



SERVICE DELIVERY CONTRACT

between

THE HIGHLAND COUNCIL

and

HIGH LIFE HIGHLAND

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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 currently at Highland Archive Centre, Bught Road, Inverness IV3 5SS and formerly 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.

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 17.4.2;

“**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;

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, and (when used in clause 30 and Schedule Part 14) **“processing”** have meanings as defined in the Data Protection Legislation (and “process” and **“processed”** when used in clause 30 and Schedule Part 14 shall be interpreted accordingly);¹

“Client Manager” means the representative of the Authority appointed pursuant to Clause 12.1;

“Core Service IPR” has the meaning ascribed to it in Clause 28.1;

“Council SLAs²” means the service level agreements to be entered into between the Authority and the Service Provider, providing for the Authority to supply the

¹ *New definition following legislation changes.*

² *Council SLA List updated to reflect the services which require an SLA and the addition of Information Governance to reflect arrangements following legislation changes. (THC provides specialist officer to support IG which includes FOI and Data Protection).*

following services to the Service Provider for a defined period (as specified in each agreement):

- grounds maintenance;
- vehicle leasing and maintenance;
- 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;
- library services at Kyle;
- Information Governance

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (as defined below); the Data Protection Act 2018 (“DPA 2018”) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

“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;

“Delivery Plan” means the operational plan of the Authority regarding the delivery of the Authority’s commitments³;

“Eligible Expenditure” means expenditure for which the Service Provider is permitted to use the Services Fees, as specified in Clause 5.4;

³ *New definition to future proof and allow flexibility of this term.*

“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; **“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 19.7;

“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, revisals and extensions;

“Law” means any applicable statute or any delegated or subordinate legislation, 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; (2) the agreement between The Highland Council and Alpha Schools (Highlands) Limited dated 29 March 2006; and (3) the agreement [to be entered into] between The Highland Council and Hub North Scotland Limited⁴ [dated **(tbc)**].

“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 10 as read with Part 2 of the Schedule) the performance standards agreed between the Authority and the Service Provider in pursuance of paragraph 10.3 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;

⁴ PPP Agreement definition updated to add (3) agreed post 2011 HLH set up

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

“Service Personal Data” has the meaning set out in Clause 30.2;

“Service Provider Representative” means the representative of the Service Provider appointed pursuant to Clause 12.1;

“Service Transfer” shall have the meaning ascribed to it in Clause 19.2;

“Service Transfer Time” shall have the meaning ascribed to it in Clause 19.2;

“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 8 (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 8;

“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 including through culture and sport, as developed and agreed from time to time between the Authority and the Service Provider in accordance with Clause 13;

“the Subsidiary” means High Life Highland (Trading) CIC, formerly known as High Life Highland (Trading) Limited, a community interest company incorporated under the Companies Acts (registered number SC408067) and having its registered office currently at Highland Archive Centre, Bught Road, Inverness IV3 5SS and formerly 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; and

“UK GDPR” has the meaning given in section 3(10) (as supplemented by section 205(4)) of the DPA 2018⁵.

- 1.2 Clause headings are included in the Agreement for ease of reference only and shall not affect the interpretation of the Agreement.
- 1.3 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.
- 1.4 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).

⁵ *New to reflect legislation changes.*

- 1.5 Where the context so admits or requires, words denoting the singular include the plural and vice versa.
- 1.6 References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

2 **ENTRUSTMENT**

- 2.1 The Authority entrusts the Service Provider with the provision throughout the Prescribed Period of the PSO Services, all in accordance with the Services Specification, as agreed between the Authority and the Service Provider in accordance with this clause 2, clause 8 and Part 2 of the Schedule.
- 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 8.2, 8.4 and 8.12) to supply the PSO Services from the respective venues comprised in the Property Portfolio; and (subject to Clauses 8.2, 8.4 and 8.12) 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 8.13) to utilise the Collections in the course of providing the PSO Services; and (subject to Clause 8.13) the Service Provider shall not be entitled to restrict public access to the Collections (otherwise than as permitted under Clause 8.13 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 The Service Provider shall be under an obligation to deliver the PSO Services in such manner that is consistent with the Delivery Plan set out from time to time by the Authority.⁶

3 DURATION AND REVIEW

3.1 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.

3.2 The parties agree to commence a review of the terms of this Agreement as at the date five years prior to the expiry of the Prescribed Period; or otherwise at such date as agreed by the parties.⁷

4 THIRD PARTY ARRANGEMENTS

4.1 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.

⁶ *New para 2.6.*

⁷ *Expanded 3.2 to ensure review of arrangements are planned well in advance of expiry of prescribed period (2036).*

4.2 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.

5 PAYMENTS ETC BY THE AUTHORITY

5.1 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.

5.2 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 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.

5.3 In order to facilitate the provision of the PSO Services, the Authority:

5.3.1 transferred 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 granted 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;

5.3.2 transferred 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 granted to the Subsidiary a licence in respect of the Collections Intellectual Property, for nil consideration, as provided for in the Collections Agreement.

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

5.5 Without prejudice to the provisions of Clause 5.4, where any capital assets are purchased by the Service Provider using Services Fees (wholly, or in conjunction with other funds):

- 5.5.1 the Service Provider shall ensure that the use of such assets for operations falling outwith the provision of the PSO Services shall be of a minor or ancillary nature only;
- 5.5.2 the Service Provider shall not dispose of such assets (either during the Prescribed Period or at any time thereafter) without the prior written consent of the Authority (acting reasonably), and on the basis that the Authority's consent may be granted subject to such conditions (which may include a requirement to repay the whole or part of the Services Fees attributable to the relevant assets) as the Authority may reasonably consider appropriate.
- 5.6 The provisions of Clause 5.5 shall apply (with any necessary modifications, and in any event subject to Clause 5.7) to the Assets as if they were capital assets of the Service Provider purchased using Services Fees.
- 5.7 The Service Provider shall be entitled, without any requirement to obtain the prior written consent of the Authority, to dispose of library or other lending stock, sports equipment and/or other items comprised in the Assets which have reached the end of their useful lives in the context of delivery of the PSO Services, providing the net receipts from such disposals are used to support the provision of the PSO Services.

6 SERVICES FEES – AMOUNTS

- 6.1 The process for agreeing the level of the Services Fees shall be in accordance with the provisions of this clause 6 and as set out in Part 4 of the Schedule.
- 6.2 At least six months prior to the start of each Financial Year, the Authority and the Service Provider shall commence negotiations in good faith with regard to the level of the Services Fees.
- 6.3 The negotiations referred to at clause 6.1 shall exclude any element payable under the provisions of Clause 6.5, payable in respect of that Financial Year.
- 6.4 The negotiations referred to at clause 6.1 shall also take account of any Services Specification Change which the parties may agree (subject to this Clause 6) should be applicable in respect of that Financial Year and the Prescribed Performance Standards which are anticipated to be applicable during that Financial Year.
- 6.5 The parties agree that the Services Fees payable by the Authority in respect of each Financial Year shall be based on the Services Fee paid in the previous Financial Year (excluding any non-recurring elements of that fee) and amended in accordance with estimates of pay inflation rates set by the Authority in setting its own service staffing

budgets for that Financial Year as they relate to Scottish Joint Council and Scottish Negotiating Committee for Teachers (or other relevant) annual pay negotiations.⁸

6.6 Subject to discussion between the parties, the Services Fee may also be adjusted to take account of the following matters:-

- i. projected activity changes;
- ii. revenue consequences of capital;
- iii. legislative change which impacts the cost of service delivery;
- iv. other cost pressures;
- v. the previous financial year's budgetary performance;
- vi. planned income generation and efficiency and other savings as proposed by the Service Provider;
- vii. such other savings, reductions or revisions to service specification/service levels as may be agreed for the year and taking account of affordability to the Authority, and impact for the Service Provider and on PSO deliverables.⁹

6.7 To ensure that the Service Provider can deal with unexpected increases in expenditure or loss of income, the Service Provider is expected to build a reasonable level of financial reserve as determined by the Service Provider's Board of Directors having regard to: (i) financial and charity best practice and guidance; and (ii) the Service Provider's turnover, makeup, structure, and relationship with the Authority. Sharing of information on the Service Provider's current and projected reserve levels, and discussion of the same regarding purpose and adequacy, will be considered as part of the annual fee setting process.¹⁰

6.8 The Service Level Agreements, where the Service Provider buys services from the Authority, shall be excluded from the calculation of the Services Fees referred to elsewhere within this clause 6. Where new services are added by the Authority these shall be subject to a separate calculation and then baselined for future year's calculations. In addition to those elements of the Services Fee which are provided for elsewhere within this clause 6, an additional 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).

