

Booklet A.

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THE HIGHLAND COUNCIL

and

HIGH LIFE HIGHLAND

SERVICE DELIVERY CONTRACT

**V2 Updated following Change control procedure signed by Douglas Wilby and
Brian Porter 010917**

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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 Glenurquhart Road, Inverness IV3 5NX (“**the Authority**”); and
- (2) **HIGH LIFE HIGHLAND** a company which is a charity (Scottish charity number SC042593) incorporated under the Companies Act 2006 with registered number SC407011 and having its registered office at 13 Ardross Street, Inverness IV3 5NS (“**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 16.4.2;

“**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 on which the headquarters of the Authority are open for business;

“Capital Improvement Works”, “FSLA Works”, “Maintenance Works”, “New Facilities Works” and “Statutory Works” have the meanings respectively assigned to those expressions 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 the Agreement;

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

“the Commencement Date” means 1 October 2011, 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;

“Client Manager” means the representative of the Authority appointed pursuant to clause 10.1;

“Core Service IPR” has the meaning ascribed to it in clause 29.2;

“Costs” has the meaning assigned to that expression in clause 19;

“Council SLAs” means the service level agreements to be entered into between the Authority and the Service Provider, providing for the Authority to supply the following services to the Service Provider for a defined period (as specified in each agreement):

- grounds maintenance;
- refuse collection;
- vehicle leasing and maintenance;
- catering;
- cleaning;
- ICT;

- internal audit;
- insurance and risk management;
- financial services (payroll, creditors, debt recovery, finance system administration, accountancy support, treasury advice etc);
- corporate governance;
- school accommodation; and
- library services at Betty Hill, Broadford and Kyle;

“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 4.5;

“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);

“Excluded Contracts” shall have the meaning ascribed to that expression in the Transfer Agreement;

“Financial Year” means each period from 1 April to 31 March during the Prescribed Period but such that the first Financial Year shall run from the Commencement Date until 31 March 2012; **“Financial Years”** shall be construed accordingly;

“Heritable Properties” shall have the meaning ascribed to that expression in the Transfer Agreement;

“Individual” shall have the meaning ascribed to it in clause 18.7;

“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 Transfer Agreement;

“the Licences” means the Community Licences, the PPP Licences and the Temporary Licences, all as defined in the Transfer Agreement;

“the Licensed Properties” has the meaning assigned to that expression in the Transfer 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 PPP Agreements” means (1) the agreement between The Highland Council and Community Schools (Highlands) Limited dated 12 June 2001; and (2) the agreement between The Highland Council and Alpha Schools (Highlands) Limited dated 29 March 2006;

“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 2 (as read with Part 1 of the Schedule);

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

“the Prescribed Performance Standards” means (subject to clause 8):

- (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 8.3 as being applicable to that Financial Year;

“the Prescribed Period” means the period commencing on the Commencement Date and expiring on 31 March 2036 or (if earlier) the date of termination of the Agreement;

“Property” and “Properties” have the meanings respectively assigned to those expressions in the Transfer 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 Licences;

“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 10.1;

“Service Transfer” shall have the meaning ascribed to it in clause 18.2;

“Service Transfer Time” shall have the meaning ascribed to it in clause 18.2;

“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;

“Services Specification Change” means a change to the Services Specification in accordance with clause 7 (as read with Part 5 of the Schedule);

“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 7;

“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 Strategy Documents” means the Authority’s key policy documents that set 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 11;

“the Subsidiary” means High Life Highland (Trading) Limited incorporated under the Companies Acts (registered number SC408067) and having its registered office at 13 Ardross Street, Inverness IV3 5NS;

“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;

“Third Party” means any party other than the Authority or the Service Provider; **“Third Parties”** shall be construed accordingly;

“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” means “the Transferring Employees” as defined in the Transfer Agreement including (without limitation), for the avoidance of doubt, the “Transferring Employees” as defined in the Subsidiary Transfer 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 19.

- 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 References in the Agreement to the Leases shall, wherever the context permits, be deemed to include the Subleases, the Community Licences and the PPP Licences (as the same are respectively defined in the Transfer Agreement).
- 1.6 Where the context so admits or requires, words denoting the singular include the plural and vice versa.
- 1.7 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 the 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 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 area served by the Authority), the Service Provider shall be under an obligation (subject to clauses 7.2, 7.4 and 7.12) to supply the PSO

Services from the respective venues comprised in the Property Portfolio; and (subject to clauses 7.2, 7.4 and 7.12) 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 7.13) to utilise the Collections in the course of providing the PSO Services; and (subject to clause 7.13) the Service Provider shall not be entitled to restrict public access to the Collections (otherwise than as permitted under clause 7.13 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 Heritable Properties, through the Leases;
- 2.5.2 grant to the Service Provider a licence to occupy in respect of each of the Licensed Properties and the Temporary Licensed Properties;
- 2.5.3 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 THIRD PARTY ARRANGEMENTS

- 3.1 The Authority and the Service Provider shall work together to agree (both parties being bound to act reasonably in this regard) and thereafter document the Service Provider's responsibilities (and its corresponding rights) to provide support, on behalf of the Authority, to the Third Parties listed in Part 12 of the Schedule.
- 3.2 The Authority shall be obliged to notify each of the relevant Third Parties of the Service Provider's role in providing support to them as of the Commencement Date.

4 PAYMENTS ETC BY THE AUTHORITY

- 4.1 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.
- 4.2 The Services Fee due in respect of each Financial Year, together with VAT, shall be payable by the Authority to the Service Provider quarterly in advance, in four equal instalments, with the payment in respect of each Quarter to be paid (subject to clause 4.3) on or before the 20th day of the month immediately preceding the commencement of that Quarter (i.e. 20 September, 20 December, 20 March and 20 June) subject to receipt by the Authority of a valid VAT invoice issued by the Service Provider relating to that element of the Services Fee.
- 4.3 The first payment of the Services Fee to be made under the Agreement shall be made on 1 October 2011 and shall relate to the period from 1 October 2011 to 31 December 2011 (inclusive); the second payment of the Services Fee to be made under the Agreement shall be made on 20 December 2011 and shall relate to the period from 1 January 2012 to 31 March 2012 (inclusive) and further payments of instalments of the Services Fee shall thereafter be made in accordance with the payment dates outlined in clause 4.2.
- 4.4 In order to facilitate the provision of the PSO Services, the Authority shall:
- 4.4.1 transfer the Assets to the Service Provider on the Commencement Date for consideration of £1 (save in respect of the stock, for which the consideration will reflect a valuation to be carried out following the transfer) and grant to the Service Provider on the Commencement Date a licence in respect of the Retained (Non-collections) Intellectual Property (for nil consideration), all as provided for in the Transfer Agreement;
- 4.4.2 transfer to the Subsidiary (being a wholly-owned subsidiary of the Service Provider) on the Commencement Date the Trading Operations Assets, for consideration of £1 (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.
- 4.5 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.

- 4.6 Without prejudice to the provisions of clause 4.5, where any capital assets are purchased by the Service Provider using Services Fees (wholly, or in conjunction with other funds):
- 4.6.1 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;
- 4.6.2 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.
- 4.7 The provisions of clause 4.6 shall apply (with any necessary modifications, and in any event subject to clause 4.8) to the Assets as if they were capital assets of the Service Provider purchased using Services Fees.
- 4.8 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.

5 SERVICES FEES – AMOUNTS

- 5.1 The Services Fee payable by the Authority to the Service Provider in respect of the first Financial Year shall (subject to clauses 5.4 and 6) be £7,961,000 (plus VAT).
- 5.2 Payments of the Services Fee for the first Financial Year will be as set out in Part 8 of the Schedule.
- 5.3 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 5.4) to be payable in respect of that Financial Year (and taking account of any Services Specification Change which the parties may agree (subject to clause 1.1) should be applicable in respect of that Financial Year (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 4 of the Schedule.
- 5.4 The Services Fee payable by the Authority to the Service Provider for each Financial Year shall be based on the previous year's Services Fee, and adjusted annually up or down by the same percentage change as the funding made available to the Authority by the Scottish Government. The Service

Level Agreements, where the Service Provider buys services from the Authority, shall be excluded from the calculation. Where new services are added by the Authority these shall be subject to a separate calculation. In addition to those elements of the Services Fees which are provided for in clauses 5.1 and 5.3, an additional element of the Services Fee (plus VAT) may be payable to the Service Provider in consideration for the provision by the Service Provider of any exceptional level of support which may be provided by the Service Provider to the Authority in respect of any special event or events, or in respect of elections (for example, the provision of the services of records management staff).

- 5.5 The basis on which the amount of any additional Services Fee payable under clause 5.4 is to be calculated shall be as agreed between the Parties from time to time.

6 SERVICES FEE – ADJUSTMENTS

- 6.1 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 5 of the Schedule.
- 6.2 For the avoidance of doubt, and with reference to clause 6.1, the Authority will be under no obligation to agree any proposal made by the Service Provider to adjust the Services Fee and if the Authority chooses to decline to agree the proposal, the Services Fee will continue to apply at the same level as applied prior to the proposal having been made under clause 6.1.
- 6.3 Without prejudice to the provisions of clause 6.1, the Services Fee shall be adjusted within the timescales and in accordance with the process set out in Part 5 of the Schedule.

