligation of the Authority to take reasonable steps to mitigate its loss.
- 14.4 The Service Provider shall:-
- 14.4.1 (without prejudice to the provisions of clause 13.4) provide to the Authority such information as the Authority may reasonably request from time to time to enable the Authority to monitor, verify and audit the PSO Operations;
 - 14.4.2 ensure that it is not in breach of any other agreements or any Law in connection with the PSO Operations and that the PSO Operations conform with all requirements of Law;
 - 14.4.3 notify the Authority immediately upon the occurrence of any event which might represent a ground on which any lender or funder might decline to make further payments to the Service Provider or require repayment of sums already advanced to the Service Provider;
 - 14.4.4 provide the Authority with such information as the Authority may reasonably require to enable the Authority to ascertain that the terms and conditions of the Agreement are being observed;
 - 14.4.5 comply with all EU and Scots law procurement requirements on the basis that it is a contracting authority for the purposes of such requirements;
 - 14.4.6 ensure that all consultants, contractors and sub-contractors employed on or in connection with the PSO Operations are paid timeously;
 - 14.4.7 ensure that the PSO Operations are carried out to the reasonable satisfaction of the Authority;
 - 14.4.8 provide the Authority and any person duly authorised by it, with reasonable facilities to inspect and review all records, accounts, invoices and other materials retained in connection with the PSO Operations upon the Authority giving reasonable notice to the Service Provider;
 - 14.4.9 keep the Authority informed of the progress in development of the PSO Operations and the activities of the Service Provider (including progress against the milestones specified, or to be agreed in terms of the Operating Plan) and furnish the Authority, to such extent and in such form and detail as the Authority may from time to time reasonably require, with financial and business information and particulars of any matters concerned with and arising out of the activities of the Service Provider in relation to the PSO Operations.

- 14.5 The Authority shall be entitled to arrange for an audit of the financial records of the Service Provider to be carried out by an independent accountant engaged by the Authority, subject to giving reasonable prior notice to the Service Provider on each occasion on which it exercises its entitlement under this clause; in the event that the audit discloses material discrepancies as compared with the financial statements supplied to the Authority by the Service Provider, the costs associated with the audit shall be met by the Service Provider.
- 14.6 The Service Provider shall be responsible for maintaining insurances, throughout the Prescribed Period, in accordance with the particulars set out in Part 14 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).
- 14.7 With reference to clause 14.6
- 14.7.1 the Service Provider shall use all reasonable endeavours to ensure that the indemnity limit in respect of the public liability insurance is at least equal to the indemnity limit applying from time to time in respect of the public liability insurance maintained from time to time by the Authority);
- 14.7.2 (without prejudice to the provisions of clause 14.6 in respect of any other variations) the Service Provider shall not increase the amount of excess in respect of any of the insurances referred to in clause 14.6 without the prior written consent of the Authority (such consent not to be unreasonably withheld).
- 14.8 For the avoidance of doubt, the Service Provider shall be responsible for payment of any excess under any of the insurance policies referred to in clause 14.6.
- 14.9 The Service Provider undertakes
- 14.9.1 to provide to the Authority on request copies of the policy documents relating to the insurances maintained by the Service Provider in pursuance of clause 14.6, together with such evidence as the Authority may reasonably request to demonstrate that such policies are in force;
- 14.9.2 to advise the Authority promptly in writing if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.
- 14.10 The Authority and its agents and advisers shall, on giving not less than 24 hours' prior notice to the Service Provider, be given reasonable access to all facilities operated by the Service Provider within the Properties for the purposes of inspecting such facilities and carrying out risk control surveys; following any such inspection or survey, the Authority (or its agents or advisers) shall make recommendations to the Service Provider on any issues identified by the inspection and/or survey, including (without prejudice to that generality) recommended measures to control risk

- 14.11 The Authority and the Service Provider shall each consider the recommendations referred to in clause 14.10 and shall enter into discussions in respect of the implementation of such recommendations and the timeframe for doing so; the Authority and the Service Provider 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.
- 14.12 The Service Provider undertakes to implement such measures to control risk as the Authority may reasonably prescribe in the light of the recommendations made in pursuance of clause 14.10, and within the timeframe reasonably prescribed by the Authority.