6.9 The basis on which the amount of any additional fee payable under Clause 6.8 is to be calculated shall be dealt with outwith the provisions contained within this Clause 6 and as agreed between the Parties from time to time.

⁸ S 6.5 – This formalises the discussion and reflects agreements made in THC Budget Setting report in February 2024.

⁹ S 6.6 - THC addition which gives further reasons for changing the Service Fee – with the intention that budget discussions with HLH are on a similar footing as with Council Services.

¹⁰ S 6.7 Addition – due to current situation with reserves, it builds in an expectation HLH will rebuild reserves to be able to address issues without necessarily looking for THC support. Note, there is a reserves limitation in clause 17.6).

7 SERVICES FEE – ADJUSTMENTS

- 7.1 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.
- 7.2 For the avoidance of doubt, and with reference to Clause 7.1, 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 7.1.
- 7.3 Without prejudice to the provisions of Clause 7.1, the Services Fee shall be adjusted within the timescales and in accordance with the process set out in Part 5 of the Schedule.

8 CHANGE IN SERVICES SPECIFICATION

- 8.1 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.
- 8.2 Without prejudice to the provisions of Clause 8.1, 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):
- 8.2.1 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;
- 8.2.2 the Parties shall, in the light of the arrangements agreed in pursuance of paragraph 8.2.1, 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;

- 8.2.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 8.2.2, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 8.3 For the avoidance of doubt, the provisions of paragraph 8.2.1 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 8.2 on an interim basis if the Service Provider considers (acting reasonably) that there is an immediate and substantial threat to health and safety.
- 8.4 The provisions of Clause 8.2 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 8.2.1 to 8.2.3 at least three months prior to commencement of the relevant works and to complete that process at least four weeks prior to commencement of the relevant works.
- 8.5 The provisions of Clause 8.2 shall (subject to Clause 8.6) 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:
 - 8.5.1 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;
 - 8.5.2 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;
 - 8.5.3 any failure or shortcoming in relation to the delivery of services by the Authority to the Service Provider under the Council SLAs;
 - 8.5.4 any failure by the Authority to comply with its obligations under the PPP Licences;
 - 8.5.5 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;

- 8.5.6 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;
 - 8.5.7 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.
- 8.6 The provisions of Clause 8.5 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.
- 8.7 The provisions of Clause 8.2 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:
- 8.7.1 any Title Defect (as defined in the Property Agreement), as provided for in clause 13 of the Property Agreement; or
 - 8.7.2 requirements associated with a civil emergency, as provided for in clause 14 of the Property Agreement.
- 8.8 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
- 8.8.1 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)
- 8.8.2 the Authority may elect that the provisions of Clause 8.2 should apply, with any necessary modifications.
- 8.9 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

8.9.1 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)

8.9.2 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:

(a) the parties shall, in the light of the arrangements agreed in pursuance of paragraph 8.9.2, determine what adjustments to the Services Specification and/or Prescribed Performance Standards are appropriate;

(b) following upon agreement between the parties in relation to the adjustments referred to in paragraph 8.9.2(a), the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.

8.10 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 assignment 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

8.10.1 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):

8.10.2 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);

- 8.10.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 8.10.2, the Parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.
- 8.11 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:
- 8.11.1 agreeing the PSO Services which are to be delivered from the Property which is being added to the Property Portfolio ("**the New Property**");
- 8.11.2 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;
- 8.11.3 determining what adjustments to the Services Specification and/or the Prescribed Performance Standards are appropriate to reflect the matters referred to in paragraphs 8.11.1 and 8.11.2; and
- 8.11.4 following upon agreement between the parties in relation to the matters referred to in paragraphs 8.11.1 to 8.11.3, 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.
- 8.12 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 8.2.1 to 8.2.3 (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.
- 8.13 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 8.2.1 to 8.2.3 (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.
- 8.14 For the avoidance of doubt, a part of the Collections will be regarded as unusable for the purposes of Clause 8.13 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.

8.15 If there is any change in Law (otherwise than as referred to in clause 8.2) which has a significant impact on delivery of the PSO Services:

8.15.1 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;

8.15.2 the parties shall, in the light of the arrangements agreed in pursuance of paragraph 8.15.1, determine what adjustments to the Services Specification and/or the Prescribed Performance Standards are appropriate;

8.15.3 following upon agreement between the parties in relation to the adjustments referred to in paragraph 8.15.2, the parties shall negotiate in good faith an appropriate alteration to the Services Fee to reflect those adjustments.

8.16 Without prejudice to the provisions of Clauses 8.1 to 8.15, 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 17) 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 7.1); the process for initiating, and thereafter negotiating and agreeing, any such change shall be as specified in Part 5 of the Schedule.

9 CAPITAL COSTS

9.1 The Authority has retained capital and revenue property costs with responsibilities relating to property having been set out in the Property Agreement. In recognition of the importance of capital investment in maintaining and developing services, the Authority and Service Provider will hold discussions on capital programme priorities and how the Service Provider's input on capital projects and business cases can inform the Council's capital investment decision making. For the avoidance of doubt, the Authority will be under no obligation to agree any proposal made by the Service Provider. ¹¹

¹¹ Addition S 9.1 – amended to allow flexibility around the Council's new property strategy.

10 PERFORMANCE STANDARDS AND PERFORMANCE REPORTING

10.1 Subject to Clause 10.6, 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.

10.2 The performance standards applicable in respect of the first Financial Year shall (subject to Clauses 10.4 and 10.5) correspond with those set out in Part 2 of the Schedule.

10.3 Prior to the commencement of each Financial Year, having regard to the timeline of any discussions relating to the Services Fees, 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 10.5) be as set out in Part 4 of the Schedule.

10.4 The Prescribed Performance Standards shall be subject to variation from time to time:

10.4.1 in accordance with the provisions of Clause 8; and

10.4.2 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).

10.5 Without prejudice to the provisions of Clause 10.4, 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.

10.6 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.

11 **PRICING**

11.1 The Service Provider shall operate a pricing policy which balances the achievement of the principles and objectives outlined in Part 11 of the Schedule.

11.2 The Service Provider shall not:

11.2.1 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);

11.2.2 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.

12 **MONITORING & REVIEW**

12.1 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.

12.2 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. ¹²

12.3 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.

12.4 The review meetings referred to in Clause 12.3 shall, in addition to addressing any perceived shortcomings in the provision of the PSO Services, afford an opportunity

¹² S 12.2 - intention to hold quarterly contract meetings between THC and HLH to keep a formal communication channel open with both organisations contractually held to this.

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 8.1.

- 12.5 The Service Provider will have the option of initiating a proposal under Clause 6.1 or 8 to address the discussions held at the review meetings referred to in Clause 12.3 and issues arising from such discussions.
- 12.6 The review meetings referred to in Clause 12.3 shall be convened on not less than three 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.
- 12.7 The Client Manager shall be responsible for preparing minutes of all meetings and shall circulate the minutes to the Service Provider Representative within 5 Business Days of the date of the meeting.
- 12.8 The Service Provider Representative shall advise the Client Manager of any comments regarding the minutes within 5 Business Days of receipt of the minutes, thereafter the Client Manager will make such revisions as are agreed between the Service Provider Representative and the Client Manager.