7 CHANGE IN SERVICES SPECIFICATION

- 7.1 The Authority may, subject to the provisions of Part 5 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 5 of the Schedule.
- 7.2 Without prejudice to the provisions of clause 7.1, 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):

- 7.2.1 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;
- 7.2.2 the Parties shall, in the light of the arrangements agreed in pursuance of paragraph 7.2.1, 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;
- 7.2.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 7.2.2, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 7.3 For the avoidance of doubt, the provisions of paragraph 7.2.1 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 7.2 on an interim basis if the Service Provider considers (acting reasonably) that there is an immediate and substantial threat to health and safety.
- 7.4 The provisions of clause 7.2 shall apply, with any necessary modifications, in any instance where the nature and/or extent of Capital Improvement Works, FSLA Works, Maintenance Works, New Facilities Works and/or 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 7.2.1 to 7.2.3 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.
- 7.5 The provisions of clause 7.2 shall (subject to clause 7.6) apply, with any necessary modifications, where the ability of the Service Provider to deliver the PSO Services from any Property (but excluding, for this purpose, the PPP Licensed Properties, as applicable) is adversely affected by:
- 7.5.1 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;
- 7.5.2 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;

- 7.5.3 any failure or shortcoming in relation to the delivery of services by the Authority to the Service Provider under the Council SLAs;
 - 7.5.4 any failure by the Authority to comply with its obligations under the PPP Licences;
 - 7.5.5 the termination of any or all of the Council SLAs 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;
 - 7.5.6 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;
 - 7.5.7 any defect or deficiency in the works associated with the implementation of Capital Improvement Works, FSLA Works, Maintenance Works, and/or New Facilities Works and “Statutory Works, 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 those works of a nature which might otherwise have been provided by a member of an external professional team.
- 7.6 The provisions of clause 7.5 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; for the avoidance of doubt, the provisions of this clause shall not apply to the PPP Licensed Properties.
- 7.7 The provisions of clause 7.2 shall apply, with any necessary modifications, in any instance where the use of the whole or part of a Property (but excluding, for this purpose, PPP Licensed Properties) for the delivery of any one or more of the relevant PSO Services is affected by:
- 7.7.1 any Title Defect (as defined in the Property Agreement), as provided for in clause 13 of the Property Agreement; or
 - 7.7.2 requirements associated with a civil emergency, as provided for in clause 14 of the Property Agreement.
- 7.8 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

- 7.8.1 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)
- 7.8.2 the Authority may elect that the provisions of clause 7.2 should apply, with any necessary modifications.
- 7.9 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
- 7.9.1 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)
- 7.9.2 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:
- 7.9.2.1 the parties shall, in the light of the arrangements agreed in pursuance of paragraph 7.9.2, determine what adjustments to the Services Specification and/or Prescribed Performance Standards are appropriate;
- 7.9.2.2 following upon agreement between the parties in relation to the adjustments referred to in paragraph 7.9.2.1, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 7.10 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
- 7.10.1 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):
- 7.10.2 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);
 - 7.10.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 7.10.2, the Parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 7.11 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:
- 7.11.1 agreeing the PSO Services which are to be delivered from the Property which is being added to the Property Portfolio (“**the New Property**”);
 - 7.11.2 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;
 - 7.11.3 determining what adjustments to the Services Specification and/or the Prescribed Performance Standards are appropriate to reflect the matters referred to in paragraphs 7.11.1 and 7.11.2; and
 - 7.11.4 following upon agreement between the parties in relation to the matters referred to in paragraphs 7.11.1 to 7.11.3, 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.
- 7.12 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 7.2.1 to 7.2.3 (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.
- 7.13 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 7.2.1 to 7.2.3 (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.

- 7.14 For the avoidance of doubt, a part of the Collections will be regarded as unusable for the purposes of clause 7.13 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.
- 7.15 If there is any change in Law (otherwise than as referred to in clause 7.2) which has a significant impact on delivery of the PSO Services:
- 7.15.1 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;
- 7.15.2 the parties shall, in the light of the arrangements agreed in pursuance of paragraph 7.15.1, determine what adjustments to the Services Specification and/or the Prescribed Performance Standards are appropriate;
- 7.15.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 7.15.2, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 7.16 Without prejudice to the provisions of clauses 7.1 to 7.15, 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 6.1); the process for initiating, and thereafter negotiating and agreeing, any such change shall be as specified in Part 5 of the Schedule.

8 PERFORMANCE STANDARDS AND PERFORMANCE REPORTING

- 8.1 Subject to clause 8.6, 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 2 of the Schedule.
- 8.2 The performance standards applicable in respect of the first Financial Year shall (subject to clauses 8.4 and 8.5) correspond with those set out in Part 2 of the Schedule.

- 8.3 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 8.5) be as set out in Part 4 of the Schedule.
- 8.4 The Prescribed Performance Standards shall be subject to variation from time to time:
- 8.4.1 in accordance with the provisions of clause 7; and
- 8.4.2 in accordance with the provisions of Part 5 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 5 of the Schedule. For the avoidance of doubt, the provisions of Part 5 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 5 of the Schedule).
- 8.5 Without prejudice to the provisions of clause 8.4, 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.
- 8.6 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 any of the Council SLAs.

9 PRICING

- 9.1 The Service Provider shall operate a pricing policy which balances the achievement of the principles and objectives outlined in Part 11 of the Schedule.
- 9.2 The Service Provider shall not:

- 9.2.1 raise charges for service users to access the PSO Services above the annual rate of inflation (which shall be taken to be the standard income inflation rate applied by the Authority in setting its budget for a given financial year);
- 9.2.2 introduce charges for service users to access PSO Services that have previously been provided free of charge,

without first obtaining the prior written approval of the Authority, which shall not be unreasonably withheld or delayed.

10 MONITORING & REVIEW

- 10.1 Without prejudice to the provisions of the Property Agreement, the Leases, the Licences 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.
- 10.2 The Authority will appoint a Client 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.
- 10.3 The Client 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.
- 10.4 The review meetings referred to in clause 10.3 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 7.1.
- 10.5 The Service Provider will have the option of initiating a proposal under clause 6 or 7 to address the discussions held at the review meetings referred to in clause 10.3 and issues arising from such discussions.
- 10.6 The review meetings referred to in clause 10.3 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.

- 10.7 The Client Manager shall be responsible for preparing minutes of all meetings.
- 10.8 A copy of the draft minutes prepared by the Client Manager in pursuance of clause 10.7 shall be forwarded to the Service Provider Representative by the Client Manager within 5 Business Days of the date of the meeting.
- 10.9 The Service Provider Representative shall advise the Client Manager of any comments which he/she has in respect of the minutes prepared in pursuance of clause 10.7 within 5 Business Days of receipt of a copy of the minutes in accordance with clause 10.8; and the Client Manager will make such revisions to the minutes as are agreed between the Service Provider Representative and the Client Manager.

11 STRATEGY DOCUMENTS

- 11.1 The Service Provider shall seek, in delivering the PSO Services, to advance the objectives set out in the Strategy Documents, so far as relevant to delivery of the PSO Services.
- 11.2 The strategy for delivery of culture and sport across the Operating Area applicable to the periods outlined in the respective documents shall be as contained in ‘The Programme for The Highland Council 2011 - 2012 (“Strengthening the Highlands”)’ and ‘Education, Culture and Sport Service Plan’, but on the basis that the strategy as set out in these documents 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.
- 11.3 The strategy for delivery of cultural and leisure services across the Operating Area shall be periodically refreshed by the Authority, and upon formal adoption by the Authority, shall be taken to form the Strategy Documents (in place of the previous strategy) for the purposes of clause 11.1.
- 11.4 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 the Operating Area, as referred to in clauses 11.2 and 11.3, and shall also assist the Authority in relation to monitoring progress in furtherance of the Strategy Documents, all as described in Part 2 of the Schedule.

12 PROMOTION OF GAELIC LANGUAGE, CULTURE AND HERITAGE

- 12.1 The Service Provider shall, in delivering the PSO Services:
- 12.1.1 adopt the Gaelic policies and practices of the Authority (so far as relevant to the delivery of the PSO Services);
- 12.1.2 implement the Authority’s Gaelic Language Plan (under the Gaelic Language (Scotland) Act 2005);

insofar as the same (and any revisions to the said policies, practices and Plan) are intimated to the Service Provider, in writing, from time to time.

- 12.2 The Gaelic policies and practices of the Authority applicable as at the date of this Agreement shall correspond with those set in Part 10 of the Schedule.

13 HMIE LEARNING COMMUNITY INSPECTIONS

- 13.1 The Service Provider shall assist the Authority in its role of organising and undertaking “HMIE Learning Community Inspections”, by contributing to the inspection process under the following performance indicators (within the “How Good is Our Learning and Development 2 Framework”):

13.1.1 improvements in performance;

13.1.2 impact on participants’ achievement through learning for young people;

13.1.3 impact on participants’ achievement through learning for adults; and

13.1.4 improving services.

- 13.2 With reference to clause 13.1, the Service Provider will contribute to the inspection process by:

13.2.1 using appropriate quality assurance, planning and recording systems to ensure adequate evidence of activity can be provided to the Authority (for the purpose of inspections);

13.2.2 arranging for appropriate local staff to engage in the inspection process, including youth workers and adult learning staff; and

13.2.3 contributing to the organisation of visits and focus groups under the above themes for inspections.

14 GRANTS

- 14.1 The Parties acknowledge that the Authority is recipient of funding under the grant agreements detailed at Part 13 of the Schedule, which are Excluded Contracts as the Authority will remain the relevant party to these agreements; in order to enable the Authority to meet the terms and conditions of these agreements, the Service Provider shall provide to the Authority (within the timescales reasonably set by the Authority), such financial and other information as the Authority requires to enable it to comply with the terms and conditions of each agreement, including its ability to make timeous claims for payment.

- 14.2 The Service Provider shall comply with such of the terms and conditions of the agreements referred to in clause 14.1 (as they apply to the Authority) as are notified to it by the Authority within 8 weeks of the date of this Agreement; where the Service Provider is in breach of any such terms and conditions, and this results in the Authority being in breach of the relevant

agreement such that funding is withheld or clawed-back, the Authority reserves the right to deduct an equivalent sum from the next instalment of the Services Fee due to be paid to the Service Provider.

- 14.3 For the avoidance of doubt, the provisions of clause 17.1 shall be deemed to include any loss or liability which the Authority may sustain or incur as a result of any breach of clause 14.1 and/or 14.2.

15 SCHOOLS

- 15.1 The Service Provider shall comply with the provisions of Part 6 of the Schedule.

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

- 16.1 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 Council SLAs 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.

- 16.2 In determining whether there is over-compensation in respect of the PSO Services by reference to the principles set out in clause 16.1:

16.2.1 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;

16.2.2 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 4.8) 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);

- 16.2.3 the assistance provided by the Authority through the matters referred to in clause 4.4 shall be taken into account as representing part of the compensation in respect of the provision of the PSO Services;
- 16.2.4 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.
- 16.3 For the avoidance of doubt, the Authority shall, in determining whether or not to issue consent under paragraph 4.6.2, 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 16).
- 16.4 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 16.1 and 16.2, the Service Provider undertakes:
- 16.4.1 to ensure that its internal accounts show the costs and receipts (including any notional charge of the nature referred to in paragraph 16.2.1) 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;
- 16.4.2 to submit to the Authority for approval, no later than 3 months after the commencement of the first Financial Year and no later than 6 months prior to the commencement of each subsequent 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 16.4.4 and 16.4.5) to use all reasonable endeavours to adhere to the operating plan, as finally approved by the Authority, in respect of that Financial Year;
- 16.4.3 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;
- 16.4.4 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;

- 16.4.5 to provide the Authority, within two months after the end of each Financial Year, with the unaudited accounts in a format complying with Accounting Code of Practice for the Authority (International Financial Reporting Standards (IFRS)) for that Financial Year together with a detailed analysis of all variances in respect of that Financial Year from the Approved Operating Plan;
 - 16.4.6 to provide the Authority, within five months after the end of each Financial Year, with the audited accounts in an appropriate format for that Financial Year (IFRS for the first Financial Year) together with a detailed analysis of all variances in respect of that Financial Year from the Approved Operating Plan;
 - 16.4.7 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.
- 16.5 The Authority shall regularly review the Statements, analyses, records and other information provided by the Service Provider under clause 16.4; and (subject to clause 16.6):
- 16.5.1 in the event that the Authority considers (acting reasonably) in the event that the Authority considers (acting reasonably) that over-compensation (having regard to the principles set out in clauses 16.1 and 16.2 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 occurred during the course of the immediately preceding Financial Year, 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);
 - 16.5.2 in the event that the Authority considers (acting reasonably) that over-compensation (having regard to the principles set out in clauses 16.1 and 16.2 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) and the revised projections shall be taken account of in the negotiations under clause 5.3.