15 TUPE

- 15.1 The Service Provider undertakes that during the Transfer Assistance Period, it shall, within 15 Business Days of receiving a request by the Authority, supply in writing to Authority such information and documentation relating to the Assigned Employees in its possession or control as may be reasonably requested by the Authority and subject to the Service Provider's obligations under the Data Protection Act 1998.
- 15.2 In the event of a Cessation of Service resulting in a transfer of the PSO 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**").
- 15.3 The Service Provider 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 Service Provider 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.
- 15.4 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 after the Service Transfer Time and the Council shall indemnify the Service Provider 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.
- 15.5 The Council shall indemnify and keep indemnified the Service Provider from and against all and any Employment Losses suffered or incurred by the

Service Provider in respect of any (and each) of the Assigned Employees arising from or as a result of:-

- 15.5.1 any act, fault or omission or alleged act, fault or omission of the Council 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
 - 15.5.2 any act, fault or omission or alleged act, fault or omission of the Council in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 15.6 The Service Provider shall indemnify and keep indemnified the New Supplier from and against all 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 Service Provider prior to the Service Transfer Time including, without limitation: -
- 15.6.1 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
 - 15.6.2 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 Service Provider to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations save to the extent that such failure by the Service Provider was as a result of any act or omission by the Council in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 15.7 If, by operation of the TUPE Regulations, the contract of employment of any individual who was employed by the Service Provider 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:-
- 15.7.1 the New Supplier shall notify the Service Provider in writing as soon as it becomes aware of this fact and shall consult with the Service Provider as to the appropriate course of action;
 - 15.7.2 the Service Provider shall, within 14 days of receiving notice in terms of clause 15.7.1, offer employment to the Individual or notify the New Supplier that it does not wish to make such an offer;
 - 15.7.3 if the Individual does not accept any offer of re-employment made by the Service Provider 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 15.7.2) the New Supplier shall be entitled to terminate the employment of the Individual; and

15.7.4 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 15.7.3 (where an offer of re-employment is made by the Service Provider) or within 14 days of the expiry of the 14-day time limit referred to in clause 15.7.2 (where no offer of employment is made by the Service Provider), the Service Provider shall indemnify and keep indemnified the New Supplier from and against any Employment Losses: -

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

15.7.4.2 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 Service Provider prior to the date of termination or commencement of employment of the Individual by the Service Provider including, without limitation: -

- (a) any claim for wages and salaries (including backdated Pay in terms of the Council's Workforce Pay & 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 Service Provider to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations.

16 WORKFORCE PAY & BENEFITS

16.1 [It is recognised that Transferring Employees have been subject to the Authority's workforce pay and benefits review ("the WPBR") prior to the Commencement Date and that the Service Provider will require to continue with the review and appeals processes flowing from the WPBR after the Commencement Date. It is further recognised that the Service Provider shall

be entitled to conduct its own reviews of pay and benefits inter alia affecting Transferring Employees on an ongoing basis following the Commencement Date (“Service Provider Review”).]

16.2 [Where any costs or liabilities (including reasonable legal costs) (“Costs”) are suffered or incurred by the Service Provider as a consequence of the WPBR or any Service Provider Review, such Costs in respect of Transferring Employees shall be considered in the course of the negotiations over Service Fees as provided for in clause 4.2 and the negotiations under clauses 5.1 and 6.16 of this Agreement. Notwithstanding the foregoing, the principles set out in this Clause 16.2 shall apply.

16.2.1 The Authority shall be liable for and shall indemnify and keep indemnified the Service Provider against any Costs in respect of the Transferring Employees relating to any acts or omissions of the Authority in its implementation of the WPBR including any claims under Equal Pay Legislation, claims for unfair dismissal, breach of contract, backdated pay and/or judicial review. Where a claim under Equal Pay Legislation under this Clause 16.2.1 requires the Service Provider to increase rates of pay and/or benefits to any of the Assigned Employees, the Authority shall be liable for and shall indemnify and keep indemnified the Service Provider against any such associated Costs.

16.2.2 Where Costs are incurred by the Service Provider as a consequence of its effecting changes to pay and/or grading of Transferring Employees in its conduct of the review and appeals procedures under the WPBR, the Service Provider shall be liable for and shall indemnify and keep indemnified the Authority against any Costs which relate to the period after the Commencement Date and the Authority shall be liable for and shall indemnify and keep indemnified the Service Provider against any Costs which relate to the period prior to the Commencement Date.