13 **STRATEGY DOCUMENTS**

- 13.1 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.
- 13.2 The strategy for delivery of culture and sport across the Operating Area applicable to the periods outlined in the respective documents shall be consistent with the Authority's Delivery 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.
- 13.3 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 13.1.
- 13.4 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 13.2 and 13.3, 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.

14 **PROMOTION OF GAELIC LANGUAGE, CULTURE AND HERITAGE**

14.1 The Service Provider shall, in delivering the PSO Services:

14.1.1 adopt the Gaelic policies and practices of the Authority (so far as relevant to the delivery of the PSO Services);

14.1.2 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.

14.2 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

15 **GRANTS**

15.1 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.

15.2 The Service Provider shall comply with such of the terms and conditions of the agreements referred to in Clause 15.1 (as they apply to the Authority) as are notified to it by the Authority within eight 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.

15.3 For the avoidance of doubt, the provisions of Clause 18.1 shall be deemed to include any loss or liability which the Authority may sustain or incur as a result of any breach of Clause 15.1 and/or 15.2.

¹³ *Original S 14 HMIE Learning Community Inspections has been removed with the transfer of Adult and Youth Services back to THC on 1 December 2024.*

16 **SCHOOLS**

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

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

17.1 The Authority has decided 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 constitute a subsidy for the purposes of the Subsidy Control Act 2022, 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 comprise terms that are more favourable to the Service Provider than the terms that might reasonably be expected to be available on the market to the Service Provider and so, in accordance with section 3(2) of the Subsidy Control Act 2022, is not treated as financial assistance which confers an economic advantage.

17.2 In determining whether there is an economic advantage conferred in respect of the PSO Services by reference to clause 17.1:

17.2.1 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;

17.2.2 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 5.7) derived directly or indirectly from the Assets and/or the Trading Operations Assets (and in any case where Assets are used for a purpose falling outwith the PSO Services, on the basis that a notional charge (reflecting market rates) for use for that purpose shall be taken into account as if it were a receipt generated by the provision of the PSO Services);

17.2.3 the assistance provided by the Authority through the matters referred to in clause 5.3 shall be taken into account as representing part of the compensation in respect of the provision of the PSO Services;

- 17.2.4 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.
- 17.3 For the avoidance of doubt, the Authority shall, in determining whether or not to issue consent under paragraph 5.5.2, and in setting any conditions attaching to consent (if granted), take due account of compliance with the Subsidy Control Act 2022.
- 17.4 In order to facilitate the monitoring and control of the level of compensation for the PSO Services in accordance with clauses 17.1 and 17.2, the Service Provider undertakes:
- 17.4.1 to ensure that its internal accounts show the costs and receipts (including any notional charge of the nature referred to in paragraph 17.2.1) associated with the provision of the PSO Services separately from those associated with any other operations carried on by the Service Provider, and to ensure that its accounting policies clearly set out the process for allocating costs and revenues;
- 17.4.2 to submit to the Authority for approval, prior to the commencement of each Financial Year (and within such timescales as agreed between the parties), 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 17.4.4 and 17.4.5) to use all reasonable endeavours to adhere to the operating plan, as finally approved by the Authority, in respect of that Financial Year;
- 17.4.3 to provide the Authority, within such timescales as agreed between the parties, with a Statement in respect of each Quarter, showing the Eligible Expenditure Defrayed during that Quarter, all other financial assistance from public 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;
- 17.4.4 to provide the Authority, within such timescales as agreed between the parties, with a detailed analysis of all variances in respect of each Quarter from the Approved Operating Plan in respect of that Quarter;
- 17.4.5 to provide the Authority, within such timescales as agreed between the parties, with the unaudited accounts in a format complying with Accounting Code of Practice for the Authority (International Financial Reporting

Standards (IFRS)) for each Financial Year together with a detailed analysis of all variances in respect of that Financial Year from the Approved Operating Plan;

- 17.4.6 to provide the Authority, within such timescales as agreed between the parties, with the audited accounts in an appropriate format for each Financial Year (IFRS for each Financial Year) together with a detailed analysis of all variances in respect of that Financial Year from the Approved Operating Plan;
 - 17.4.7 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 economic advantage conferred in respect of the provision of the PSO Services.
- 17.5 The Authority shall regularly review the Statements, analyses, records and other information provided by the Service Provider under clause 17.4; and (subject to clause 17.6):
- 17.5.1 in the event that the Authority considers (acting reasonably) that economic advantage (having regard to clauses 17.1 and 17.2) in respect of the provision of the PSO Services has been conferred 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 economic advantage conferred 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);
 - 17.5.2 in the event that the Authority considers (acting reasonably) that economic advantage (having regard to clauses 17.1 and 17.2) in respect of the provision of the PSO Services is likely to be conferred 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.

- 17.6 If there has been economic advantage conferred (having regard to clauses 17.1 and 17.2) in respect of the provision of the PSO Services in respect of any Financial Year (an “Overspend Financial Year”), the Authority may allow the economic advantage 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 17.5.1.
- 17.7 Without prejudice to the provisions of paragraph 17.5.2, 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.
- 17.8 Any revised financial projections prepared pursuant to paragraph 17.5.2 or clause 17.7 shall be considered by the Authority by reference to clauses 17.1 and 17.2, and in the event that the Authority is satisfied (acting reasonably) that the revised financial projections would not lead to an economic advantage being conferred, 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.
- 17.9 In the event of any change in the Law, the issue of any communication, guidance note, consultation document or other relevant material by the UK Government or any other government authority or agency or any other development arising which might alter or otherwise affect the interpretation or effect of the Subsidy Control Act 2022 in its 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.
- 17.10 The Authority may withhold payment of and/or reclaim any amount paid to the Service Provider in respect of the PSO Services if required to do so by the Competition Appeal Tribunal or any other judicial body or body with appropriate authority. Any amount reclaimed as aforesaid shall be payable by the Service Provider within two months (or such shorter period, if any, as may be specified by the Competition Appeal Tribunal) of the date of issue by the Authority of a notice reclaiming the amount.
- 17.11 The Authority reserves the right, if required to do so, to provide any competent authority with information about any amount paid to the Service Provider in respect of the PSO Services and the provisions of this Agreement. In respect that the UK Government is empowered in certain circumstances to require the Authority to supply it with any information it deems necessary to enable it to determine that the amounts paid to the Service Provider in respect of the PSO Services complies with the Subsidy Control Act 2022 and any other rules and guidance applicable to the award of subsidies, the Service Provider shall so far as lawfully obliged to and within its power

supply the Authority with such information related to this Agreement as may be required in the course of such enquiries, as intimated by the Authority.

18 **FURTHER CONDITIONS/OBLIGATIONS**

- 18.1 The Service Provider shall (subject to Clause 18.2) 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).
- 18.2 The indemnity contained in Clause 18.1 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.
- 18.3 The provisions of Clause 18.1 shall not displace the obligation of the Authority to take reasonable steps to mitigate its loss.
- 18.4 The Service Provider shall:-
- 18.4.1 (without prejudice to the provisions of Clause 17.4 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;
 - 18.4.2 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;
 - 18.4.3 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;
 - 18.4.4 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;
 - 18.4.5 comply with all applicable procurement regulations on the basis that it is a contracting authority for the purposes of the Public Contracts (Scotland) Regulations 2015;

- 18.4.6 ensure that all consultants, contractors and sub-contractors employed on or in connection with the PSO Operations are paid timeously;
- 18.4.7 ensure that the PSO Operations are carried out to the reasonable satisfaction of the Authority;
- 18.4.8 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 Criminal Justice Information Service (CJIS) enhanced level check; and HLH must ensure that any employee who has not had such a satisfactory CJIS check, does not pass through or remain in public areas except under the direct supervision of a superior who has undergone such a satisfactory CJIS check;
- 18.4.9 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;
- 18.4.10 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.
- 18.5 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.
- 18.6 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.