- 16.6 If there has been over-compensation (having regard to the principles set out in clauses 16.1 and 16.2) 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 16.5.1.
- 16.7 Without prejudice to the provisions of paragraph 16.5.2, 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.
- 16.8 Any revised financial projections prepared pursuant to paragraph 16.5.2 or clause 16.7 shall be considered by the Authority by reference to the principles in relation to avoiding over-compensation set out in clauses 16 and 16.2, 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.
- 16.9 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.

17 FURTHER CONDITIONS/OBLIGATIONS

- 17.1 The Service Provider shall (subject to clause 17.2) 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 (which shall, for the avoidance of doubt, include any loss, liability or claim arising under any of the PPP Agreements).

- 17.2 The indemnity contained in clause 17.1 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.
- 17.3 The provisions of clause 17.1 shall not displace the obligation of the Authority to take reasonable steps to mitigate its loss.
- 17.4 The Service Provider shall:-
- 17.4.1 (without prejudice to the provisions of clause 16.4) 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 including (but not limited to) the information outlined at Part 3 of the Schedule;
 - 17.4.2 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;
 - 17.4.3 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;
 - 17.4.4 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;
 - 17.4.5 comply with all EU and Scots law procurement requirements on the basis that it is a contracting authority for the purposes of such requirements;
 - 17.4.6 ensure that all consultants, contractors and sub-contractors employed on or in connection with the PSO Operations are paid timeously;
 - 17.4.7 ensure that the PSO Operations are carried out to the reasonable satisfaction of the Authority;
 - 17.4.8 ensure that all of its employees who are engaged in the provision of the PSO Services and whose normal duties might reasonably be expected to include working within the Community Licensed Properties and/or the PPP Licensed Properties or any other educational establishment within the meaning of the Protection of Children (Scotland) Act 2003 or whose normal duties might otherwise reasonably be expected to involve unsupervised contact with children, have been the subject of a satisfactory SCRO enhanced level check; and HLH must ensure that any employee who has not had such a

satisfactory Scottish Criminal Records Office check, does not pass through or remain in public areas except under the direct supervision of a superior who has undergone such a satisfactory Scottish Criminal Records Office check;

- 17.4.9 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;
- 17.4.10 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.
- 17.5 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.
- 17.6 In addition to the obligations as regards insurance arrangements imposed on the Authority under the Transfer Agreement, the Property Agreement, the Collections Agreement, the Leases and the Licences the Authority shall procure that in respect of the insurances specified in Part 9 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), and identified as being insurance taken out in the name of the Authority, the relevant insurer notes that the Service Provider is operating under the Authority's policy; this is on the basis that the Authority will charge the Service Provider annually in respect of the premiums.
- 17.7 The Service Provider shall be responsible for maintaining insurances (covering both itself and its Subsidiary), throughout the Prescribed Period, in accordance with the particulars set out in Part 9 of the Schedule, and identified as being insurance to be taken out in the name of the Service Provider, subject to such variations as the Parties may agree from time to time (each being bound to act reasonably in this respect).
- 17.8 With reference to clause 17.7, the Service Provider shall not increase the amount of excess in respect of any of the insurances referred to in clause 17.7 without the prior written consent of the Authority (such consent not to be unreasonably withheld).

- 17.9 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 clauses 17.6 and 17.7.
- 17.10 The Service Provider undertakes:
- 17.10.1 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 17.7, together with such evidence as the Authority may reasonably request to demonstrate that such policies are in force;
- 17.10.2 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.
- 17.11 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
- 17.12 The Authority and the Service Provider shall each consider the recommendations referred to in clause 17.11 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.
- 17.13 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 17.11, and within the timeframe reasonably prescribed by the Authority.

18 TUPE

- 18.1 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.

- 18.2 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**”).
- 18.3 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.
- 18.4 The Authority shall use all reasonable endeavours to procure that the New Supplier is 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 Authority shall use all reasonable endeavours to procure that the New Supplier indemnifies 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.
- 18.5 The Authority shall use all reasonable endeavours to procure that the New Supplier indemnifies and keeps the Service Provider indemnified 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:-
- 18.5.1 any act, fault or omission or alleged act, fault or omission of the New Supplier relating to an Assigned Employee occurring after the Service Transfer Time including, without limitation, any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
- 18.5.2 any act, fault or omission or alleged act, fault or omission of the New Supplier in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 18.6 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: -

- 18.6.1 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
 - 18.6.2 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 Authority in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 18.7 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:-
- 18.7.1 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;
 - 18.7.2 the Service Provider shall, within 14 days of receiving notice in terms of clause 18.7.1, offer employment to the Individual or notify the New Supplier that it does not wish to make such an offer;
 - 18.7.3 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 18.7.2) the New Supplier shall be entitled to terminate the employment of the Individual; and
 - 18.7.4 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 18.7.3 (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 18.7.2 (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: -
 - 18.7.5 arising from or in connection with the termination of employment of the Individual; and
 - 18.7.6 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 Authority'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.

19 WORKFORCE PAY & BENEFITS

- 19.1 The Authority confirms that, notwithstanding the transfer of employment of the Transferring Employees from the Authority to the Service Provider, the Authority shall continue, after the Commencement Date, to have responsibility for conducting the review and appeals processes flowing from the Authority's workforce pay and benefits review ("**WPBR**") in relation to the Transferring Employees.
- 19.2 Where any costs or liabilities (including reasonable legal costs) ("**Costs**") are suffered or incurred by the Service Provider as a consequence of the WPBR, such Costs in respect of Transferring Employees shall be considered in the course of the negotiations over Services Fees as provided for in clause 4.2 and the negotiations under clauses 5.1 and 6.1 of this Agreement. Notwithstanding the foregoing,

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 19.2 requires the Service Provider to increase rates of pay and/or benefits to any of the Assigned Employees, subject to the Authority satisfying itself that such increase in rates of pay and/or benefits is required, the Authority shall be liable for and shall indemnify and keep indemnified the Service Provider against any such associated Costs.

- 19.3 In the event that the Service Provider incurs a loss or liability, or receives a claim, of a nature which may fall within the indemnity contained in clause 19.2, it:-

- 19.3.1 shall intimate the loss or liability, or the relevant claim, to the Authority as soon as reasonably practicable after the loss, liability or claim becomes known to the Service Provider, providing to the Authority all such information and evidence in respect of the loss, liability or claim as is reasonably available to the Service Provider;
- 19.3.2 shall (in the case of a claim) take such steps to resist or defend the claim as the Authority may reasonably request or (if the Authority so elects) allow the Authority the conduct of any defence and/or negotiations in respect of the claim (subject in either case to the Authority indemnifying the Service Provider in respect of any liability (including reasonable legal expenses on a solicitor/client basis and any award of expenses) which the Service Provider may thereby incur);
- 19.3.3 shall keep the Authority closely apprised of all developments relating to the relevant loss, liability or claim (including any insurance claim that may be pursued in connection with the relevant occurrence);
- 19.3.4 shall not (in the case of a claim), compromise any such claim, or take any step which would prejudice the defence of such claim, without (in each such case) the prior written consent of the Authority (such consent not to be unreasonably withheld) except in circumstances where the taking of such steps is required by law;
- 19.3.5 shall take all reasonable steps available to it to mitigate such loss or liability.

20 FORCE MAJEURE

20.1 Subject to clause 20.2, 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:

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

20.1.2 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.

20.2 The provisions of clause 20.1 shall not apply in relation to any circumstances which fall within the provisions of clause 7.

21 DEFAULT

- 21.1 The Authority may (subject to clause 21.3) at any time by notice in writing to the Service Provider terminate the Agreement with immediate effect if:
- 21.1.1 the Service Provider fails to observe or perform any of its material obligations contained in the Agreement where such failure is not remediable;
 - 21.1.2 the Service Provider fails to observe or perform any of its material obligations contained in the Agreement where such failure was capable of being remedied but was not remedied within 15 Business Days of being requested to do so by the Authority making that request;
 - 21.1.3 the Service Provider fails to comply with a remedial plan of the nature referred to in clause 21.3 within the period reasonably prescribed within that remedial plan;
 - 21.1.4 the Authority exercises any right to terminate the Property Agreement or the Collections Agreement or all, or a majority, of the Leases or the Licences;
 - 21.1.5 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.
- 21.2 Following the occurrence of an event of the nature referred to in paragraph 21.1.2, 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.
- 21.3 In the event of the Service Provider committing any breach or series of breaches in respect of its obligations under the Agreement, the Authority may (without prejudice to any right to terminate this Agreement under paragraph 21.1.1 or 21.1.2):
- 21.3.1 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;

21.3.2 prescribe (acting reasonably, and taking account of any discussions held in pursuance of paragraph 21.3.1) 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.

21.4 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.

21.5 Notwithstanding the provisions of this clause 21, the provisions of clauses 4.6, 4.7, 4.8, 14.1, 14.2, 14.3, 16, 17.1 to 17.3, 17.4.9, 17.5, 18, 20, 21.4, 22.1, 24, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36 and 38 shall survive termination (for whatever reason) or expiry of this Agreement.

22 INTEREST

22.1 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 the Bank of England from the due date until payment.

23 ASSIGNATION & SUBCONTRACTING

23.1 The Service Provider shall not assign or otherwise dispose of its interest under the Agreement to any other party.

23.2 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.

24 WAIVER

24.1 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.

24.2 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).

25 NOTICES

25.1 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.

25.2 A notice or notification under the Agreement shall (subject to clauses 25.3 and 25.4) be deemed to be duly given:

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

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

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

25.3 A notice or notification which is delivered, or (in the case of facsimile transmission or other visible electronic means) despatched, outwith business hours shall be deemed to be duly given during business hours on the Business Day which next follows.

25.4 A notice sent by first class recorded delivery post (or equivalent postal service) shall be deemed to have been delivered during business hours on the Business Day following the date of posting; in proving that a notice was given, it shall be sufficient to prove that an envelope containing the notice was duly addressed and posted in accordance with clause 25.2.

25.5 For the purposes of clauses 25.3 and 25.4, “business hours” shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

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

The Highland Council

Fax number: 01463 711177

For the attention of: Director of Education, Culture and Sport.

High Life Highland

Fax number: 01463 663809

For the attention of: The Chief Executive.

26 PARTNERSHIP

- 26.1 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.

27 SEVERANCE

- 27.1 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.

28 DURATION

- 28.1 The Agreement shall commence on the Commencement Date and shall, (subject to clause 21.1), continue in full force and effect until the expiry of the Prescribed Period.