16.2.3 The Service Provider shall be liable for and shall indemnify and keep indemnified the Authority against any Costs in respect of Transferring Employees relating to any Service Provider Review including any claims under Equal Pay Legislation, claims for unfair dismissal, breach of contract, backdated pay and judicial review.]

17 FORCE MAJEURE

17.1 Subject to clause 17.2, if either Party is prevented from performing, 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), it shall be excused performance to the extent affected by the circumstances concerned, so long as

17.1.1 it gives notice to the other Party of those circumstances promptly after they first affected performance; and

17.1.2 it uses all reasonable commercial endeavours to remove or avoid their cause or minimise their effect.

Such performance shall be excused for the period during which the inability of the Party to perform subsists but for no longer period, and shall be remedied as soon as possible.

17.2 The provisions of clause 17.1 shall not apply in relation to any circumstances which fall within the provisions of clause 6.

18 DEFAULT

18.1 The Authority may (subject to clause 18.3) at any time by notice in writing to the other terminate this Agreement with immediate effect if:-

18.1.1 the Service Provider fails to observe or perform any of its material obligations contained in this Agreement where such failure is not remediable;

18.1.2 the Service Provider 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 Authority making that request;

18.1.3 the Service Provider fails to comply with a remedial plan of the nature referred to in clause 18.3 within the period reasonably prescribed within that remedial plan; or

18.1.4 the Authority exercises any right to terminate the Property Agreement or the Collections Agreement or all, or a majority, of the Leases; or

18.1.5 the Service Provider 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.

18.2 Following the occurrence of an event of the nature referred to in paragraph 18.1.2, the Authority shall, without prejudice to any other remedy competent to the Authority, be entitled to decline to make any further payments of the Services Fees (or any part of the Services Fees), temporarily or otherwise, and without prejudice to the entitlement of the Authority subsequently to terminate the Agreement on the same or any other ground.

18.3 In the event of the Service Provider committing any breach or series of breaches in respect of its obligations under this Agreement, the Authority may

(without prejudice to any right to terminate this Agreement under paragraph 18.1.1 or 18.1.2)

18.3.1 enter into discussions with the Service Provider 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;

18.3.2 prescribe (acting reasonably, and taking account of any discussions held in pursuance of paragraph 18.3.1) a remedial plan (including a reasonable period for implementation) which it shall issue in writing to the Service Provider;

and the Service Provider shall thereafter be under obligation to comply with the remedial plan within the period stated in such remedial plan.

18.4 Termination or expiry of the 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.

18.5 Notwithstanding the provisions of this clause 18, the provisions of clauses [3.3.2, 3.6, 13, 14.1 to 14.3, 14.5, 15, 16, 17, 18.4, 19.1, 20, 24, 25, 26.1 to 26.3, 26.7, **Error! Reference source not found.**, 27.3, 28, 30, 31 and 33] shall survive termination (for whatever reason) or expiry of this Agreement.

19 INTEREST

- 19.1 Except to the extent that the parties otherwise agree, interest will accrue and be payable by each Party to the other on any sum due to the other Party in terms of the Agreement which remains unpaid for 15 Business Days after the due date, such interest to run at the rate of 2 % per annum above the base rate of ● from the due date until payment.

20 ASSIGNATION & SUBCONTRACTING

- 20.1 The Service Provider shall not assign or otherwise dispose of its interest under the Agreement to any other party.
- 20.2 For the avoidance of doubt, the Service Provider shall be entitled to enter into sub-contracts for the delivery of particular elements (but not the whole) of the PSO Services, but on the basis that the Service Provider shall remain liable for the performance of all obligations incumbent upon it under the Agreement.

21 WAIVER

- 21.1 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.
- 21.2 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).

22 NOTICES

- 22.1 All notices and notifications under the Agreement shall be given or issued by letter or by other written document, or by way of facsimile transmission or other visible electronic means.
- 22.2 A notice or notification under the Agreement shall (subject to clauses 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;
- 22.2.2 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 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.
- 22.3 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.

- 22.4 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 22.2.
- 22.5 For the purposes of clauses 22.3 and 22.4, “business hours” shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

23 PARTNERSHIP

- 23.1 The Agreement shall not be deemed to constitute a partnership or a joint venture between the parties; neither Party is an agent, express or implied, of the other and neither Party shall hold itself out or submit itself to be held as such or as having any power or authority of any other kind to bind the other Party in respect of legal obligations to third parties.