- 18.7 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).
- 18.8 With reference to Clause 18.7, the Service Provider shall not increase the amount of excess in respect of any of the insurances referred to in Clause 18.7 without the prior written consent of the Authority (such consent not to be unreasonably withheld).
- 18.9 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 18.6 and 18.7.
- 18.10 The Service Provider undertakes:
- 18.10.1 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 18.7, together with such evidence as the Authority may reasonably request to demonstrate that such policies are in force;
- 18.10.2 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.
- 18.11 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
- 18.12 The Authority and the Service Provider shall each consider the recommendations referred to in Clause 18.11 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.
- 18.13 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 18.11, and within the timeframe reasonably prescribed by the Authority.

19 **TUPE**

- 19.1 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 Legislation.
- 19.2 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**").
- 19.3 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.
- 19.4 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.
- 19.5 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:-
- 19.5.1 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

- 19.5.2 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.
- 19.6 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: -
- 19.6.1 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
- 19.6.2 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.
- 19.7 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:-
- 19.7.1 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;
- 19.7.2 the Service Provider shall, within 14 days of receiving notice in terms of Clause 19.7.1, offer employment to the Individual or notify the New Supplier that it does not wish to make such an offer;
- 19.7.3 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 19.7.2) the New Supplier shall be entitled to terminate the employment of the Individual; and
- 19.7.4 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 19.7.3 (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 19.7.2 (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: -

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

19.7.6 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, 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.

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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

¹⁴ *Original S 20 Workforce Pay and Benefits is obsolete - removed as referred to original transfer (2011) requirements..*

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 8.

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 5.5, 5.6, 5.7, 15.1, 15.2, 15.3, 17, 18.1 to 18.3, 18.4.9, 18.5, 19, 20, 21.4, 22.1, 24, 25, 26, 27, 28, 29, 30, 31, 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 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 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.
- 25.3 A notice or notification which is delivered, or (in the case of 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 contact name is supplied in pursuance of Clause 25.2, the respective addresses, and contact names, for the respective parties are as follows:

The Highland Council
For the attention of: Assistant Chief Executive - People

High Life Highland
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 **OWNERSHIP OF IPR**

28.1 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 is 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.

28.2 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.

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28.3 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.

28.4 Subject to Clause 28.3, the Service Provider acknowledges that it shall acquire no rights to any IPR owned by the Authority.

28.5 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

¹⁵ *Original paragraph 29.3 removed as no IPR applies.*

IPR throughout the term of this Agreement. All right, title and interest in and to IPR created by or on behalf of the Service Provider independently of the PSO Services shall belong to the Service Provider. ¹⁶

28.6 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 28.2) 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 28.6.

29 **WARRANTIES**

29.1 The Authority warrants, represents and undertakes to the Service Provider that the Authority has full capacity and authority to enter into the Agreement;

29.2 The Service Provider warrants, represents and undertakes to the Authority that the Service Provider has full capacity and authority to enter into the Agreement.

29.3 The Parties hereby exclude from the Agreement all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

30 **PROCESSING OF PERSONAL DATA** ¹⁷

30.1 Each Party shall comply with its obligations under the provisions of the Data Protection Legislation.

30.2 In relation to any Personal Data disclosed by the Authority to the Service Provider or obtained by the Service Provider in the performance of the PSO Services ("**Service Personal Data**"):

30.2.1 The Parties acknowledge and agree that it is the factual arrangement between them which dictates the role and status of each party under Data Protection Legislation in respect of the processing of Service Personal Data. Notwithstanding the foregoing, the Parties anticipate that:

- (a) the Authority shall at all times act as and maintain the role of the owner and Controller of such Service Personal Data;
- (b) the Service Provider shall at all times, while it continues to process such Service Personal Data, act as and maintain the role of Data Processor of such Personal Data and shall only process the Service

¹⁶ Addition of final sentence S 28.5.

¹⁷ S 30 has been fully reviewed and updated for data protection legislation.

Personal Data as set out in Schedule Part 14 or as may otherwise be instructed in writing by the Authority; and

- 30.2.2 Schedule Part 14 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Service Personal Data and categories of Data Subject. ¹⁸
- 30.3 The Service Provider shall not process Service Personal Data except on the written instructions of the Authority which shall include, without limitation, acting in accordance with the terms of the Agreement.
- 30.4 The Service Provider shall acquire no right, title or interest in the Service Personal Data which shall vest and remain vested solely in the Authority.
- 30.5 The Service Provider shall implement appropriate technical and organisational security measures against unauthorised or unlawful processing of the Service Personal Data and against accidental loss or destruction of or damage to the Service Personal Data in compliance with the Data Protection Legislation.
- 30.6 For the purposes of the Agreement technical and organisational security measures required of the Service Provider shall include, without limitation, measures reflecting the material requirements of ISO 27001 (or any replacement Standard relating to data security).
- 30.7 The Service Provider shall not disclose any Service Personal Data other than to perform the Agreement, including to its officers, employees, volunteers 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 and who have committed themselves to keep the Service Provider Data confidential. The Service Provider shall also take all reasonable steps to ensure the reliability of those of its officers, employees, volunteers permitted agents, consultants, sub-contractors who may have access to the Service Personal Data.
- 30.8 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.
- 30.9 The Service Provider shall promptly implement any reasonable requirement made by the Authority (taking into account the nature of the processing) to ensure that the technical and organisational security measures taken by the Service Provider in respect of Service Personal Data are sufficient to enable the Authority to comply with the Data Protection Legislation and following request by the Authority shall provide

¹⁸ ¹⁸ Addition of 30.2.3 to reflect requirements following legislation changes.

the Authority reasonable assistance in connection with data protection impact assessments and consultations with the UK Information Commissioner's Office.

- 30.10 The Service Provider shall ensure that its employees, volunteers, its permitted agents, consultants, sub-contractors and their employees shall maintain proper records of the processing of the Service Personal Data and of all training carried out by it with regard to the Data Protection Legislation.
- 30.11 The Service Provider hereby agrees to assist the Authority, at no additional cost to the Authority, and within the timescales imposed by the Authority (acting reasonably) with Data Subject requests which may be received by either the Service Provider or the Authority in respect of any Data Subject rights under Data Protection Legislation relating to Service Personal Data. Such assistance comprises, where practicable taking into account the nature of the processing, drafting responses to Data Subject requests on behalf of the Authority and collating relevant documentation within the possession or control of the Service Provider in response to a Data Subject request. In providing such assistance, the Service Provider shall comply with the reasonable instructions of the Authority's data protection officer who will consider and approve all responses on behalf of the Authority before issue. The Authority's data protection officer shall provide instructions to the Service Provider in connection with this clause.
- 30.12 The Service Provider shall ensure that the Client Manager or Authority's data protection officer is informed promptly upon receipt of any request for information that might reasonably be regarded as a request by a Data Subject to exercise Data Subject rights under Data Protection Legislation. The Service Provider shall liaise with the Authority's data protection officer and follow the instructions of Authority's data protection officer in respect of all such requests.
- 30.13 The Service Provider may transfer Service Personal Data outside the UK, provided such transfer complies with Data Protection Legislation.
- 30.14 The Service Provider shall not process the Service Personal Data other than in compliance with the Agreement and/or with the written instructions of the Authority or at the specific request of the Authority or in compliance with a statutory legal obligation. Where the Service Provider is relying on an applicable statutory legal obligation as the basis for its processing of Service Personal Data, it shall promptly notify the Authority of this before performing the processing required by the applicable law unless the law prohibits the Service Provider from so notifying.
- 30.15 The Service Provider may only engage a third party to may process Service Personal Data on its behalf (a "**Sub-Processor**") provided that:
- 30.15.1 the Sub-Processor provides sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out;