29 OWNERSHIP OF IPR

- 29.1 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 Service IPR**”) shall be the property of and vest in the Authority.
- 29.2 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.
- 29.3 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 29.2.
- 29.4 The Authority hereby grants to the Service Provider a worldwide, royalty free sole licence to use the Core Service IPR for all purposes associated with providing the PSO Services and for no other purpose whatsoever.
- 29.5 Subject to clause 29.4, the Service Provider acknowledges that it shall acquire no rights to any IPR owned by the Authority.
- 29.6 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.

- 29.7 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 29.2) 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 29.7.

30 WARRANTIES

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

31 PERSONAL DATA & FREEDOM OF INFORMATION

- 31.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998 (the "DPA").
- 31.2 In relation to any Personal Data disclosed by the Authority to the Service Provider:
- 31.2.1 the Authority shall at all times, while the Authority continues to process such Personal Data, act as and maintain the role of the owner and Data Controller of such Personal Data; and
- 31.2.2 the Service Provider shall at all times, while it continues to process such Personal Data, act as and maintain the role of Data Processor of such Personal Data and shall only process the Personal Data as instructed in writing by the Authority and in accordance with the Agreement.
- 31.3 The Service Provider shall not process Personal Data except on the written instructions of the Authority which shall include, without limitation, acting in accordance with the terms of the Agreement.
- 31.4 The Service Provider shall acquire no right, title or interest in the Personal Data which shall vest and remain vested solely in the Authority.
- 31.5 The Service Provider shall implement appropriate technical and organisational security measures against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of or damage to the Personal Data acting as if it were a data controller in compliance with the DPA.

- 31.6 For the purposes of the Agreement technical and organisational security measures required of the Service Provider shall include, without limitation, measures in conformity with ISO 27001(or any replacement Standard relating to data security) and such other technical and organisational security measures which the Authority may decide, at its reasonable discretion, are appropriate for the purposes of the Agreement.
- 31.7 The Service Provider shall not disclose any Personal Data other than to its officers, employees, its permitted agents, consultants, sub-contractors and their employees who reasonably require the same in order for the Service Provider to perform its obligations pursuant to the Agreement. The Service Provider shall also take all reasonable steps to ensure the reliability of those of its officers, employees, permitted agents, consultants, sub-Contractors who may have access to the Personal Data.
- 31.8 Subject to the Authority giving not less than two Business Days' prior written notice, the Service Provider shall permit the Authority access to the Service Provider's premises, personnel and records for the purpose of inspecting, testing and auditing the technical and organisational security measures and the Service Provider's compliance with the Agreement.
- 31.9 The Service Provider shall promptly implement any requirement made by the Authority to ensure that the technical and organisational security measures taken by the Service Provider in respect of Personal Data are sufficient to enable the Authority to comply with the DPA.
- 31.10 The Service Provider shall ensure that its employees, its permitted agents, consultants, sub-contractors and their employees shall maintain proper records of the processing of the Personal Data and of all training carried out by it with regard to the DPA.
- 31.11 The Service Provider hereby agrees to assist the Authority, at no additional cost to the Authority, and within the timescales imposed by the Authority with all Subject Information Requests which may be received by either the Service Provider or the Authority in respect of any Personal Data.
- 31.12 The Service Provider shall ensure that the Client Manager is informed immediately upon receipt of any request for information that might reasonably be regarded as a Subject Information Request under the DPA. The Service Provider shall liaise with the Client Manager and follow the instructions of the Client Manager in respect of all Subject Information Requests.
- 31.13 The Service Provider shall not cause or permit the transfer of any of the Personal Data outside the European Economic Area except with the prior written consent of the Authority and in accordance with any additional terms the Authority may impose on such transfer.
- 31.14 The Service Provider shall not disclose the Personal Data to any third party in any circumstances other than in compliance with the written instructions of

the Authority or at the specific request of the Authority or in compliance with a statutory legal obligation.

- 31.15 In situations where the Service Provider engages any third party that may process Personal Data, the Service Provider shall ensure that it selects only those third parties that provide sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out. Without prejudice to the foregoing generality, the Service Provider shall ensure that each third party selected by it complies with the terms of the provisions contained in the Agreement by means of a contract which is made or evidenced in writing.
- 31.16 The Service Provider shall inform the Authority immediately if the Service Provider becomes aware or suspects that Personal Data has been disclosed to an unauthorised person.
- 31.17 Forthwith on termination or expiry of the Agreement for whatever reason, or upon written request at any time, the Service Provider and its employees, its permitted agents, consultants, sub-contractors and their employees shall forthwith cease to use or process the Personal Data and shall return and/or procure the return of any and all Personal Data (together with all copies in any media in its power, possession or control) to the Authority together with all copies of the Personal Data in its possession or control. In such an event, the Service Provider and its employees will not retain any copy of any part of the Personal Data in any form or media and will give the Authority a certificate signed by one of its officers confirming that it has fully complied with this clause.
- 31.18 The Service Provider shall be liable for and shall fully indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities of any sort that the Authority incurs due to the Service Provider's breach of this clause 31 and the Service Provider shall ensure that it has adequate insurance to cover any potential liability under this clause satisfactory evidence of which shall be provided to the Authority upon request.
- 31.19 For the purposes of clause 31.18, any breach of this clause 31 resulting from the acts or omissions of a sub-contractor of the Service Provider shall be deemed to be a breach of this clause 31 by the Service Provider.
- 31.20 For the purposes of this clause 31, the terms "Data Controller", "Data Processor" "Personal Data" and "processing" shall have the meanings ascribed to them in the DPA and "process" shall be construed accordingly and the term "Subject Information Request" shall mean a request for information made by or on behalf of an individual pursuant to section 7 of the DPA.
- 31.21 The Parties shall develop and finalise a data sharing protocol appropriate to the provision of the PSO Services within a period of sixty (60) days from the Commencement Date; each of the Parties will comply with the provisions of such data sharing protocol.

32 FREEDOM OF INFORMATION

- 32.1 The Parties acknowledge that they are both subject to the requirements of the Freedom of Information Act (Scotland) Act 2002 (the “FOISA”) and shall cooperate with each other to enable compliance with these information disclosure requirements.
- 32.2 Each Party shall assist the other Party at no additional cost to comply with the FOISA and the Regulations made thereunder. Neither Party shall do any act either knowingly or recklessly that would cause the other Party to be in breach of FOISA and its Regulations.
- 32.3 Each Party shall supply to the other Party all such information (together with reasonable assistance to locate the same) which is required by the other Party to comply with its obligations under FOISA and Regulations within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Authority must comply with as defined in FOISA and the Regulations
- 32.4 The Service Provider shall advise the Authority of any information that it wishes to publish that relates to the PSO Services so that the Authority may maintain its publication scheme under the FOISA and Regulations.
- 32.5 The Service Provider shall advise the Authority of any requests for information received by the Service Provider where the information requested is in relation to the PSO Services provided under the Agreement and shall follow the Authority’s access procedures in fulfilling the request.
- 32.6 The Service Provider shall be required to follow all the Authority’s policies, processes and procedures that provide for compliance with FOISA and Regulations where information held is in relation to the PSO Services.
- 32.7 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
- 32.7.1 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
 - 32.7.2 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).
- 32.8 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,

- 32.8.1 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;
- 32.8.2 if the other Party shall fail to respond to a request for consent of the nature referred to in paragraph 32.8.1 within 5 Business Days of the request being made, it shall be deemed to have consented to the release of information;
- 32.8.3 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.

33 EQUALITIES

- 33.1 The Service Provider undertakes to the Authority to put in place an equalities policy, within six months of Commencement Date, which reflects the principles of the Authority's policy or policies on equalities and to regularly review the said policy, all to the reasonable satisfaction of the Authority.

34 DISPUTE RESOLUTION

- 34.1 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.
- 34.2 If a dispute cannot be resolved by the individuals to which the dispute has been escalated in pursuance of clause 34.1 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
- 34.3 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.
- 34.4 Within 14 days after the Expert has accepted the appointment, the parties shall submit to the Expert a written report on the dispute.
- 34.5 Both parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute.

- 34.6 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 34.4.
- 34.7 Save in the case of manifest error, decisions of the Expert shall be final and binding not subject to appeal.
- 34.8 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.
- 34.9 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.

35 PUBLICITY

- 35.1 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:
- 35.1.1 comply with the law or the requirements of auditors;
- 35.1.2 provide information to HM Revenue & Customs and its professional advisers;
- 35.1.3 provide information to a Party's professional advisers; or
- 35.1.4 provide information to any potential New Supplier.
- 35.2 The Parties agree to adhere to the provisions set out in Part 7 of the Schedule.

36 VARIATION

- 36.1 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.

37 COSTS

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

38 GOVERNING LAW AND JURISDICTION

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

IN WITNESS WHEREOF this Agreement, consisting of this and the preceding 41 pages together with the Schedule in 13 parts annexed, is executed as follows:-

SEALED with the COMMON SEAL of the said THE HIGHLAND COUNCIL and SUBSCRIBED for and on its behalf

at

on

by _____

SUBSCRIBED for and on behalf of the said HIGH LIFE HIGHLAND

at

on

by _____
Print Full Name Director

before this witness

_____ Witness
Print Full Name

Address

_____ Proper Officer

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

SCHEDULE

PART 1 – PSO SERVICES

1 PSO Services

- 1.1 On behalf of the Authority, the Service Provider will deliver specified PSO services with the overall aim of enhancing the quality of life in the Highlands by developing, delivering and promoting leisure and learning opportunities.
- 1.2 The Service Provider will deliver nine specialist areas of work that will comprise the provision of the PSO services on behalf of the Authority:
- i) Adult Learning
 - ii) Archives
 - iii) Arts
 - iv) Leisure facilities
 - v) Libraries
 - vi) Museums
 - vii) Outdoor Education
 - viii) Sport
 - ix) Youth Work
- 1.3 The table in section 2 sets out the aims and priorities to be achieved by the Service Provider for each of the nine services and the resources to be maintained to support their delivery.
- 1.4 The table in section 3 sets out further facility and non facility based staffing resources to be made available by the Service Provider within each Associated School Group (ASG) to support the delivery of the PSO services.
- 1.5 The table in section 4 details the list of free swimming lessons to be made available by the Service Provider to the Authority each year.

2. Service Aims, Priorities and Delivery Channels

The following table sets out the aims and priorities to be achieved by the Service Provider for each of the nine services and the resources to be maintained to support their delivery.