24 SEVERANCE

- 24.1 All of the provisions of the Agreement are severable and distinct from one another; if at any time one or more of such provisions becomes or is declared by a court to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

25 DURATION

- 25.1 The Agreement shall commence on the Commencement Date and shall, (subject to clause 18.1), continue in full force and effect until the expiry of the Prescribed Period.

26 OWNERSHIP OF IPR

- 26.1 All right, title and interest in and to IPR arising or created by or on behalf of the Service Provider as a result of the provision by it of the PSO Services and which would be required by a New Supplier in order to provide services equivalent or similar to the PSO Services, or any part of the PSO Services, (the “**Core Services IPR**”) shall be the property of and vest in the Authority.
- 26.2 The Service Provider hereby assigns to the Authority its whole right, title and interest in and to all Core Service IPR, including (with effect from its creation) all future rights.
- 26.3 The Service Provider hereby agrees to execute and deliver such further documents at any time as may be necessary to confirm the assignation under clause 26.2.

- 26.4 The Authority hereby grants to the Services Provider a worldwide, royalty free sole licence to use the Core Services IPR for all purposes associated with providing the PSO Services and for no other purpose whatsoever.
- 26.5 Subject to clause 26.4, the Service Provider acknowledges that it shall acquire no rights to any IPR owned by the Authority.
- 26.6 All right, title and interest in and to IPR arising or created by or on behalf of the Service Provider as a result of the provision by it of the PSO Services shall, with the exception of Core Service IPR, be the property of and vest in the Service Provider and the Service Provider hereby grants to the Authority a non-exclusive licence to use such IPR throughout the term of this Agreement.
- 26.7 On expiry or earlier termination of the Agreement, the Service Provider shall assign to the Authority all IPR (other than Core Service IPR already assigned to the Authority pursuant to clause 26.2) which arose or was created by or on behalf of the Service Provider in the course of the provision by it of the PSO Services; the Service Provider shall execute all such documents and take all such other steps as the Authority may request to give effect to the preceding provisions of this clause 26.7.

27 WARRANTIES

- 27.1 The Authority warrants, represents and undertakes to the Service Provider that the Authority has full capacity and authority to enter into the Agreement;
- 27.2 The Service Provider warrants, represents and undertakes to the Authority that the Service Provider has full capacity and authority to enter into the Agreement.
- 27.3 The Parties hereby exclude from the Agreement all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

28 PERSONAL DATA & FREEDOM OF INFORMATION

- 28.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.
- 28.2 Where the Service Provider or any of its sub-contractors, as part of the provision of the PSO Services under this Agreement, processes personal data on behalf of the Authority, then in relation to such personal data the Service Provider shall, and shall take all such steps as are reasonably available to it to procure that its sub-contractors shall:-
- 28.2.1 act only on instructions from the Authority; and
- 28.2.2 comply with the Authority's instructions in relation to the processing of such personal data, as such instructions are given and varied from time to time by the Authority; and

- 28.2.3 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.
- 28.3 For the purposes of clause 28.2, the terms “personal data” and “processing” shall have the meanings ascribed to them in the Data Protection Act 1998.
- 28.4 [Each of the Parties undertakes to comply with the data sharing protocol set out in Part 10 of the Schedule.]
- 28.5 All information (including, without limitation, any Confidential Information) submitted to either Party by the other may be disclosed and/or published by either Party; without prejudice to that generality, either Party may disclose information in compliance with
- 28.5.1 the Freedom of Information (Scotland) Act 2002 (the decisions of either Party in the interpretation of that Act being final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms); or
- 28.5.2 any other law, or as a consequence of any judicial order or any order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).
- 28.6 If either Party receives a request under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, which relates to any Confidential Information,
- 28.6.1 the Party in receipt of the request may seek the consent of the other Party to release some or all of the Confidential Information in response to that request and shall do so if the Party in receipt of the request is minded to disclose such items, whether in terms of the public interest or otherwise;
- 28.6.2 if the other Party shall fail to respond to a request for consent of the nature referred to in paragraph 28.6.1 within 5 Business Days of the request being made, it shall be deemed to have consented to the release of information;
- 28.6.3 in all cases, the Party in receipt of the request may, without the consent of the other Party, disclose any of the Confidential Information, if the Party in receipt of the request (acting reasonably) is satisfied that it is in the public interest for it to do so; and on the basis that in reaching that conclusion, the Party in receipt of the request shall take into account any representations made in connection with this by the other Party but the decisions of the Party in receipt of the request as to what constitutes public interest shall be final and conclusive in any dispute, difference or question arising in respect of disclosure of the relevant Confidential Information.