- 30.15.2 the Sub-Processor is either listed in Schedule Part 14 or the Authority provides written consent prior to the appointment of the Sub-Processor (such consent not to be unreasonably withheld, conditioned or delayed);
- 30.15.3 the Service Provider engages the Sub-Processor on terms no less onerous than this clause 30 and which meet the relevant Art 28(4) requirements of UK GDPR by means of a contract which is made or evidenced in writing; and
- 30.15.4 the Service Provider shall remain fully liable for all acts or omissions of the Sub-Processor.
- 30.16 The Service Provider shall inform the Authority without undue delay (and in any event within 24 hours) if the Service Provider becomes aware or suspects that Service Personal Data has been subject to a Personal Data Breach.
- 30.17 The Service Provider will reasonably co-operate with the Authority in the Authority's handling of any Personal Data Breach, including but not limited to assisting with any investigation, making available all relevant information held by it relating to the Personal Data Breach, and taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach.
- 30.18 The Service Provider will comply with its obligations under clause 30.17 at no additional cost to the Authority, save where the Personal Data Breach arises from the Authority's specific written instructions, negligence, wilful default or breach of this Agreement.
- 30.19 Forthwith on termination or expiry of the Agreement for whatever reason, the Service Provider and its employees, volunteers its permitted Sub-Processors and their employees shall forthwith cease to use or process the Service Personal Data and shall, at the Authority's instruction, delete or return (or procure the return of) any and all Service Personal Data (together with all copies in any media in its power, possession or control) to the Authority. In such an event, the Service Provider and its employees/volunteers will not retain any copy of any part of the Service Personal Data in any form or media (other than Service Personal Data in digital form which has been archived and put beyond use to be deleted by the Service Provider in line with its retention policy) and will give the Authority a certificate signed by one of its officers confirming that it has fully complied with this clause. The Service Provider is not required to delete or return Service Personal Data it is required to retain under applicable law.
- 30.20 Without prejudice to clause 30.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Service Personal Data to the Service Provider and/or lawful collection of the Service Personal Data by the Service Provider on behalf of the Authority for the duration and purposes of the Agreement.

31 FREEDOM OF INFORMATION ¹⁹

- 31.1 The Parties acknowledge that they are both subject to the requirements of the Freedom of Information Act (Scotland) Act 2002 including the Regulations made under it and the Environmental Information (Scotland) Regulations 2004 (the “FOISA” and the “EIRs” respectively) and shall cooperate with each other to enable compliance with these information disclosure requirements.
- 31.2 Each Party shall assist the other Party at no additional cost to comply with the FOISA and/or the EIRs. Neither Party shall do any act either knowingly or recklessly that would cause the other Party to be in breach of FOISA and/or the EIRs.
- 31.3 Each Party shall advise the other of any requests for information received by the relevant Party where the information requested is in relation to the PSO Services provided under the Agreement. Where a Party receives a request for information under FOISA and/or the EIRs which relates to information held by or on behalf of the other Party, it shall direct the enquirer to submit a request with the other Party.
- 31.4 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/or the EIRs within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale with which the relevant Party must comply with as defined in FOISA and/or the EIRs, as relevant.
- 31.5 Each Party shall advise the other of any information that it wishes to publish that relates to the PSO Services so that the other Party may maintain its publication scheme under the FOISA.
- 31.6 Each Party shall have in place and shall follow its own policies, processes and procedures that provide for compliance with FOISA and EIRs where information held is in relation to the PSO Services.
- 31.7 Subject to Clause 31.8, all information (including, without limitation, any Confidential Information) submitted to either Party by the other, or obtained by a Party in connection with the PSO Services, may be disclosed and/or published by the relevant Party in compliance with/where required by:
- 31.7.1 the FOISA and/or the EIRs (the decisions of the relevant 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
 - 31.7.2 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

¹⁹ S 31 has been updated to reflect changes in freedom of information legislation.

Scottish Information Commissioner), only to the extent required to be disclosed.

31.8 If either Party receives a request under FOISA and/or the EIRs, which relates to any Confidential Information of the other Party,

31.8.1 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;

31.8.2 if the other Party shall fail to respond to a request for consent of the nature referred to in Clause 31.8.1 within five Business Days of the request being made, it shall be deemed to have consented to the release of information; and

31.8.3 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 legally required/ 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.

32 **EQUALITIES**

32.1 The Service Provider undertakes to the Authority that it has put in place, and shall maintain, an equalities policy 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.

33 **NET ZERO** ²⁰

33.1 The Service Provider undertakes to the Authority that it shall work with the Authority as regards any legal, or otherwise, obligations on the Authority in relation to lowering emissions and working towards net zero.

34 **DISPUTE RESOLUTION**

34.1 Both Parties will use their reasonable endeavours to resolve any dispute between them in respect of the Agreement and to reach an amicable and workable resolution of the matter in dispute within ten Business Days of either Party notifying the other of

²⁰ *New S 33 to tie the two organisations to working together.*

the dispute arising or within such other mutually acceptable timescale. Such endeavours shall involve the escalation of the dispute by referral by either Party in writing to the Parties' authorised representatives for resolution (who shall, in the first instance, be: (for the Authority) the chief executive of the Authority and (for the Service Provider) the chief executive of the Service Provider).²¹

- 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.
- 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

²¹ S 34 updated to add earlier step prior to escalation to reflect the way both organisations would want to operate.

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. Each party irrevocably agrees that the Scottish courts have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement.

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

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

SCHEDULE ²²

**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 seven specialist areas of work that will comprise the provision of the PSO services on behalf of the Authority:

- (i) Archives
- (ii) Countryside Rangers
- (iii) Leisure facilities
- (iv) Libraries
- (v) Museums and Galleries
- (vi) Music Development
- (vii) Sport

1.3 The table in section 2 sets out the aims and priorities to be achieved by the Service Provider for each of the seven services and the resources to be maintained to support their delivery.

1.4 The Authority may, from time to time, request that the Service Provider provide the Authority with documentation in respect of the strategy and development of each of the seven services listed at 1.2 above. ²³

²² Schedules have all been updated in line with current service levels as agreed between the Council and HLH as part of decisions taken by the Council in its budget setting process, the Council's Recovery Board and the agreement to complete this review of the Contract. These updates also reflect changes that will take place following the transfer of Adult and Youth Services from HLH to THC on 1 December 2024.

²³ New para 1.4 to reflect the reality of the ability of THC to request additional work of HLH in service development.

- 1.5 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.
- 1.6 The table in section 4 details lists the 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/outcomes	Priorities/objectives
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.²⁴ 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.

²⁴ Formal agreement reflecting this has been developed since HLH was established.

Service	Aim/outcomes	Priorities/objectives
Countryside Rangers	To increase awareness, understanding and care of the natural, built and cultural heritage of the Highlands through the provision of : information, advice, activities and events, interpretation, countryside site and greenspace management ; and encouraging responsible behaviour.	<ol style="list-style-type: none"> 1. Manage bunkhouse accommodations for visitors and groups. 2. Provide heritage and nature based learning opportunities & events to the public and contribute to The Highland Council's CLD Plan; 3. Provide an annual environmental education programme to schools and contribute to The Highland Council's Learning for Sustainability (LfS) and Curriculum for Excellence (CfE) through outdoor learning; 4. Contribute to The Highland Council's statutory Biodiversity duties; 5. Build capacity within communities to undertake environmental stewardship; 6. Assist the Highland Council's statutory outdoor access duties by monitoring D&I countryside site and core path conditions and raising awareness of the Scottish Outdoor Access Code;

Service	Aim/outcomes	Priorities/objectives
		7. Deliver events which aim to improve health and wellbeing across the highland area.

Service	Aim	Priorities
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;

Service	Aim	Priorities
		<p>8. Provide specialist advice and guidance to community management committees within the facility network.</p>
Libraries	<p>To provide reading and information services to support the educational, cultural and recreational needs of all.</p>	<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;

Service	Aim	Priorities
		<ol style="list-style-type: none"> 5. Provide guidance to support both formal and informal learning, including the provision of a library service to schools and communities.
Museums & Galleries	<p>To provide a specialist service that conserves, interprets and celebrates the heritage of the Highlands, provides access to high-quality visual art and provides excellent visitor experiences.</p>	<ol style="list-style-type: none"> 1. Conserve and make accessible the Authority's museums and visual art collections; 2. Provide public access to those through regional museums and art galleries and a range of interpretive services; 3. Provide local access to works of Highland, national and international importance, through a programme of temporary exhibitions. 4. Support organised school, other group and special interest visits; 5. Administer the annual Council funding to independent museums.