Service	Aim	Priorities	Delivered through
Adult Learning	To ensure a range of targeted, local opportunities for personal and social development.	<ol style="list-style-type: none"> 1. Provide and commission a range of targeted numeracy and literacy services; 2. Recruit, retain and develop a network of volunteers; 3. Widen opportunities through supporting partnerships. 	Literacies Officers; Learning centres; Community based adult learning; English for speakers of other languages; Community Language Assistants.
Archives	To manage, preserve and promote access to the Highland's records and archives.	<ol style="list-style-type: none"> 1. Preserve, conserve and make accessible the archive collections in the custody of the Authority; 2. . Provide an operational, non-strategic, Records Management Service to all Authority services. 3. Operate the Highland Archive Centre and three local Archive Centres; 4. Provide a learning & outreach service to schools and community groups; 5. In partnership, provide a Highland-wide genealogy service. 	Inverness Archive and Registration Centre; Caithness Archive Centre; Skye Archive Centre; Lochaber Archive Centre; A range of new media and web resources.

Arts	To provide access to and to promote participation in arts experiences	<ol style="list-style-type: none"> 1. Provide local access to works of Highland, national and international importance; 2. Programme the Authority's three visual arts galleries; 3. 'Support the development of arts and creativity opportunities and initiatives' 	Exhibitions Unit; Arts and Creativity Leader
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Service	Aim	Priorities	Delivered through
Leisure Facilities	To provide local, specialist venues, staff and activities to promote sport, leisure and learning.	<ol style="list-style-type: none"> 1. Provide facilities that comply with the Authority's Health & Safety legislation and statutory guidance; 2. Provide opportunities to schools for the delivery of curriculum and after school activities; 3. Provide opportunities for casual use by the public; 4. Develop and deliver a programme of coach led activities; 5. Develop and deliver the Highland Learn to Swim programme 6. Develop and deliver Holiday Programme activity for school aged children; 7. Provide specialist venues for use by sports clubs; 8. Provide specialist advice and guidance to community management committees within the facility network. 	<p>Stand alone leisure centres with swimming pools; Stand alone dry leisure centres; Community schools (6 with swimming pools); Community centres; Private leisure partnership (Aviemore Highland Resort); Sports pitches; Highland Football Academy.</p>
Libraries	To provide reading and information services to support the educational, cultural and recreational needs of all.	<ol style="list-style-type: none"> 1. Work with readers and learners to identify and provide a range of relevant materials and resources; 2. Work with communities to identify, promote and preserve published material of local importance; 3. Provide alternative methods of service delivery to people who cannot easily access library buildings; 4. Encourage people of all ages and levels of literacy to share and enjoy reading for pleasure; 5. Provide guidance to support both formal and informal learning, including the provision of a library service to schools and communities. 	<p>Public libraries; Joint school/public library/service point; Staffed school libraries; Mobile libraries; Library Support Unit; Free public access computers; A range of new media and web resources.</p>

Museums	To provide a specialist service that conserves, interprets and celebrates the heritage of the Highlands.	<ol style="list-style-type: none"> 1. Conserve and make accessible the Authority's museums collections; 2. Provide public access through two regional museums and three local heritage centres and a range of interpretive services; 3. Support organised school visits; 4. Provide advice and support to the 20 council funded independent museums 	Highland Folk Museum; Inverness Museum and Art Gallery; Heritage and visitor centres; and Independent Museums Officer.

Service	Aim	Priorities	Delivered through
Outdoor Activities	<p>To allow people to learn by participating in outdoor pursuits through the provision of specialist staff, centres, training and safety recording systems.</p> <p>To increase awareness, understanding and care of the natural, built and cultural heritage of the Highlands through the provision of : information, advice, activities, interpretation, site and facility management ; and encourage responsible behaviour.</p>	<ol style="list-style-type: none"> 1. Build the capacity of school and community staff to deliver Adventurous Activities as part of delivering the Curriculum for Excellence through Outdoor Learning; 2. Manage the off site excursions safety management system for the Authority; 3. Manage two outdoor education centres and their activity programmes. 4. Deliver a programme of events for the public, schools and other groups to help raise awareness and encourage appreciation of the, wildlife, landscape and heritage of the Highlands; 5. Promote the Scottish Outdoor Access Code, the Eco – Schools programme and contribute to the Highland Council’s statutory outdoor access duties; 6. Contribute to The Highland Council's Biodiversity duties; 7. Monitor, report upon and contribute to the maintenance of D&I countryside sites and core paths throughout the Highlands. 	<p>Outdoor Centres; Management of ECS Adventurous Activities System. Countryside Rangers.</p>

Service	Aim	Priorities	Delivered through
Sport	To increase the number of people taking part in physical activity and to improve performance.	<ol style="list-style-type: none"> 1. Provide an Active Schools service in every Associated Scholl Group (ASG) that delivers the targets of the sportscotland funding agreement; 2. Develop pathways for young people to progress from school to after school and community sport; 3. Recruit, retain and develop a network of volunteers; 4. Develop and maintain a range of physical activity and sport opportunities; 5. Provide specialist development officers for disability, , , and coaching development; 6. Provide specialist advice and guidance to sports clubs and organisations; 7. Lead on the set up and operation of Sports Hubs with sportscotland; 8. Work with the specialist sports officers of national governing bodies where they exist; 	Sports Development Officers; Active Schools Coordinators; Specialist sports specific development staff.

Service	Aim	Priorities	Delivered through
Youth Work	To empower young people to become successful, confident, responsible and effective through the work of specialist staff and the provision of targeted activities	<ol style="list-style-type: none"> 1. Co-ordinate and develop local provision for young people; 2. Widen opportunities through supporting partnerships; 3. Support young people to have a voice through a range of appropriate structures; 4. Support and develop a range of achievement frameworks; 5. Develop targeted interventions towards young people in need. 	Youth Development Officers; Youth Convener; Highland Youth Parliament; Youth Forums; Scottish Youth Parliament - Highland reps; Young Scot Card; Support to youth clubs/centres/cafes; Duke of Edinburgh Award; A range of youth achievement awards.

3. Facility and Non Facility Based Staffing Resources in each Associated School Group (ASG)

The following table sets out further facility and non facility based staffing resources to be made available by the Service Provider within each Associated School Group (ASG) to support the delivery of the PSO services.

- i) The opening hours of facilities managed by the Service Provider on behalf of the Authority;
- ii) The FTE presence of Active Schools Co-coordinators;
- iii) The FTE presence of Youth Workers;
- iv) The FTE presence of Adult Learning staff.

ALNESS	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
The Place Youth Centre	30		
Alness Library	35.5		
Alness Academy Swimming Pool	Term Time: 17 School Holidays: 17		
Mobile Library	3		
Dalmore Playing Field and Changing		Yes	
Evanton Sports Centre – Community Hall		Yes	
Black Park Milnafua		Yes	
Active Schools Coordinator			1
Youth Worker			1
Adult Learning Workers			0.48
Averon Leisure Centre	Term Time: 84 School Holidays: 84	Yes	
ARDNAMURCHAN			
Ardnamurchan Community Library	41		

Sunart Centre	89		
Mobile Library	3		
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			0.25

CHARLESTON	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Beaully Library	14		
Charleston Academy Community Complex	81		
Highland Archive and Registration Centre	30.5		
Mobile Library	5		
Braeview Playing Field Park, Beaully		Yes	
Phipps Hall		Yes	
Active Schools Coordinator			1.2
Youth Worker			1.0
Adult Learning Workers			0.46
CULLODEN			
Culloden Library	27		
Ardersier Library	16		
Mobile Library	1.45		
Culloden Pitches and Changing		Yes	
Active Schools Coordinator			1.2
Youth Worker			1.0
Adult Learning Workers			0.46
Culloden Academy Community Complex	Term Time: 41.75 School Holidays: 38.75	Yes	

DINGWALL	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Dingwall Leisure Centre	84.5		
Strathpeffer Spa Pavilion		Yes	
Dingwall Library	56		
Muir of Ord Library	15		
Mobile Library	9		
Jubilee Park, pitches, all weather pitch, changing rooms		Yes	
Dingwall Academy community facilities		Yes	
Dingwall Town Hall		Yes	
Strathpeffer Tennis Courts		Yes	
Active Schools Coordinator			1.2
Youth Worker			1.0
Adult Learning Workers			0.48
Leanaig Centre, Ben Wyvis Primary School	Term Time: 23 School Holidays: 38	Yes	
Highland Football Academy	91	Yes	
DORNOCH			
Bonar Bridge Library	17.5		
Dornoch Library	23.5		
Mobile Library	1		
Dornoch tennis courts		Yes	
Active Schools Coordinator			0.5
Youth Worker			0.5
Adult Learning Workers			0.085

FARR			
Bettyhill Library and Service Point	17.5		
Melvich Megacaff	5		
Mobile Library	6.30		
Portskerra Playing Field and changing Rooms		Yes	
Active Schools Coordinator			0.5
Youth Worker			0.5
Adult Learning Workers			0.085
FORTROSE	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Black Isle Leisure Centre	74		
Cromarty Library	12		
Fortrose Library and Computer suite	47 (Term) 32 (Hols)		
Mobile Library	7		
Fortrose Town Hall		Yes	
Fortrose Community Theatre, in Fortrose Academy		Yes	
Cromarty Playing Field		Yes	
Rosemarkie Playing Field		Yes	
Gollanhead Playing Field		Yes	
King George V Playing Fields and Changing		Yes	
North Kessock Playing Field and Changing (Ferry Brae)		Yes	
Resolis Playing Fields		Yes	
Active Schools Coordinator			1
Youth Worker			1.0
Adult Learning Workers			0.708

GAIRLOCH			
Gairloch Leisure Centre	Term Time: 41 School Holidays: 49		
Gairloch Library	43 (Term) 12 (Hols)		
Mobile Library	8		
Torridon Campsite		Yes	
Poolewe playing field		Yes	
MacLennan Park Aultbea playing field		Yes	
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			0.28

GLENURQUHART/ KILCHUIMEN	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Glenurquhart Library	25.5		
Craigmonie Centre	School holidays: 68 Term time: 68		
Mobile Library	4		
Active Schools Coordinator			1.0
Youth Worker			1.0
Adult Learning Workers			0.21
GOLSPIE			
Sutherland Swimming Pool Complex	68.5		
Lairg Library	17.5		
Brora Learning Centre	0		
Golspie Library	18		
Helmsdale Library	17.5		
Brora Library	22		
Mobile Library	4		
Brora Heritage Centre	30 / 36 seasonal		
Couper Park Playing Field, Helmsdale		Yes	
Golspie Changing Rooms		Yes	
Pittentrail Playing Field		Yes	
Ferrycroft Playing Field and Lairg Changing Rooms		Yes	
Active Schools Coordinator			0.5
Youth Worker			1

Adult Learning Workers			0.4
Ferrycroft Visitor Centre, Lairg	42 (Mar- Nov Only)	No	