29 DISPUTE RESOLUTION

- 29.1 All disputes between the parties arising out of or relating to this Agreement may be escalated, by either Party, to the board of directors of the Service Provider and the chief executive of the Authority for resolution.
- 29.2 If a dispute cannot be resolved by the individuals to which the dispute has been escalated in pursuance of clause 29.1 within 14 days, the dispute may, within 28 days thereafter, be referred for final determination to an expert (the “Expert”) who shall be deemed to act as expert and not as arbiter; and
- 29.3 The Expert shall be selected by mutual agreement or, failing agreement, within 14 days after a request by one Party to the other, shall be chosen at the request of either Party by the President for the time being of the Law Society of Scotland who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.
- 29.4 Within 14 days after the Expert has accepted the appointment, the parties shall submit to the Expert a written report on the dispute.
- 29.5 Both parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute.
- 29.6 The Expert shall be instructed to deliver his/her determination to the parties within 14 days after the submission of the written reports pursuant to clause 29.4.
- 29.7 Save in the case of manifest error, decisions of the Expert shall be final and binding not subject to appeal.
- 29.8 The 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 such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 29.9 The fees of the Expert shall be borne by the parties in such proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the parties.

30 PUBLICITY

- 30.1 Except as otherwise agreed in writing by the parties, the parties shall not communicate with the media or any other third person nor publish the results of any operational or financial review of, or report or article about, the PSO Operations without the prior written consent of each other (such consent not to be unreasonably withheld or unreasonably delayed) except and to the extent that such disclosure may be necessary to:
- 30.1.1 comply with the law or the requirements of auditors;
- 30.1.2 provide information to HM Revenue & Customs and its professional advisers;

30.1.3 provide information to a Party's professional advisers; or

30.1.4 provide information to any potential New Supplier.

30.2 The Parties agree to adhere to the provisions set out in Part 11 of the Schedule.

31 VARIATION

31.1 Save as otherwise expressly provided, no amendment or supplement of any of the provisions of the Agreement shall be effective unless made in writing specifically referring to the Agreement and duly executed by the parties to the Agreement.

32 COSTS

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

33 GOVERNING LAW AND JURISDICTION

33.1 The Agreement shall be governed by and construed in accordance with the laws of Scotland.

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

SUBSCRIBED for and on behalf of
the said THE HIGHLAND
COUNCIL

at

on

by

Print Full Name

Proper Officer

before this witness

Print Full Name

Witness

Address

SUBSCRIBED for and on behalf of
the said CULTURE AND SPORT
HIGHLAND

at

on

by

Print Full Name

Director

before this witness

Print Full Name

Witness

Address

**This is the Schedule referred to in the preceding Services Agreement between
The Highland Council and Culture and Sport Highland**

SCHEDULE

PART 1 – SPECIFICATION OF PSO SERVICES

PART 1A – [*SERVICE STRAND*]

PART 1B – [*SERVICE STRAND*]

PART 1C – []

PART 1D – []

PART 1E – []

**PART 2 - PERFORMANCE STANDARDS APPLYING TO FIRST
FINANCIAL YEAR**

**PART 3 – PROCESS FOR AGREEING SERVICES SPECIFICATION,
PERFORMANCE STANDARDS & SERVICES FEE FOR EACH
FINANCIAL YEAR**

1 Annual Service Fee and Performance Targets

1.1 Service Charge

In July of each year of this Agreement the Authority will advise the Service Provider of the broad budget assumption being made by the Authority for the forthcoming financial year.

In September of each year of this Agreement, the Service Provider will submit its detailed budget and service delivery plans to the Authority for the forthcoming financial year and at the same time identify major development and service delivery changes for year 2 and associated performance targets. The Service Provider's proposals will only be submitted to the Authority after approval from the Service Provider's Board of Directors.

The Authority will consider these budget and service proposals and agree with the Service Provider, for the forthcoming year the level of service to be provided, performance targets and the charge for providing these services. Agreement in principle is to be reached by the Parties by the end of December in each year of this Agreement and the Authority will seek formal approval to pay the service charge at its budget meeting in February of each year of this Agreement.