Service	Aim	Priorities
Music Development	To allow learners across Highland to access formal tuition on a range of orchestral; folk and pop/rock instruments and to participate in group and individual performances	<ol style="list-style-type: none"> 1. Provide access for tuition in as many schools and centres as possible across Highland; 2. Develop pathways for young people to progress through appropriate performance opportunities at school; area and regional level; 3. Maintain and develop a highly skilled team of specialist instructors and additional staff and volunteers; 4. Develop opportunities for excellence through the activities of Highland Young Musicians; 5. Promote the health, wellbeing and social benefits of music making; 6. Support young people's progression from Highland activities into the work of national organisations

Service	Aim/Outcome	Priorities/Objectives
Sport	To increase the number of people taking part in sport and physical activity at all levels.	<ol style="list-style-type: none"> 1. Provide an Active Schools service in every Associated School 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 community organisations;

Service	Aim/Outcome	Priorities/Objectives
		<p>7. Lead on the set up and operation of Community Sports Hubs in line with sportscotland funding agreement;</p> <p>8. Work with the specialist sports officers of national governing bodies where they exist;</p> <p>9. Deliver the sportscotland funded Athlete Travel Award Scheme (ATAS) to provide travel assistance to talented Highland athletes of all ages.</p>

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 presence of Active Schools Co-coordinators;
- iii) The presence of Countryside Rangers
- iv) The presence of Music Development team.

ALNESS	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Averon Leisure Centre	Term Time: 84 School Holidays: 84	Yes
Countryside Rangers		
Music Tuition		

ARDNAMURCHAN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Ardnamurchan Community Library	41	
Sunart Centre	89	
Mobile Library	3	
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

CHARLESTON	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Beaully Library	14	
Charleston Academy Community Complex	81	
Mobile Library	5	
Braeview Playing Field Park, Beaully		Yes
Phipps Hall		Yes
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

CULLODEN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Culloden Library	27	
Ardersier Library	16	
Mobile Library	1.45	
Culloden Pitches and Changing		Yes
Active Schools Coordinator		
Culloden Academy Community Complex	Term Time: 41.75 School Holidays: 38.75	Yes
Countryside Rangers		
Music Tuition		

DINGWALL	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Leanaig Centre, Ben Wyvis Primary School	Term Time: 23 School Holidays: 38	Yes
Highland Football Academy	91	Yes
Countryside Rangers		
Music Tuition		

DORNOCH	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Bonar Bridge Library	17.5	
Dornoch Library	23.5	
Mobile Library	1	
Dornoch tennis courts		Yes
Active Schools Coordinator		
Music Tuition		

FARR	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Bettyhill Library and Service Point	17.5	
Mobile Library	6.30	
Portskerra Playing Field and changing Rooms		Yes
Active Schools Coordinator		
Music Tuition		

FORTROSE	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Countryside Rangers		
Music Tuition		

GAIRLOCH	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Countryside Rangers		
Music Tuition		

GLENURQUHART/ KILCHUIMEN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Glenurquhart Library	25.5	
Craigmonie Centre	School holidays: 68 Term time: 68	
Mobile Library	4	
Active Schools Coordinator		
Music Tuition		

GOLSPIE	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Ferrycroft Visitor Centre, Lairg	42 (Mar- Nov Only)	No
Music Tuition		

GRANTOWN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Grantown Library	21	
Craig MacLean Leisure Centre	84.5	
Mobile Library	4	
Carrbridge Playing Field		Yes
Boat of Garten Playing Field		Yes
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

INVERGORDON	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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
Invergordon Public Toilets		
Active Schools Coordinator		
Countryside Rangers		

Music Tuition		
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INVERNESS SCHOOL	HIGH	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Inverness Botanic Garden and Bught Nursery		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	
Bught Park Stadium (pitches x 8)			Yes
Bught Park Shinty Pavilion		tbc	tbc
Bught Park Synthetic Pitch			Yes
Northern Meeting Park, Inverness			Yes
Active Schools Coordinator			
Inverness Leisure Centre		Term Time: 106.25 School Holidays: 106.25	Yes
Canal Park Synthetic Turf Pitch			Yes
Countryside Rangers			
Music Tuition			
Highland Archive and Registration Centre		30.5	

INVERNESS ACADEMY	ROYAL	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Hilton Community Centre		Term Time: 73 School Holidays 73	

Mobile Library	3	
Balloan Road Playing Field		Yes
Active Schools Coordinator		
Inverness Royal Academy Sports Centre	Term Time: 28 School Holidays: 48	Yes
Countryside Rangers		
Music Tuition		

KINGUSSIE	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Badenoch Centre	Term Time 80.5 School Holidays: 80.5	
Badenoch Library	27	
Highland Folk Museum	49	
Mobile Library	3	
Market Stance Playing Field, Kingussie		Yes
Kingussie Tennis Court and Pavillion		Yes
Dunbarry Playing Fields		Yes
Active Schools Coordinator		
Aviemore Community Centre	Term Time: 83.5 School Holidays: 83.5	Yes
Countryside Rangers		
Music Tuition		

KINLOCHBERVIE	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Scourie Playing Field		Yes
Mobile Library	5	
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

KINLOCHLEVEN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Leven Centre	Term time: 64 School holidays: 64	
Kinlochleven Library	46 (Term) 39 (Hols)	

Mobile Library	3	
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

LOCHABER	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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	
Claggan Park and Pavilion		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		
Lochaber High School Sports Facilities	Term Time: 24 School Holidays: 24	Yes
Ben Nevis Visitor Centre	Seasonal 56	No
Countryside Rangers		
Music Tuition		

MALLAIG	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Knoydart Inverie Library	2	

Mallaig Library	16.5	
Mobile Library	1	
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

MILLBURN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Inverness Library	55	
Spectrum Centre	67	
Inshes Community Library	22.75	
Inverness Museum and Art Gallery	35 (summer) 22 (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		
Countryside Rangers		
Music Tuition		

NAIRN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Nairn Academy Sports Facilities	38	
Countryside Rangers		
Music Tuition		

PLOCKTON	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Plockton Library	10	
Lochcarron Library	10	
Kyle of Lochalsh Library	33.5	
Mobile Library	9	
Active Schools Coordinator		
Countryside Rangers		
Music Tuition		

PORTREE	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Skye & Lochalsh Archive Centre	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		
Music Tuition		

TAIN	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
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		
Countryside Rangers		
Music Tuition		

THURSO	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
Thurso Swimming Pool	79.75	
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		
Countryside Rangers		
Music Tuition		

ULLAPOOL	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholderS4 Swimming lessons - incl
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		
Countryside Rangers		
Music Tuition		
WICK	Facility opening hours per week as at 1 December 2024	Facility available for booking/community access/trusted keyholder
East Caithness Community Facility	87	
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		
Countryside Rangers		
Music Tuition		
Caithness Archive Centre (in Nucleus)	30	

4 **School Swimming Lessons as at 1 December 2024** ²⁵

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Lochaber Leisure Centre	Ardgour	P1-P7	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Banavie	P6	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Caol	P6	12 (Jan - Apr)	2 x 1hr
Lochaber Leisure Centre	Duror	P1-P7	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Glencoe	P1-P3	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Invergarry	P4 -P7	12 (Jan - Apr)	1hr
Lochaber Leisure Centre	Inverlochy	P6	12 (Jan - Apr)	1hr
Lochaber Leisure Centre	Kinlochleven	P6-P7	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Lochaline	P1-P7	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	St Columbas	P1-P7	12 (Jan - Apr)	1hr
Lochaber Leisure Centre	Spean Bridge	P4-P7	12 (Jan - Apr)	1hr

²⁵ *Swimming lessons provided to schools has been updated to add lessons provided at facilities previously invoiced because they transferred to HLH after it was established*