GRANTOWN	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Grantown Library	21		
Craig MacLean Leisure Centre	84.5		
Mobile Library	4		
Highland Council Badaguish Outdoor Centre		Yes	
Carrbridge Playing Field		Yes	
Boat of Garten Playing Field		Yes	
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			0.405
INVERNESS HIGH SCHOOL			
Inverness Botanic Garden	Term time: 49 School holidays: 49		
James Cameron Community Centre	68		
Cameron Youth Centre	57.5		
Merkinch Community Centre	Term Time 58 School Holidays: 58		
Jannie's Hoose		Yes	
Bught Park Stadium (and pitches x 8)		Yes	
Bught Park Synthetic Pitch		Yes	
Northern Meeting Park, Inverness		Yes	
Canal Pitch (1), Circus site		Yes	

Active Schools Coordinator			1.2
Youth Worker			3.0
Adult Learning Workers			0.46
Bught Nursery	NA	No	NA
Inverness Leisure Centre	Term Time: 106.25 School Holidays: 106.25	Yes	NA
Canal Park Synthetic Turf Pitch and Pavilion		Yes	NA

INVERGORDON	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Invergordon Leisure Centre	77.5		
Invergordon Library	21		
Mobile Library	4		
Invergordon Town Hall		Yes	
Joss Street Hall		Yes	
Invergordon Playing Fields		Yes	
Inverbreakie Playing Field (Hospital PF)		Yes	
Saltburn Playing Field		Yes	
Newmore Playing Field		Yes	
Milton Playing Field, Invergordon		Yes	
Active Schools Coordinator			1
Youth Worker			1
Adult Learning Workers			0.48
INVERNESS ROYAL ACADEMY			
Hilton Community Centre	Term Time: 73 School Holidays 73		
Mobile Library	3		
Balloan Road Playing Field		Yes	
Active Schools Coordinator			1.2
Youth Worker			1
Adult Learning Workers			0.46

Drummond Swimming Pool (for Swimming Lessons)	Provision of Swimming Lessons only	No	NA
Inverness Royal Academy Sports Centre	Term Time: 28 School Holidays: 48	Yes	NA

KINGUSSIE	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Badenoch Centre	Term Time 80.5 School Holidays: 80.5		
Badenoch Library	27		
Highland Folk Museum	49		
Mobile Library	3		
Aviemore Youth Club		Yes	
Market Stance Playing Field, Kingussie		Yes	
Kingussie Tennis Court and Pavillion		Yes	
Dunbarry Playing Fields		Yes	
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			0.265
Aviemore Community Centre	Term Time: 83.5 School Holidays: 83.5	Yes	NA
Temporarily Remove pending provision of alternative – Badaguish Outdoor centre	0	No	NA
KINLOCHBERVIE			
Scourie Playing Field		Yes	
Mobile Library	5		
Active Schools Coordinator			0.5
Youth Worker			0.5
Adult Learning Workers			0.085

KINLOCHLEVEN			
Leven Centre	Term time: 64 School holidays: 64		
Kinlochleven Library	46 (Term) 39 (Hols)		
Mobile Library	3		
Active Schools Coordinator			1
Youth Worker			1.0
Adult Learning Workers			0.25

LOCHABER	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Lochaber Leisure Centre and Hydrotherapy Pool	Term Time: 85.75 School Holidays 85.75		
Fort William Library	42		
Caol Library	18		
Lochaber Archive Centre	24		
Mobile Library	2		
Plantation Youth Centre		Yes	
Claggan Park and Pavilion		Yes	
Caol Youth Centre		Yes	
Kinlocheil Outdoor Centre		Yes	
Canal Park, Fort William		Yes	
Pulp Mill Pitch and Pavilion, Fort William		Yes	
Black Park Playing field and changing room		Yes	
Fort William Putting Green		Yes	
An Aird Sports Field and Changing		Yes	
Town Park - King George V		Yes	
Active Schools Coordinator			1.2
Youth Worker			3.1
Adult Learning Workers			0.85
Lochaber High School Sports Facilities	Term Time: 24 School Holidays: 24	Yes	
Ben Nevis Visitor Centre	Term Time: 56 School Holidays: 56	No	

MALLAIG			
Knoydart Inverie Library	2		
Mallaig Library	16.5		
Mobile Library	1		
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			0.25

MILLBURN	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Inverness Library	55		
Spectrum Centre	67		
Inshes Community Library	22.75		
Inverness Museum and Art Gallery	29.5 (summer) 17.5 (winter)		
Mobile Library	1		
Raigmore Community Centre	55.5		
Milton of Culcabock Pitches and Changing		Yes	
Fraser/ Walker Park playing fields and changing		Yes	
Inshes Primary Community Facilities		Yes	
Active Schools Coordinator			1.2
Youth Worker			1
Adult Learning Workers			0.46
Inverness Castle Viewpoint	Seasonal Apr-Oct (Yr 1 2017)		
NAIRN			
Nairn Swimming Pool	Term Time: 80.5 School Holidays: 80.5		
Nairn Library	42		
Mobile Library	4		

Nairn Paddling Pool and Leisure Park	49 (Seasonal)		
Active Schools Coordinator			1
Youth Worker			1
Adult Learning Workers			0.515
Nairn Academy Sports Facilities	38		

PLOCKTON	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Plockton Library	10		
Lochcarron Library	10		
Kyle of Lochalsh Library	33.5		
Auchtertyre Learning Centre	21		
Mobile Library	9		
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			0.3
PORTREE			
Archive Centre and Offices, Portree	24		
Portree Library (in school)	51.15		
Broadford Library and Service Point	22		
The Fingal Centre	81		
Mobile Library	9		
Raasay Playing Field		Yes	
King George 5th Playing Field		Yes	
Portree MUGA		Yes	
Broadford Playing Field		Yes	
Uig Playing Field and Changing		Yes	
Torrin Outdoor Centre		Yes	
Active Schools Coordinator			1.2
Youth Worker			1.0

Adult Learning Workers			0.3
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TAIN	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Tain Library	20		
Lower Balintore Scout Hut	5		
Tain Royal Academy Community Complex (TRACC)	75		
Mobile Library	10		
Tain Academy Synthetic Pitch		Yes	
Portmahomack Playing Field and Changing		Yes	
Balintore Lower Playing Field		Yes	
Active Schools Coordinator			1
Youth Worker			1.0
Adult Learning Workers			0.48
THURSO			
Thurso Swimming Pool	79.75		
Swanson Gallery	22		
Thurso Library	42		
Mobile Library	5		
Ormlie Playing Field and Changing Room		Yes	
Olrig Street Playing Field and Changing Rooms		Yes	
Sir George's Playing Field and Changing Room, Thurso		Yes	
Gillock Park Playing Field		Yes	
Millbank Playing Field		Yes	
Naver Playing Field, synthetic pitch and Changing		Yes	
Viewfirth Park Playing Field		Yes	

Dunnet Playing Field and Changing Rooms		Yes	
Active Schools Coordinator			1.2
Youth Worker			1.0
Adult Learning Workers			0.3

ULLAPOOL	Facility opening hours per week	Facility available for booking	Non Facility Based Staffing FTE
Lochbroom Leisure Centre & Tennis Courts	66 (Term) School Holidays: 68.75		
Macphail Centre	45		
Ullapool Library	44 (Term) 19 (Hols)		
Achiltibuie Library	5		
Mobile Library	4		
Morefield Playing Field and Changing		Yes	
Active Schools Coordinator			1
Youth Worker			0.5
Adult Learning Workers			1.57
WICK			
East Caithness Community Facility	87		
St Fergus Gallery	25		
Mobile Library	6		
Caithness Broch Centre	30 / 36 (Seasonal)		
Harmsworth Playing Field and Changing		Yes	
Wick Assembly Rooms		Yes	
Wick Riverside Park (booked area)		Yes	

Rosebank Playing Field, Muga and changing room		Yes	
KGV Playing Field, Wick		Yes	
Lower Bignold Playing Field		Yes	
Upper Bignold Playing Field and Changing		Yes	
Watten Playing Field and Changing		Yes	
Dunbeath Playing Field		Yes	
Thrumster Playing Field		Yes	
Active Schools Coordinator			1.2
Youth Worker			1.0
Adult Learning Workers			0.3

4. School Swimming Lessons

Swimming Pool Name	School name	Primary Class	Number sessions of per year	Duration of sessions	Comments
Lochaber Leisure Centre	Ardgour	3-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Banavie	6	14	30	2 groups x30mins
Lochaber Leisure Centre	Caol	6	14	30	2 groups x30mins
Lochaber Leisure Centre	Duror	4-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Fort William	5-6	14	30	2 groups x30mins
Lochaber Leisure Centre	Fort William RC	6	14	30	2 groups x30mins
Lochaber Leisure Centre	Glencoe	4-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Invergarry	4-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Inverlochy	6	14	30	2 groups x30mins
Lochaber Leisure Centre	Kinlochleven	6-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Lochaline	4-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Lochyside	6	14	30	2 groups x30mins
Lochaber Leisure Centre	Roy Bridge	1-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Spean Bridge	4-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Strontian	3-7	14	30	2 groups x30mins
Lochaber Leisure Centre	Upper Achintore	6	14	30	2 groups x30mins
Culloden Academy	Duncan Forbes	6	8	40	There are no contracted staff.
Culloden Academy	Ardersier	6	8	40	2 groups
Culloden Academy	Croy	6	8	40	2 groups
Culloden Academy	Smithton	6	8	40	2 groups
Culloden Academy	Balloch	6	8	40	2 groups
Culloden Academy	Cradlehall	6	8	40	2 groups
Culloden Academy	Available to all schools	Three - Seven	32	30	Assisted Needs

Craig Centre	Maclean	Leisure	Grantown Primary	P4 & P5	28	30	Aug 2011-June 2012
Craig Centre	Maclean	Leisure	Abernethy	P4 & P5	18	45	Aug 2011-June 2012 - 2 groups x 45 mins
Craig Centre	Maclean	Leisure	Deshar	P4 & P5	18	45	Aug 2011-June 2012 - 1 group x 45 mins
Craig Centre	Maclean	Leisure	Carrbridge	P5/6/7	8	45	Composite classes unable to bring P4 pupils through
Craig Centre	Maclean	Leisure	Aviemore	P4 & P5	8	45	May-June 2012
Craig Centre	Maclean	Leisure	Kingussie	P4 & P5	8	45	Jan- March 2012
Craig Centre	Maclean	Leisure	Gergask	P4/5/6/7	8	45	May-June 2012
Craig Centre	Maclean	Leisure	Newtonmore	P4 & P5	8	45	School have not confirm if they will attend swimming this year
Craig Centre	Maclean	Leisure	Alvie	P4 & P5	8	45	School have not confirm if they will attend swimming this year
Nairn Leisure Pool			Rosebank	P4&5	15	30	2 groups
Nairn Leisure Pool			Millbank	P4&5	15	30	2 groups
Nairn Leisure Pool			Cawdor	P4	15	30	2 groups
Nairn Leisure Pool			Auldearn	P4&5	15	30	2 groups
Nairn Leisure Pool			Academy Base	N/A	35	45	
Nairn Leisure Pool			Millbank Base	N/A	35	45	
Alness Swimming Pool			Kiltearn	P4 & P5	9	30	
Alness Swimming Pool			Bridgend	P4 & P5	9	30	
Alness Swimming Pool			Coulhill	P4 & P5	9	30	