1.2 Special Projects/Property Investment Fund

Funding required by the Service Provider for Special Projects and Property Investment Fund in forthcoming years will also form part of the budget process detailed above.

PART 4 - CALCULATION OF SERVICES FEES RELATING TO CAPITAL PROJECTS OR SPECIAL EVENTS

PART 5 – CHANGE CONTROL PROCEDURE

The process set out in this Part 5 of the Schedule shall apply to any proposed change to the Services Specification and/or Services Fee and/or Prescribed Performance Standards initiated by either party in accordance with the terms of this Agreement.

1 PRINCIPLES

The Authority and the Service Provider agree that the following principles shall apply to the conduct between them in connection with the proposed changes considered through this Change Control Procedure:-

- 1.1 the end result of the Change Control Procedure must be a change to any one or more of the Services Specification and/or Services Fee and/or Prescribed Performance Standards;
- 1.2 all discussions shall be carried out in a timely fashion, constructively and in the utmost good faith by appropriate representatives for each party;
- 1.3 all discussions, negotiations or other communications which may take place, including but not limited to the submission of any written communications, prior to the signing by both parties of an agreement in writing, shall be without prejudice to the rights of either party and do not create any legal rights and obligations;
- 1.4 the parties shall use all reasonable endeavours to adhere to the timescales set out in this Change Control Procedure or such other periods as may be agreed between the parties, acting reasonably, taking into account the complexity, financial impact and urgency of the change; and
- 1.5 each party shall use all reasonable endeavours to cooperate fully with the other party throughout the Change Control Procedure and provide all reasonable assistance requested, including but not limited to, complying with any reasonable request for information from the other party.

2 PROCEDURE

- 2.1 Either party may initiate the Change Control Procedure where it has a right to do so under the terms of this Agreement.

- 2.2 If either party wishes to initiate a change pursuant to this Change Control Procedure then that party ("**Initiating Party**") shall notify the other party ("**Recipient Party**") in writing that it wishes to propose a change not less than two Business Days following the occurrence of an event which gives rise to a right under the Agreement to initiate a change.
- 2.3 Within three Business Days from the date on which notice was duly given in accordance with paragraph 2.2, the Initiating Party shall submit to the Recipient Party a written paper ("**Proposed Change Paper**") setting out the Initiating Party's recommendations and options and providing:
- 2.3.1 details of the proposed change;
 - 2.3.2 the reason for the proposed change;
 - 2.3.3 the likely impact of the change (including but not limited to the financial impact); and
 - 2.3.4 an assessment of the impact of the change not being implemented.
- 2.4 Appropriate representatives of each party shall meet within two Business Days from the date on which the Proposed Change Paper is received by the Recipient Party to review and discuss the proposed options set out in the Proposed Change Paper and to agree:
- 2.4.1 the scope of the change;
 - 2.4.2 the adjustments which require to be made to the Services Specification and/or the alteration which requires to be made to the Services Fee; and
 - 2.4.3 the time period for implementing the change.
- 2.5 Where agreement is reached in accordance with paragraph 2.4, the agreed change shall be documented by the Initiating Party in an agreement signed by authorised signatories of each of the parties.
- 2.6 The parties shall do all things reasonably required for the purposes of implementing the change in accordance with the agreed timescales.
- 2.7 Where the parties are unable to reach agreement as to the proposed change the matter may be escalated by either party in accordance with the dispute resolution period set out in clause 28 of this Agreement.

PART 6 - PUBLIC PERFORMANCE REPORTING

PART 7A – PROCESS FOR DEALING WITH GRANT APPLICATIONS

PART 7B – ARRANGEMENTS RELATING TO EVENTS

**PART 8 – LETTINGS OF SCHOOLS (AND ASSOCIATED FACILITIES) TO
THE COMMUNITY**

PART 9 – DATA SHARING PROTOCOL

PART 10 - MEDIA MANAGEMENT PROTOCOL

PART 11 - PAYMENT SCHEDULE IN RESPECT OF SERVICES FEE

The Services Fee will be paid by the Authority 4 weekly in advance, per the amounts detailed below.

The first payment is due on ● , with subsequent payments due at 4 weekly intervals.

PART 12 – REQUIREMENTS IN RELATION TO INSURANCES