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Lochaber Leisure Centre	Strontian	P1-P7	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Lundavra	P6	12 (Jan - Apr)	1hr
Lochaber Leisure Centre	Ballachulish	P4-P7	12 (Sept - Dec)	1hr
Lochaber Leisure Centre	Bun -Sgoil Ghaidhlig	P5	12 (Jan - Apr)	1hr
Lochaber Leisure Centre	Glencoe House (LHS ASN)	S1-S6	24 (Sept- Apr)	1hr
Lochaber Leisure Centre	St Brides	P1-P3	12 (Jan - Apr)	1hr
Culloden Academy	Duncan Forbes	P6	14 sessions (April - May)	1 hr
Culloden Academy	Ardersier	P6	7 sessions (April - May)	30mins
Culloden Academy	Croy	P6	7 sessions (April - May)	30mins
Culloden Academy	Smithton	P6	14 sessions (April - May)	1 hr
Culloden Academy	Balloch	P6	14 sessions (April - May)	1hr
Culloden Academy	Cradlehall	P6	14 sessions (April - May)	1hr
Culloden Academy	Available to all schools	P4 & P5	6 sessions	1hr

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Craig Maclean Leisure Centre	Grantown Primary	P4 & P5	6 sessions	1hr
Craig Maclean Leisure Centre	Abernethy	P4 & P5	6 sessions	1hr
Craig Maclean Leisure Centre	Deshar	P4 & P6	6 sessions	1hr
Craig Maclean Leisure Centre	Carrbridge	P4 & P7	6 sessions	1hr
Alness Leisure Centre	Kiltearn	P4-7	34	30
Alness Leisure Centre	Bridgend	P4-7	34	30
Alness Leisure Centre	Coulhill	P4-7	34	30
Alness Leisure Centre	Obsdale	P4-7	34	30
Alness Leisure Centre	Ardross	P4-7	34	30
Alness Leisure Centre	Newmore	P4-7	34	30
Alness Leisure Centre	Additional needs	P1-7	34	30

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Nairn Leisure Pool	Rosebank	P4-7	30 (January - December)	30mins
Nairn Leisure Pool	Millbank	P4-7	19 (January - December)	30mins
Nairn Leisure Pool	Cawdor	P4-7	12 (August - December)	30mins
Nairn Leisure Pool	Auldearn	P4-7	19 (August - December)	30mins
Nairn Leisure Pool	Academy Base	P4-7	35 (January - December)	45mins
Nairn Leisure Pool	Millbank Base		35 (January - December)	45mins
Dingwall Leisure Centre	Dingwall	P4-7	35	30mins
Dingwall Leisure Centre	Tarradale	P4-7	0	30mins
Dingwall Leisure Centre	Ben Wyvis	P4-7	10	30mins
Dingwall Leisure Centre	Mulbuie	P4-7	0	30mins
Dingwall Leisure Centre	Strathpeffer	P4-7	10	30mins
Dingwall Leisure Centre	Ferintosh	P4-7	0	30mins
Dingwall Leisure Centre	Strathconon	P1-P7	5	1 hr

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Dingwall Leisure Centre	Tore and Munloch	P4-P7	5	30mins
Dingwall Leisure Centre	North Kessock	P4-P7	5	30mins
Dingwall Leisure Centre	Avoch	P4-P7	10	30mins
Dingwall Leisure Centre	Culbokie	P4-P7	10	30mins
Dingwall Leisure Centre	Marybank	P1-P7	5	30mins
Dingwall Leisure Centre	Resolis	P1-P7	5	30mins
Dingwall Leisure Centre	St Clements		15	30mins
Sutherland Swimming Pool	Domoch	P4-P7	10	45mins
Sutherland Swimming Pool	Helmsdale/Kinbrace	P4-P7	10	45mins
Sutherland Swimming Pool	Brora	P4-P7	10	45mins
Sutherland Swimming Pool	Golspie	P4-P7	10	45mins
Sutherland Swimming Pool	Lairg	P4-P7	10	45mins
Sutherland Swimming Pool	Rogart	P1-P7	10	45mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Sutherland Swimming Pool	Achfary/Rosehall	P1-P7	10	45mins
Sutherland Swimming Pool	Gledfield	P1-P7	10	30mins
Sutherland Swimming Pool	BonarBridge	P4-P7	10	30mins
Invergordon Leisure Centre	Park Primary	P4-7	34	2x 30 mins
Invergordon Leisure Centre	South Lodge Primary	P4-7	34	2 x 30 mins
TRACC	Craighill	P4-P7	10	30mins
TRACC	Edderton	P1-P7	10	30mins
TRACC	Inver	P1-P7	10	30mins
TRACC	Tarbat	P1-P7	10	30mins
TRACC	Knockbreck	P4-P7	10	30mins
TRACC	Milton	P1-P7	10	30mins
TRACC	Fearn	P1-P7	10	30mins
TRACC	Hilton	P1-P7	10	30mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Thurso Swimming Pool	Bower	P1-P7	10	30mins
Thurso Swimming Pool	Crossroads	P1-P7	10	30mins
Thurso Swimming Pool	Pennyland	P4 &P5 any P6&7 who can't swim	10	30mins
Thurso Swimming Pool	Halkirk	P4 &P5 any P6&7 who can't swim	10	30mins
Thurso Swimming Pool	Mount Pleasant	P4 &P5 any P6&7 who can't swim	10	30mins
Thurso Swimming Pool	Reay	P4 &P5 any P6&7 who can't swim	10	30mins
Thurso Swimming Pool	Castletown	P4 &P5 any P6&7 who can't swim	10	30mins
Thurso Swimming Pool	Miller Academy	P4 &P5 any P6&7 who can't swim	10	30mins
Wick Swimming Pool	Newton Park	P4 & P5	20	30mins
Wick Swimming Pool	Noss Primary	P4 & P5	20	30mins
Wick Swimming Pool	Cannisbay	P4 & P7	10	30mins
Wick Swimming Pool	Watten	P4 & P7	10	30mins
Wick Swimming Pool	Keiss	P4 & P7	10	30mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Wick Swimming Pool	Dunbeath	P4 & P7	10	30mins
Wick Swimming Pool	Thrumster	P4 & P7	10	30mins
Wick Swimming Pool	Lybster	P4 & P7	10	30mins
Wick Swimming Pool	CEYAC Group	P1-S6	34	20mins
Lochbroom Leisure Centre (Ullaspool) *	Scoraig Primary	P4 & P5	16	45mins
Lochbroom Leisure Centre (Ullaspool) *	Ullapool Primary	P4 & P5	16	30mins
Lochbroom Leisure Centre (Ullaspool) *	Lochinver	P4 & P5	16	45mins
Lochbroom Leisure Centre (Ullaspool) *	Ullapool High School	Sept-Dec Lifeguard Supply, UHS supply own swim teaching staff	25	1hr
Lochbroom Leisure Centre (Ullaspool) *	Achiltibuie	P4 & P5	16	45mins
Lochbroom Leisure Centre (Ullaspool) *	Scourie	P4 & P5	16	45mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Lochbroom Leisure Centre (Ullaspool) *	Kinlochbervie	P4 & P5	16	45mins
Fingal Centre	Portree P.S.	P3-7	34	30mins
Fingal Centre	Bun Sgoil Ghaidhlig Phorthrigh	P3-7	34	30mins
Fingal Centre	Raasay P.S.	P1-7	15	1hr
Fingal Centre	Edinbane P.S.	P1-7	20	1hr
Fingal Centre	Carbost P.S.	P1-7	20	1hr
Fingal Centre	Staffin P.S.	P1-7	25	1hr
Fingal Centre	Kilmuir P.S.	P1-7	24	1hr
Fingal Centre	Dunvegan P.S.	P1-7	25	1hr
Fingal Centre	MacDiarmid P.S.	P1-7	25	1hr
Fingal Centre	Sleat P.S.	P5-7	15	1hr
Inverness Leisure	Aldourie	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Inverness Leisure	Beauly	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Bishop Eden	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	BSGI	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Balnain	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Cannich Bridge	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Crown	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Cauldeen	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Central (incl. Doorways Nurture Project)	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Drummond	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Dalneigh	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Dochgarroch	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Daviot	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Inverness Leisure	Drakies	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Farr	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Glenurquhart	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Hilton	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Holm	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Inshes	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Kilchuiemen	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Kirkhill	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Kinmylies	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Lochardil	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Merkinch	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Milton of Leys	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Muirtown	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins

Swimming Pool Name	School Name	Primary Class	Number sessions	Duration of sessions
Inverness Leisure	Ness Castle	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Raigmore	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	St. Josephs	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Strathdearn	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Stratherrick	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Tomnacross	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
Inverness Leisure	Teanassie	P4-7 (P1-7 for smaller schools)	Up to 10 weeks	30mins
North Coast Leisure	Melvich Primary	P4 &P5 any P6&7 who can't swim	10	45mins
North Coast Leisure	Farr Primary	P4 &P5 any P6&7 who can't swim	10	45mins
North Coast Leisure	Tongue Primary	P4 &P5 any P6&7 who can't swim	10	45mins
North Coast Leisure	Bettyhill High	Provisional Booking for April 2025	4	45mins
Poolewe	Shieldaig PS	P1-P3	6	45mins

* ***Arrangement in place for Ullapool sites to invoice THC annually.***

PART 2 – PUBLIC PERFORMANCE REPORTING ²⁶

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 Council's Corporate Plan. 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.

Performance reporting shall normally be twice per year to the Education committee through the "HLH Progress Report", as agreed between the Authority and the Service Provider. Reporting shall include:

- i. The Service Provider's contributions to the current Authority corporate plan once per year.
- ii. The provision to the Authority of the Service Provider's Annual Report as submitted to Companies House
- iii. Annual performance indicators which reflects effectiveness, efficiency, and relevance to the Highland.

The annual performance indicators referred to in point (i) above shall be as follows:

- i. Effectiveness – measured by reporting in-person and digital engagements as defined by the Authority's statutory local government benchmarking framework reporting and reporting on customer satisfaction levels.
- i. Efficiency – measured by expressing the Services Fee provided by THC as a percentage of HLH expenditure.
- ii. Relevance to the Highland population – measured by tracking the number of individual customers which HLH has where it is possible to identify unique individuals through, for example, library and leisure memberships, enrolments into music tuition classes etc.

The Service Provider will be required to provide customer and financial information as required by the Authority for its statutory reporting purposes relating to the PSOs including the provision of customer and financial information which allows the Authority to make its statutory returns listed in Schedule 1 Part 3.

²⁶ *PART 2 – Public Performance Reporting updated to reflect Council requirements.*

PART 3
FINANCIAL REPORTING REQUIREMENTS –

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

Information	Format	Frequency
Local Finance Return (LFR)	As per the return issued by the Scottish Government	Annually
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 Grant	As per the return issued by Sportscotland, including full payroll and ledger transaction data	Twice annually
PSO Quarterly Statement	Format – provision of quarterly financial monitoring report to the HLH Board.	Quarterly
Unaudited accounts	In compliance with IFRS, the Companies Act and the OSCR regulations	Annual
Audited accounts	In compliance with IFRS, the Companies Act and the OSCR regulations	Annual
List of material assets	List of all material assets held as at 31 st March	Annual

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
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
Pension Data	As per the Employers Guide	

PART 4
PROCESS FOR AGREEING SERVICES SPECIFICATION, PERFORMANCE
STANDARDS & SERVICES FEE FOR EACH FINANCIAL YEAR ²⁷

In September 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 progressing negotiations, the Authority and Service Provider will:

- i. act in good faith and in a reasonable manner;
- ii. display flexibility and pragmatism;
- iii. be open and transparent with information about performance and financial status i.e. open book accounting;
- iv. accept the integrity of information provided;
- v. co-operate fully with the other;
- vi. provide early information and notice about relevant problems and initiate early dialogue;
- vii. follow processes without delay and within agreed timeframes;
- viii. recognise the benefits of longer-term and multi-year financial planning and the external constraints that may apply in terms of the timing and duration of Scottish Government financial settlements, and accordingly as far as practicable, will endeavour to take a multi-year approach to financial planning;
- ix. the respective representatives will meet by 1 September each year:-
 - a. to consult on their proposed timetables for forward financial planning and budget setting; and
 - b. so far as possible to agree a consistent schedule for production of key information required by each partner.

Adjustments will be evidence based with full transparency and in the case of efficiency/savings/transformational targets will be accompanied by a clear assessment of their potential impact on outcomes and strategic objectives, and associated risks. Targets and assessments will be open to scrutiny by the partners.

In March 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 and associated performance targets. The Service Provider's proposals will only be formally 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

²⁷ PART 3 – updated to describe how the annual budget discussions will be conducted.

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.

In addition to general reporting requirements, each Financial Year budget monitoring statements will be produced on a quarterly basis by the Service Provider.

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 34 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 and the 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 The Service Provider's Area Facilities Managers 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 Provide, 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 an undisputed and vatable 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	<p>£18.5m p.a.</p> <p>£250K</p>	<p>£1K</p> <p>£1K</p>	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>		<p>Buildings £99M;</p> <p>Contents £13.5M</p>	£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, to apply for funding streams that will help to increase the profile of Gaelic language and culture;
- 4 In conjunction with the Authority's Gaelic Team, help to provide a programme of Gaelic extra-curricular activities for pupils in Gaelic Medium Education and help to raise awareness of Gaelic language and culture and to promote participation in the Gaelic arts;
- 5 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;
- 6 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;
- 7 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 sports leadership training;
- 8 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;
- 9 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;
- 10 To incorporate the promotion of Gaelic language, culture and heritage in any events hosted or organised the Service Provider;
- 11 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;

- 12 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 Raising income;
- 5 Maintaining free use of school facilities for school and youth work activity, while allowing charging for additional facility management costs incurred;
- 6 Maintaining free access (charging on a cost recovery/income loss only basis ²⁸) to outdoor facilities to host events delivered directly by the Inverness Festivals Working Group.

²⁸ *Text in brackets added to reflect new arrangement between the Council and Common Good Funds.*

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
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
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	c. £1m	Partnership Agreement - Active School Co- ordinators/CSH/Leadership/ Travel

PART 14 – PARTICULARS OF PROCESSING ²⁹

1 Scope, nature and purpose of processing by the Service Provider

As part of delivering the PSO Services and performing its obligations under the Agreement, the Service Provider is obliged to process Personal Data on behalf of the Authority.

The Service Provider will receive, collect, store, share, delete and otherwise process Personal Data in the performance of the PSO Services and otherwise consistent with its obligations under the Agreement.

2 Duration of the processing

The duration of the processing is the duration of the Service Provider's obligations under the Agreement.

3 Types of Personal Data

Personal Data disclosed by the Authority to the Service Provider or obtained by the Service Provider in the performance of the PSO Services, including: names, contact details, pay and financial details, personal identifiers such as DOB, images, attendance, health data, data relating to criminal offences and convictions and all such relevant data types as required through new initiatives or requirements to deliver the PSO Services.

4 Categories of Data Subject

Data Subjects whose Personal Data is disclosed by the Authority to the Service Provider or obtained by the Service Provider in the performance of the PSO Services, including Authority's customers and service users, [any other persons – parties to confirm?]

5 List of Sub-Processors

The Service Provider is permitted to engage the following Sub-Processors from the commencement of this Agreement:

Name and Address of Sub-Processor	Processing Activities	Security Measures	Location	Cross-Border Transfer Mechanisms (if applicable)
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²⁹ New PART 14 required following legislation changes to describe the processing under the agreement.

Mailchimp	E-mail, newsletter	Set out in Mailchimp terms and conditions	Various, including United States	Set out in mailchimp terms and conditions
Processors set out on the Service Provider's website: https://www.highlifehighland.com/gdpr/data-processors/	Various, as set out on the website	Set out in accordance with the relevant Sub-Processor's terms	Various, including United States	Set out in accordance with the relevant Sub-Processor's terms