Alness Swimming Pool	Obsdale	P4 & P5	9	30	
Dingwall Leisure Centre	Dingwall	P4-P7	142	20	
Dingwall Leisure Centre	Tarradale	P6&P7	26	20	
Dingwall Leisure Centre	Conon Bridge	P4-P7	6	20	
Dingwall Leisure Centre	Maryburgh	P4-P7	6	20	
Dingwall Leisure Centre	Mulbuie	P3 & P4	14	20	
Dingwall Leisure Centre	Strathpeffer	P3-P7	34	20	
Dingwall Leisure Centre	Ferintosh	P5-P7	7	20	
Dingwall Leisure Centre	Strathconon	P4-P7	6	20	
Dingwall Leisure Centre	Tore	P4-P7	7	20	
Dingwall Leisure Centre	North Kessock	P4-P7	6	20	
Dingwall Leisure Centre	Munlochy	P4-P7	6	20	
Dingwall Leisure Centre	Avoch	P3-P6	34	20	
Sutherland Swimming Pool	Dornoch	P4 & P5	33	30	
Sutherland Swimming Pool	Helmesdale/Kinbrace	P4-P7	15	30	
Sutherland Swimming Pool	Brora	P4 & P5	21	30	
Sutherland Swimming Pool	Golspie	P4 & P5	36	30	
Sutherland Swimming Pool	Lairg	P4-P7	8	30	Sometimes don't take up allocation
Sutherland Swimming Pool	Rogart	P1-P7	21	30	
Sutherland Swimming Pool	Achfary/Rosehall	P1-P7	8	30	Sometimes don't take up allocation
Sutherland Swimming Pool	Gledfield	P4-P7	21	30	
Sutherland Swimming Pool	BonarBridge	P4 & P5	21	30	
Invergordon Leisure Centre	South Lodge	P4 & P5	34	30	
Invergordon Leisure Centre	Park	P4 & P5	34	30	
Invergordon Leisure Centre	Resolis	P4 & P5	34	30	
TRACC	Craighill	P4-P7	32	30	

TRACC	Edderton	P1-P7	15	30	
TRACC	Inver	P1-P7	15	30	
TRACC	Tarbat	P1-P7	15	30	
TRACC	Knockbreck	P4-P7	30	30	
TRACC	Milton	P1-P7	15	30	
TRACC	Fearn	P1-P7	15	30	
TRACC	Hilton	P1-P7	8	30	
Thurso Swimming Pool	Bower	P4 & P5	14	30	
Thurso Swimming Pool	Crossroads	P4 & P5	14	30	
Thurso Swimming Pool	Pennyland	P4 & P5	34	40	35 mins teaching 5 min free play
Thurso Swimming Pool	Halkirk	P4 & P5	26	30	
Thurso Swimming Pool	Mount Pleasant	P4 & P5	34	40	35 mins teaching 5 min free play
Thurso Swimming Pool	Reay	P4 & P5	13	30	
Thurso Swimming Pool	Castletown	P4 & P5	24	30	
Thurso Swimming Pool	Miller Academy	P4 & P5	34	30	
Wick Swimming Pool	Hillhead	P4 & P5	34	30	
Wick Swimming Pool	Pultneytown	P4 & P5	34	30	
Wick Swimming Pool	Wick North	P4 & P5	18	30	
Wick Swimming Pool	Wick South	P4 & P5	16	30	
Wick Swimming Pool	Cannisbay	P4 & P5	34	30	
Wick Swimming Pool	Watten	P4 & P5	34	30	
Wick Swimming Pool	Keiss	P4 & P5	34	30	
Wick Swimming Pool	Dunbeath	P4 & P5	18	30	
Wick Swimming Pool	Thrumster	P4 & P5	18	30	
Wick Swimming Pool	Lybster	P4 & P5	18	30	
Wick Swimming Pool	CEYAC Group	P4 & P5	34	20	

Total			1784		
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PART 2 – PUBLIC PERFORMANCE REPORTING

The Service Provider will be required to contribute to the achievement of the Authority’s aims and objectives in the delivery of the PSO services outlined in Part 1, as set out in the following strategic documents.

- i) Single Outcome Agreement
- ii) Strengthening the Highlands
- iii) Corporate Plan
- iv) ECS Service Plan
- v) Children’s Plan
- vi) National Statutory Performance Indicators for Community Learning and Leisure Services.

The following Performance Indicators have been extracted from each document to summarise the performance standards and performance reporting requirements to be met by the Service Provider in providing the PSO Services. All reports referred to in the Performance Indicators shall be supplied to the Authority in each quarter and the Service Provider shall in addition to the reports referred to in the Performance Indicators provide to the Authority such further information as the authority may reasonably require to enable the Authority to monitor, verify and audit the achievement of the performance standards by the Service Provider. As each corporate document is reviewed and updated by the Authority, the Performance Indicators attributable to the Service Provider will be amended in accordance with the Change Control Procedure in Part 5.

Service	Performance Indicator
Adult learning	<ol style="list-style-type: none"> 1. Maintain the Highland Adult Literacy Partnership; 2. Contribute to the delivery of the Highland Literacy and Numeracy Plan; 3. Develop new ways of supporting adult learners; 4. Increase the number of courses and classes run or supported by the Authority to support lifelong learning; 5. Provide a range of courses, classes and support to contribute to the delivery of English as a second or other language (ESOL) services; 6. Increase opportunities for Adult Literacy Learners and take up by 10%; 7. Ensure that 10% of adult literacy learners move to positive destinations; 8. Increase the number of new learners supported with English

Service	Performance Indicator
	<p>language tuition 1154 by 2011;</p> <p>9. Contribute to increasing the number of inward migrants and their families who have limited English language to settle in the Highlands to 302.</p>
Archives	<ol style="list-style-type: none"> 1. Contribute to the delivery of the Authority's Archives and Records Management Strategies; 2. Contribute to the delivery of the Authority's policies and strategies in cultural services/archives. 3. Increase dwell time on Am Baile website;
Arts	<ol style="list-style-type: none"> 1. Report on the number of opportunities taken up to enjoy arts, sport and cultural activities; 2. Contribute to the delivery of the Authority's policies and strategies in cultural services.

Service	Performance Indicator
Leisure facilities	<ol style="list-style-type: none"> 1. Contribute to the delivery of the Authority's Community Facility Strategy including a review of Authority leisure facilities; 2. Report on the number of attendances per 1,000 population for pools; 3. Report on the number of attendances per 1,000 population for other indoor sports and leisure facilities, excluding pools in a combined complex; 4. Report on the cost / attendance figures for sports facilities;
Libraries	<ol style="list-style-type: none"> 1. Contribute to the delivery of the Authority's Library and Information Services Policy; 2. Achieve 65% of the national target met for replenishing lending stock for adults; 3. Achieve 67.5% of the national target met for replenishing lending stock for children and teenagers; 4. Report on the number of borrowers expressed as a percentage of resident population; 5. Report on the number of visits to Authority libraries per 1,000 population; 6. Increase the number of times Access Point terminals are used per 1000 population; 7. Maintain 25% of the resident population as library borrowers; 8. Report on the cost / visit.
Museums	<ol style="list-style-type: none"> 1. Report on the number of real and virtual visits to/usages of Authority funded or part funded museums per 1,000 population; 2. Report on the number of visits to in person of Authority funded or part funded museums that were in person per 1,000 population; 3. Contribute to the delivery of the Authority's policies and strategies in cultural services/Museums; 4. Report on the cost per visit / usage in person; 5. Report on the cost per visit / usage.
Outdoor education	<ol style="list-style-type: none"> 1. Achieve an annual increase in the users
Sport	<ol style="list-style-type: none"> 1. Increase the cardiovascular fitness of boys in primary 7; 2. Increase the cardiovascular fitness of girls in primary 7; 3. Increase in the number of boys participating in shinty to 1635; 4. Increase in the number of girls participating in shinty to 938; 5. Contribute to the delivery of Your Choice to Healthy

	<p>Living Implementation Plan;</p> <ol style="list-style-type: none"> 6. Contribute to the delivery of the Authority's Physical Activity and Sport Strategy; 7. Maintain 1000 accredited awards for volunteers in sports leadership.
Service	Performance Indicator
Youth work	<ol style="list-style-type: none"> 1. Contribute to the delivery of the Youth Work Strategy; 2. Contribute to the delivery of the Youth Work Plan; 3. Maintain a Youth Worker presence in every Associated School Group; 4. Sustain the post of Youth Convenor; 5. Deliver successful Youth Voice elections annually supported by HYV Executive Meetings; 6. Enable all secondary school pupils to have access to the National Entitlement Card (NEC); 7. Achieve integration of smart card functionality; 8. Through the posts of Youth Convenor and Youth Workers continue to engage with young people and take the lead on giving them a voice in decisions that affect them; 9. Maintain the number of children and young people taking part in recognised leadership and achievement awards.

PART 3 – FINANCIAL REPORTING REQUIREMENTS

The Authority will require the Service Provider to provide the financial information outlined below.

<i>Information</i>	<i>Format</i>	<i>Frequency</i>	<i>Deadline</i>
Local Finance Return (LFR)	As per the return issued by the Scottish Government	Annually	August
Provisional Outturn Budget Estimate (POBE)	As per the return issued by the Scottish Government	Annually	April
Cultural Statistics Return	As per the return issued by CIPFA	Annually	
Library Statistics Return	As per the return issued by CIPFA	Annually	
Culture, Sport and Recreation Statistics Return	As per the return issued by CIPFA	Annually	
Public Library Statistics Return	As per the return issued by CIPFA	Annually	
Income Statistics Return	As per the return issued by CIPFA	Annually	
Sportscotland Active Schools Grant	As per the return issued by Sportscotland, including full payroll and ledger transaction data	Quarterly	
ESF Funding Claims	As per the return issued by the Scottish Government, including full payroll and ledger transaction data	In accordance with approved project	
PSO Quarterly Statement	Format included overleaf	Quarterly	
Unaudited accounts	In compliance with IFRS, the Companies Act and the OSCR regulations	Annual	End May
Audited accounts	In compliance with IFRS, the Companies Act and the OSCR	Annual	End August

	regulations		
List of material assets	List of all material assets held as at 31 st March	Annual	End May
List of leased equipment	For every lease held at 31 st March, a list comprising the current year expenditure, total lease liability and outstanding lease liability.	Annual	End May
Directors' remuneration	The name of the Chief Executive (or equivalent), the name of each Councillor to which that body paid remuneration, and the post title and name of each director or employee whose annual remuneration was £150,000 or more. Remuneration includes: salary, fees or allowances (separately disclosed) and before any tax or other deductions.	Annual	End May
Pension Data	As per the Employers Guide		

Quarterly Monitoring Statement - Format

	Annual Budget £'000	Budget to Date £'000	Actual to Date £'000	Projected Outturn £'000	Variance £'000
Management & Support Adult & Youth Learning Facilities Libraries Culture Sport					
	£'000	£'000	£'000	£'000	£'000
Expenditure					
Staff Costs					
Other Costs					
Income					
Highlife Income					
Other Income					
Management Fee					

**PART 4 – PROCESS FOR AGREEING SERVICES SPECIFICATION,
PERFORMANCE STANDARDS & SERVICES FEE FOR EACH
FINANCIAL YEAR**

In August 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. These broad budget assumptions will be provided at a very early stage in the Authority's budget setting process and as such must be treated in the strictest confidence by the Service Provider.

In October 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.

With regard to the above, the Service Provider must be aware that the Authority's budgetary timescales, targets and therefore ability to any agreement in principal may be subject to the receipt and implications of the Local Government Finance Settlement which is not normally received until mid December. Therefore any budgetary assumption made prior to receipt of the Financial Settlement may be subject to change.

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.

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 31 of the Agreement.

PART 6 - OPERATION OF SCHOOLS AND JOINT COMMUNITY FACILITIES

The Service Provider will provide services to Authority schools under the following principles:

1. Both parties, the Service Provider and individual schools have a joint responsibility to maximise the use of facilities for both curriculum and community use.
2. Schools will have priority use of facilities for curricular and extra-curricular activities between the start of the school day and six o'clock during term time. Where there is existing community use within these hours, these commitments will be honoured.
3. Individual schools will indicate annually and termly their required use of facilities for curriculum purposes. These will be jointly reviewed four weeks before the start of each term to ensure that unused bookings by any party are removed and the use of facilities maximised.
4. Where facilities cannot be separated or public access supervised, schools will have sole use between the start of the school day and six o'clock. Over time, steps will be taken to reduce such situations.
5. Recurring evening school commitments such as parents evening and Christmas shows will also receive priority booking.
6. School bookings will be at no cost to the Authority.
7. All negotiations in respect of the above will be undertaken by the Service Provider's Area Facilities Officers and the Head Teacher of the school.
8. The Service Provider's Area Facilities Officers will confirm the school bookings agreed with the Head Teacher at the start of each school term.

PART 7 - MEDIA MANAGEMENT PROTOCOL

In the event of a media enquiry which relates to an issue concerning a service provided by the Service Provider, on the Authority's behalf, a senior representative of the Service Provider (with responsibility for dealing with media matters) will liaise with the Public Relations Manager of the Authority to advise the Authority of the proposed statement / response.

In the event that the Authority's PR Manager proposes to issue a statement on behalf of the Authority, in connection with the same issue, the Authority will ensure that its PR Manager gives advance notice to the Service Provider of the proposed content of the response.

PART 8 - PAYMENT SCHEDULE IN RESPECT OF SERVICES FEE

The Services Fee will be paid quarterly in advance by the Authority on presentation of a valid invoice, as per the amounts agreed in line with Part 4 of the schedule.

PART 9 – REQUIREMENTS IN RELATION TO INSURANCES

Type of Insurance	Policyholder	Description	Indemnity Period	Sum Insured	Excess	Exclusions
Business Interruption: Gross Revenue & Additional Expenditure Policy	The Service Provider	<p>The policy covers loss of gross revenue and increased cost of working in the event of damage to a building by an insured peril covered under the property policy.</p> <p>The policy covers the amount of additional expenditure reasonably incurred in avoiding the interruption of the business in the event of damage to a building by an insured peril covered under the property policy.</p>	36 months	£18.5m p.a. £250K	£1K £1K	Refer to Policy
Commercially Tenanted Policy	The Authority	<p>Buildings including landlord’s fixtures and fittings and contents.</p> <p>Insured Perils - Fire, Lightning, Aircraft, Explosion, Earthquake, Riot & Civil Commotion, Malicious Damage, Storm, Flood, Escape of Water, Impact.</p>		Buildings £99M; Contents £13.5M	£250	If the property is empty or not in use no cover applies in respect of Burst Pipes or Malicious Damage.
“All Risks” Property Policy	The Authority	The policy covers damage to insured property resulting from a cause not otherwise excluded, includes exhibits and works of art belonging to or on loan to the insured.		£5.6M	£5K	Refer to Policy

Type of Insurance	Policyholder	Description	Indemnity Period	Sum Insured	Excess	Exclusions
Motor Policy	The Authority	Fully comprehensive cover. Covers any driver on business of THE SERVICE PROVIDER (subject to licence). For mini-buses must be 25 Years + and have passed appropriate test.			£1k	Refer to Policy
Public Liability Policy	The Authority	In the event of negligence being proved against the organisation, the public liability insurance policy will indemnify the organisation against its legal liability in respect of damages and claimants costs incurred from injury to any person or damage to property. In the case of employees, cover is normally restricted to duties undertaken within the terms of their contract of employment.		Limit of Indemnity £25M	Excess £1K	Refer to Policy
Employers Liability Policy	The Authority	The policy provides cover to indemnify the organisation against legal liability arising from claims for injury to employees.		Limit of Indemnity £25M	Excess £25K	Refer to Policy
Officials Indem	The Authority	The policy provides indemnity in respect of negligent acts, errors or omissions committed in good faith by officials in the course of the organisation's business. The policy covers claims of financial loss from a third party.		Limit of Indemnity £2.5M	Excess £1K	Refer to Policy

Type of Insurance	Policyholder	Description	Indemnity Period	Sum Insured	Excess	Exclusions
Trust & Trustee Indemnity	THE SERVICE PROVIDER	The policy provides indemnity to the organisation in respect of damages and claimants' costs arising from maladministration committed by a director, trustee, officer or committee member.		Limit of Indemnity £2.5M	Excess £1K	Refer to Policy
Personal Accident Policy - Employees	The Authority	The employees personal accident policy provides cover for accidents of employment including direct commuting to and from work. All employees, volunteers and tutors of the organisation are covered by the policy. Details of capital sums and benefits are shown in the table below.			Nil	Refer To policy

Death		5 Times Salary
Loss of Limb or Sight		5 Times Salary
Permanent Disablement	Total	5 Times Salary
Permanent Disablement	Partial	% of Capital Sum
Temporary Disablement	Total	Benefits paid to organisation for up to 24 months depending on length of service. Salary will be paid to employee for up to 24 months less payment made by the organisation's Statutory Sick Pay Scheme.

PART 10 - PROMOTION OF GAELIC LANGUAGE AND CULTURE

- 1 To incorporate Gaelic into the design of the company brand, corporate logo and promotional material;
- 2 In conjunction with the Authority's Gaelic Team, ensure that learning and leisure activities organised in areas with Gaelic Medium Education, or with a Gaelic tradition, include Gaelic Medium options;
- 3 In conjunction with the Authority's Gaelic Team, help to provide a programme of Gaelic extra-curricular activities for pupils in Gaelic Medium Education;
- 4 To help to raise awareness of Gaelic language and culture and to promote participation in the Gaelic arts by supporting the development of Gaelic cultural activities and the organisations that provide them;
- 5 In conjunction with the Authority's Gaelic Team, to apply for funding streams that will help to increase the profile of Gaelic language and culture;
- 6 To work with the Authority's Gaelic Team in areas such as Youth Development in Gaelic, Gaelic in Libraries and through initiatives such as Active Schools to ensure delivery of year-round activities for Gaelic Medium pupils;
- 7 To liaise with the Authority's Gaelic Team to ensure that Gaelic resources are available in the Service Provider's libraries where required and to continue to provide Gaelic storytelling and reading workshops for Gaelic Medium pupils;
- 8 To ensure that Active Schools Co-ordinators are targeting Gaelic speaking youngsters and adults to become active volunteers and to continue to ensure that 5th and 6th year Gaelic Medium pupils are given opportunities to learn and undertake coaching and TOP sport training to build the number and capacity of Gaelic speaking coaches;
- 9 To support Gaelic community groups by providing access to minibuses, sporting and outdoor equipment and residential centres in line with the Authority's policy;
- 10 To provide access to school and community leisure facilities managed by the Service Provider and to make available activities and programmes organised and directly run by the Authority's Gaelic Team, free of charge;
- 11 To help to make residents of, and visitors to, the Highlands aware of its Gaelic heritage, by promoting Gaelic through its Museums Service and by developing the Gaelic content on its websites where resources permit;

- 12 To incorporate the promotion of Gaelic language, culture and heritage in any events hosted or organised the Service Provider;
- 13 To engage with the Authority's Gaelic Team for support and advice on Gaelic, including the ongoing free use the Authority's Gaelic Translations service in order to maintain a high level of consistency and quality assurance with regard to the Service Provider's Gaelic representation;
- 14 To use its influence with its Partner Agencies and Service Suppliers to promote an understanding of the importance of the use of Gaelic to help to engender an appreciation of the cultural identity of the Highlands and of its Gaelic heritage, in social, economic and environmental contexts.

PART 11 – PRINCIPLES RELATING TO PRICING

- 1 Ensuring affordable access to all sections of the community to encourage participation;
- 2 Fostering social inclusion for those who are economically and socially vulnerable;
- 3 Developing opportunities across a broad range of activities for an increasing range of participants;
- 4 Reflecting differing local priorities and size, quality and design of facilities;
- 5 Raising income;
- 6 Maintaining free use of school facilities for school and youth work activity, while allowing charging for additional facility management costs incurred;
- 7 Maintaining free access to outdoor facilities to host events delivered directly by the Inverness Festivals Working Group.

PART 12 – THIRD PARTY AGREEMENTS AND LEISURE FACILITIES

Facility	Third Party	Nature of Support
Dingwall Community Centre	Dingwall Community Centre Management Committee	Caretaking services
Puffin Pool	Puffin Hydrotherapy Pool Ltd	Facility management and staffing
Poolewe Pool	Poolewe and District Swimming Pool Association	Management support
Ullaspool	Ullaspool Ltd	Facility staffing
Cameron Youth Centre	Queens Own Cameron Highlander War Memorial Youth Club	Facility management and staffing
Spectrum Centre	Spectrum Centre Board of Directors	Facility management and staffing
Merkinch Community Centre	Merkinch Community Centre Association	Facility management and staffing
Leven Centre	Kinlochleven Community and Sport Centre Limited	Facility management and staffing
Caol Youth Centre	Caol Management Committee	Facility management and staffing and contribution to running costs
Drummond School	Drummond School	Provision of professional advice and support in operation of swimming pools

PART 13 – GRANTS RECEIVED BY THE TRANSFEROR

Grant Paying Body	Award £	Description
Sportscotland	882,400	Active School Co-ordinators
Scottish Government	93,702	Coordinate the funding bid for English for speakers of other languages (ESOL) on behalf of the Highland ESOL delivery partners